ESR REVIEW

Economic and Social Rights in South Africa

Volume 13
No. 1 2012

Ensuring rights make real change

Contents

20 Years of Excellence promoting human rights and democracy
COMMUNITY LAW CENTRE
1990-2010

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

ESR REVIEW

ISSN: 1684-260X

A publication of the Community Law Centre (University of the Western Cape)

Editor: Dr Ebenezer Durojaye

Co-editor: Gladys Mirugi-Mukundi

External editor: Olubayo Oluduro

Contact the Socio-Economic Rights Project
Community Law Centre
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
www.communitylawcentre.org.za/clc-projects/socio-economic-rights/esr-review-1

ESR Review
The ESR Review is produced by the Socio-Economic Rights Project of the Community Law Centre, with the financial assistance of the European Union and with supplementary funding from the Ford Foundation. The contents of the ESR Review are the sole responsibility of the Socio-Economic Rights Project and can under no circumstances be regarded as reflecting the position of the European Union or the Ford Foundation.

Production: Page Arts cc

Editorial

This is the first ESR issue of 2012. The contributions focus on gender mainstreaming, racial inequality, the link between access to socio-economic rights and the right to dignity, as well as the application of international standards and norms in South Africa's domestic case law.

Ebenezer Durojaye and Bridget Chukwudera Okeke explore the notion of gender-mainstreaming from a comparative analysis of what obtains in Nigeria and South Africa. The authors argue that beyond states providing for gender equality in their national legal framework, the norms and standards contained in the law should translate to gender equality in practice, which still seems to be a lacuna in both countries.

Anthea van der Burg explores the link between access to socio-economic rights and the right to dignity in a review of the *Beja* judgment. The case arose at the South African Human Rights Commission (SAHRC) and the Cape High Court as a result of undignified sanitation services in the form of un-enclosed toilets in Khayelitsha in the Western Cape. In addition, the review importantly reiterates the need for South Africa to ratify the International Covenant on Economic Social and Cultural Rights (ICESCR) and the imperative of applying international standards and norms in South Africa's case law.

April 8 is International Roma Day. On this date, UN Independent Expert on minority issues, Rita Izsák, called on states to intensify their efforts and 'identify, share and put into practice what is known to be working for the inclusion and integration of Roma communities'. Sheila Camerer shares her practical insights and reflections as South Africa's Ambassador to Bulgaria on the plight of the Roma people. Sheila makes the notable observation that the deplorable human rights situation of the Roma could be compared to the socio-economic situation of many South Africans living in equally deplorable conditions in the townships and at the margins of development in post-apartheid South Africa.

Flowing from the Beja judgment, the SAHRC recently appealed for state accountability at a a public dialogue on water and sanitation. This issue presents a brief summary of the key outcomes of that hearing. It also pays tribute to the late Andries Tatane, a teacher, community activist and journalist, killed in cold blood by the South African police force on 13 April 2011 during a service delivery demonstration at Ficksburg, Free State.

It further provides summarised updates of the recently launched Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights and a report of the Special Rapporteur, Raquel Rolnik, on adequate housing, as a component of the rights to an adequate standard of living and to non-discrimination.

We acknowledge and thank all the guest contributors and reviewers in this issue. We trust that readers will find it stimulating and useful in the advancement of socio-economic rights, especially the rights of the poor and most vulnerable groups of society.

Finally, we extend a warm welcome to Dr. Ebenezer Durojaye, the new coordinator of the Socio-Economic Rights Project at the CLC, and wish him well in steering the project forward.

Gladys Mirugi-Mukundi,
co-editor

How effective is gender mainstreaming at the national level?

A comparative study of Nigeria and South Africa

Ebenezer Durojaye and Bridget Chukwudera Okeke

Introduction

The notion of gender mainstreaming gained international attention during the 1990s, particularly after deliberations at the International Conference on Population and Development in Cairo 1994 and at the Fourth World Conference on Women in Beijing in 1995. Significant attention was given at these conferences to issues affecting women's health, economic development and wellbeing. In particular, the international community agreed at Beijing to mainstream gender in all activities and programmes of governments. This is more or less a reinforcement of the provisions of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which came into force in 1981. The Convention urges states to take adequate measures with a view to addressing cultural and religious practices that perpetuate the subordination of women and deny them the enjoyment of their fundamental rights and freedoms.

At the regional level, attempts made to address gender inequality and improve the status of women include the Dakar Declaration of 2002, the Solemn Declaration on Gender of 2004 and the African Union's 2005 Protocol to the African Charter on the Rights of Women (African Women's Protocol). The SADC Protocol on Gender and Development (2008) equally contains important norms and standards aimed at securing substantive gender equality and development among SADC member states.

The African Women's Protocol remains one of the most radical human rights instruments that address gender inequality and the subordination of women in all spheres of life (Banda 2005; Durojaye 2006). It contains a number of groundbreaking provisions relating to women's sexual and reproductive health, inheritance rights, political participation, economic empowerment, elimination of harmful cultural practices and equal rights in marriage and social lives. More importantly, it urges African government to enact laws and adopt policies that will advance gender equality and protect women from human rights abuses

Although the notion of gender mainstreaming does not imply favouring women, given the patriarchal nature of most societies (particularly African societies) and the historically disadvantaged position of women, it is meant to ensure equal participation by and opportunities for women in all spheres of life. Gender mainstreaming refers to the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies, at all levels and at all stages, by the actors normally involved in policy-making (Council of Europe 1998). According to Mukopadhya (2004), gender mainstreaming should aim to achieve the following:

- make policy makers pay more attention to resources available to men and women;
- make policy makers look at the differences that occur in men and women's experiences in their daily lives; and
- make policy makers examine the representation of men and women in decision-making positions in all areas.

To determine the extent to which a country has mainstreamed gender into its political, economic and social lives, attention should be given to how existing laws and policies accommodate the differences that exist between men and women and how women's specific concerns have been addressed with the integrationist and transformative approaches (Mukhopadhyay 2004). More importantly, gender mainstreaming must be integrated into all aspects of human endeavour, particularly political representation and public management policies.

Implementation of national action plans on gender in Nigeria and South Africa

To determine whether a country is committed to advancing gender equality within its area of jurisdiction, one must

> Addressing gender inequality goes beyond merely enacting laws and adopting policies

examine whether existing laws and policies recognise gender inequality and aim to redress it. This section examines the legal framework for advancing gender equality in Nigeria and South Africa. The choice of these countries is based on the dynamics which they represent. Nigeria is the most populous country in Africa with about 150 million people (National Population Commission 2006) made up of about 200 ethnic groups, and is regarded as one of the leading oil exporting countries in the world. On the other hand, South Africa, which recently emerged from the apartheid era, has one of the most buoyant economies in Africa. Its population is estimated at 50 million and is made up of diverse groups and people (often referred to as the 'rainbow nation'), speaking 11 official languages (Statistics South Africa 2011).

The discussion that follows will assess whether the actions and measures taken by these countries in addressing gender inequality are consistent with their obligations under national and international laws. This analysis is carried out by focusing on issues such as gender and governance regimes, political representation and public management policy.

Gender and governance regimes

In an attempt to address gender inequality in Nigeria and South Africa, the governments of these countries have adopted important governance regimes. For instance, Nigeria has adopted a number of measures, including the National Gender Policy (the Policy) of 2006, in response to the prevailing gender inequality in the country. The Policy aims at complementing the provision of section 42 of the 1999 Constitution of Nigeria, which prohibits discrimination on different grounds, including sex. One of its goals is to:

> build a just society devoid of discrimination, harness the full potentials of all social groups regardless of sex or circumstance, promote the enjoyment of fundamental human rights and protect the health, social, economic and political well being of all citizens in order to achieve equitable rapid economic growth.

The Policy is a commitment to gender mainstreaming as a developmental approach and tool for achieving the economic reform agenda. It also recognises that gender issues are critical to the achievement of national development.

South Africa has one of the most progressive constitutions in the world. The 1996 Constitution of South Africa contains copious provisions on equality and respect for the fundamental rights of all, particularly disadvantaged groups such as women. Section 9 is regarded as the 'equality clause' and prohibits discrimination on various grounds including gender, sex and pregnancy. In addition, the Gender Policy of 2000 has among others the objectives of improving the status of women, promotion of their economic empowerment, the development and implementation of affirmative action targeting women and the setting up of effective machinery at national and provincial levels to implement the Policy's provisions. The Gender Policy aligns itself with other international affirmations on women's rights and gender equality. Additionally, the South African government has enacted laws such as the Employment Equity Act (EEA) of 1998 and Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000 in order to address all forms of discrimination within the country, particularly the employment sector (Hassim et al 2007).

From the foregoing it is evident that the two countries have adopted gender-specific governance regimes. However, whether or not these legal frameworks have impacted positively on the lives of women in these countries is the basis of the discussion below. Addressing gender inequality in any society goes beyond merely enacting laws and adopting policies, and requires a commitment to implementing the laws.

Political representation

Although the Nigerian Policy on Gender of 2006 contains lofty goals (such as achieving 'minimum threshold of representation for women in order to promote equal opportunity in all areas of political, social, economic life of the country'), neither the Policy nor the Constitution contain specific provisions on affirmative action. Therefore, the situation on the ground does not seem to reflect the Nigerian government's commitment to eliminate gender inequality. The result is that women are still under-represented in key political positions. For instance, women only account for four of about 109 Members of Senate (less than five per cent) and a mere 13 of 352 Members of the House of Representatives (less than five per cent) (Inter-Parliamentary Union 2011).

Nigeria is currently ranked number 127 on the list of countries that have achieved gender parity in the parliamentary sphere (Inter-Parliamentary Union 2011). With regard to the executive arm, women only account for 12 out of 41 ministers (representing about 12 per cent) and none of the state governors is a woman. It should be noted that article 9 of the Women's Protocol enjoins African governments to actively promote women's participation in government, including ensuring that women are equally represented in all levels of decision-making. The low representation of women in politics in Nigeria is an indication that the government is failing in its obligation under the Women's Protocol. Women should no longer be viewed as inferior or less qualified as men. Rather they should be treated as equal partners with men in developing and implementing government's policies and decisions.

With regard to South Africa, the Gender Policy of 2000 provides that women and men will be given equal oppor-

tunity to participate in the country's political, social, economic and cultural development. It further aims to achieve equality for women as active citizens, decision makers and beneficiaries in the political, economic, social and cultural spheres of life. The Gender Policy equally upholds the principle of affirmative action. In addition, the ruling African National Congress (ANC) recognises the principle of gender equality and has agreed to allocate 50 per cent of all political positions to women at branch, district, provincial and national levels (Mukasa 2008). This is quite commendable and in line with the spirit of article 9 of the Women's Protocol. It will undoubtedly go a long way in promoting the rights of women in the country.

When South Africa returned to democratic rule in 1994, about 111 women were elected to the legislature, representing 28 per cent of the 400 Members of Parliament. By 2009, this number had increased to 178, representing about 45 per cent of the total. In the National Provincial Assembly, 16 women represented about 29 per cent of its 56 members (Inter-Parliamentary Union 2011). A similar trend is noticed at the provincial level. In 1994, women only made up 23 per cent of the 428 seats available for the provincial legislatures. By 2009, this number had increased to 170 (about 45 per cent) of the 430 seats then available at the provincial level (Statistics South Africa 2011). This development has put South Africa at number five on the list of countries that have achieved gender parity in the legislature. In Africa it is second only to Rwanda regarding the number of women represented in the parliament (Inter-Parliamentary Union 2011).

In 2009, when President Zuma's government was inaugurated, 14 ministers and 12 deputy ministers were women, representing about 42 per cent of the total. This is a remarkable improvement from 1994, when only two women were appointed as ministers and another three as deputy ministers. At the provincial level, five of the nine provincial premiers (approximately 60 per cent) are women (South Africa Institute of Race Relations 2011).

This undoubtedly shows South Africa's commitment to meeting the target set by the South African Development Community (SADC) of 50 per cent representation of women in political decision-making by 2015. It further shows that the South African government is alive to its obligation under article 9 of the Women's Protocol, which requires African governments to ensure women's equal participation in decision-making. The South African experience serves as a best practice for other African countries to emulate. No society can achieve greatness and economic development where gender inequality remains the norm.

Public management/economic opportunities

Women are often assigned menial or low paying jobs and would need to work twice as much as men in order to occupy top positions in many establishments. In some cases, women are paid less than men for doing the same job. The National Gender Policies in Nigeria and South Africa contain important provisions to address these challenges. One of the objectives of the National Gender Policy in Nigeria is undertaking women- and men-specific projects as a means of developing the capabilities of both women and men, to enable them take advantage of economic and political opportunities. However, women have continued to occupy the lower levels of the civil service and private sectors and have relatively few opportunities to secure employment. For instance, it is estimated that women constitute 65 per cent of the poorest 70 per cent of the population (UN Statistics Division 2011).

Moreover, women constitute only 24 per cent of the total workforce for the Federal Civil Service. In addition, they only occupy 14 per cent of the overall management positions (National Bureau of Statistics 2010). On average, it is estimated that women account for 35 per cent of people in active employment in the country (UN Statistics Division 2011). This is more or less a reflection of social relations of gender in the Nigerian society, which are often perpetuated by gender ideologies.

In the case of South Africa, while women account for 51 per cent of the total population, about 45 per cent of them are actively engaged in the employment sector. On the other hand, unemployment rates among women are around 27 per cent compared with 20 per cent for men (United Nations Statistics Division 2011). A more recent report shows that women occupy 27 per cent of top management positions, thus surpassing the global average of 20 per cent (Grant Thorton International 2011). While this is an important milestone for women in South Africa, there remain some challenges with regard to their roles in the private sector. For instance, a survey carried out by the Business Women's Association reveals that only three per cent of South African companies have women as the chief executive officers (Limpopo Provincial Government 2011).

This clearly shows that there is room for improvement with regard to women's representation in the top management positions of big private corporations. Mathur-Helm (2005) has argued that due probably to patriarchy and stereotypical beliefs, South African organisations are still

Table 1: Number and percentage of women represented in legislative houses and cabinets in Nigeria and South Africa

Country	Lower legislative house		Upper legislative house		Cabinet
	Number of women represented	Percentage of women represented	Number of women represented	Percentage of women represented	Percentage of women represented
Nigeria	13 (out of 352)	3	4 (out of 109)	3	5
South Africa	178 (out of 400)	45	16 (out of 56)	29	42

Source: Inter-Parliamentary Union Report 2011.

Table 2: Global Gender Gap Report 2010, showing women's participation in four areas (economic development, health, education and political empowerment) in Nigeria and South Africa

	Overall rank and score		Economic participation opportunity		Education attainments		Health and survival		Political empowerment	
Country	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Nigeria	118	0.6055	86	0.6044	124	0.8072	120	0.9607	111	0.0497
South Africa	12	0.7535	55	0.6727	43	0.9962	101	0.9677	9	0.3773

reluctant to entrust crucial positions to women. It has been argued that under-representation or under-utilisation of women in the work force may exacerbate poverty and under-development (Bridges and Lawson 2008).

This shows that South Africa is faring better than Nigeria regarding women's involvement in political and economic situations.

Conclusion

Although Nigeria and South Africa have initiated measures towards realising gender equality in all spheres of life, these measures have not wholly improved the position of women in these countries. While the South African government deserves commendation for the high representation of women in the legislature, much more is still required to be done with regard to the numbers of women actively engaged in employment and occupying the top positions in private companies. Due to the half-hearted implementation of laws and policies in Nigeria, women have not fared better in the political, social and economic spheres. This shows that the existence of a promising legal and policy framework may not necessarily guarantee improvements in women's status (Bauer 2008; Morgan 2009). Therefore, the two countries would need to intensify programmes such as education awareness and micro-credit that will lead to the empowerment of women so as to ensure them better access to economic or financial resources (Chant 2008).

Ebenezer Durojaye is the coordinator of, and senior researcher in, the Socio-Economic Rights Project.
Bridget Chukwudera Okeke is a Masters student in International Development Studies at the University of Manchester, United Kingdom.

References

African Union 2003. The Protocol to the African Charter on the Rights of Women, Adopted by the 2nd Ordinary Session of the African Union General Assembly in Maputo CAB/LEG/66.6. Entered into force 25 November, 2005.

Banda, F 2005. *Women, law and human rights: An African perspective*. Oxford: Hart Publishing.

Bridges, S and Lawson, D 2008. A gender-based investigation into the determinants of labour market outcomes: Evidence from Uganda. *Journal of African Economies*, 18(3): 461–495.

Chant, S 2008. The feminisation of poverty and 'feminisation' of anti-poverty programmes: Room for revision? *Journal of Development Studies*, 44(2): 165–197.

Council of Europe 1998. *Gender mainstreaming: Conceptual framework, methodology and presentation of good practices*. Council of Europe, Strasbourg.

Constitution of the Federal Republic of Nigeria 1999.

Durojaye, E 2006. Advancing gender equity in access to HIV treatment through the Protocol on the Rights of Women in Africa. *African Human Rights Law Journal*, 6(2): 187–207.

Grant Thorton International Business Report 2011. 'Proportion of women in senior management falls to 2004 levels', available at http://www.internationalbusinessreport.com/Press-room/2011/women_in-senior_management.asp.

Hassim, A, Heywood, M and Berger, J 2007. *Health and democracy: A guide to human rights, health law and policy in post-apartheid South Africa*. Cape Town: Siber Ink.

Inter-Parliamentary Union 2011. 'Women in National Parliaments', available at http://www.ipu.org/wmn-e/classif.htm (accessed on 26 November 2011).

Limpopo Provincial Government 2011. 'SA women in senior positions beating global counterparts', available at http://www.limpopo.gov.za/index.

Mathur-Helm, B 2005. Equal opportunity and affirmative action for South African women: A benefit or barrier? *Women in Management Review*, 20(1): 56–71.

Mukasa, RS 2008. *The African Women's Protocol: Harnessing a potential force for positive change*. Auckland Park: Jacana.

Mukhopadhyay, M. 2004. Mainstreaming gender or 'Streaming' gender away: Feminists marooned in the development business. *IDS Bulletin* (30) 4: pp.95–103.

National Bureau of Statistics 2010. 'National manpower stock and employment generation survey: Household and micro enterprise (informal sector)', available at http://www.nigerianstat.gov.ng/uploads/latestRelease/2b1fa54acea7189e402bc1d2b9d240305edd96c1.pdf.

National Population Commission 2005. Population census report. Abuja: National Population Commission.

South Africa - The Good News 2011. 'More women in Parliament', available at http://www.sagoodnews.co.za/politics/more_women_in_parliament_2.html.

South African Institute for Race Relations (SAIRR) 2011. *South Africa annual survey*. Pretoria: SAIRR.

Statistics South Africa 2011. *Population statistics – Mid year estimates*. Pretoria: Statistics South Africa

United Nations Statistics Division 2011. *Statistics and indicators on men and women*. New York: United Nations Statistics Division.

Application of international law in South African case law and the importance of ratification of the ICESCR

Anthea van der Burg

Beja and Others v Premier of the Western Cape and Others (21332/10) [2011] ZAWCHC 97; [2011] 3 All SA 401 (WCC); 2011 (10) BCLR 1077 (WCC) [*Beja* case].

Introduction

In 2005, the City of Cape Town began implementation of the Upgrading of Informal Settlements Programme (UISP) in terms of the Housing Act No. 107 of 1997, in three select areas: Makhaza, Town 2 and Silvertown. These jointly form part of the Silvertown housing project (*Beja* judgment, para 11, 12). The main objective of the UISP was to 'directly encourage the development of social capital by supporting active participation of communities in the design, implementation and evaluation of projects' (para 60).

One of the fundamental principles of the programme was the empowerment of communities to enable them to assume ownership of their own development and improvement of life. In this particular case, the City relied on the fact that an agreement had been concluded between the community and the City in respect to the enclosure of toilets. However, it is to be understood that such a programme would only have succeeded if the City ensured meaningful participation of the intended beneficiaries.

In this case, the judge asserted that the following requirements should be satisfied for an agreement to be enforceable:

- it must be concluded with duly authorised representatives of the community;
- it must be concluded at meetings held with adequate notice for those representatives to get a proper mandate from their constituencies;
- it must be properly minuted and publicised;
- it must be preceded by a process of information sharing and, where necessary, technical support, so that the community is properly assisted in concluding such an agreement.

The judge expressed concern that none of these requirements had been met and that the consultation referred to by the City merely represented the interests of some 60 residents and was not the view of all affected residents (para 98). The agreement relied upon by the City failed to take account of the needs of the most vulnerable and desperate, persons with disabilities and the gender impact on women and girls and their vulnerability to higher levels of gender violence. The judge held that the agreement relied upon by the City was not valid or enforceable.

The facts

In this project the City decided to install communal toilets in a ratio of 1:5 households, which meant that one toilet would be provided for every five families. By 2007 the contractor had installed 63 toilets and it was at this point that the community expressed their unhappiness and demanded that an individual toilet be constructed for each family. It was agreed at a community meeting that each of the families would have an individual toilet and that the community would build their own enclosures.

In 2007, the City began to install the unenclosed toilets in Town 2 and Silvertown and completed the construction by December 2009. It was agreed that the residents build their own enclosures (para 19). In Makhaza 225 toilets were installed and 55 of these toilets were enclosed by the residents themselves. The unenclosed toilets consisted of a concrete slab for the toilet to stand on with the cistern and a water pipe that was not affixed to any walls. The toilets were open and in full view of every person within the community and located close to the road.

Complaint with the South African Human Rights Commission

In January 2010, the African National Congress Youth League (ANCYL) lodged a complaint with the South African Human Rights Commission (SAHRC) that related to the installation of 1 316 single flush toilets that were installed in the Makhaza district, of which 55 toilets were unenclosed (para 20). The complainants alleged that the City of Cape Town was violating their rights to dignity and privacy by failing to enclose the toilets.

This complaint was significant in terms of human rights

> The provision of unenclosed toilets violated sections 10, 12, 14, 24, 26 and 27 of the Constitution

in South Africa because it directly linked the delivery of socio-economic rights with the right to dignity as protected in the Constitution. The residents claimed that their right to dignity was being infringed by requiring them to use toilets which were in full view of all. Mrs Beja, an elderly woman and one of the applicants in the case, was attacked and stabbed after using an unenclosed toilet at night (para 23). It is evident that the protection of the elderly, women, girls and disabled persons were not taken into account by the City in the construction of the toilets, which led to an aggrieved community who argued strongly against the violation of their right to dignity.

The City of Cape Town refuted this and stated that that there was an agreement between themselves and the Makhaza residents that the residents would enclose their own toilets. They further argued that the unenclosed toilets were due to budgetary constraints.

In June 2010, the SAHRC concluded its investigation and published a report that found that the City of Cape Town had violated the rights to privacy and dignity of the Makhaza residents. The complaint led to considerable public interest and media reports. In July 2010, the City of Cape Town appealed the SAHRC decision and on 21 September 2010, a report dismissing the appeal was released.

The complainants then launched a court application (para 27). An inspection *in loco* was held in November 2010 to determine whether urgent relief was necessary. The judge found during the inspection *in loco* that 'most of the self-enclosed toilets were unsatisfactory to satisfy dignity and privacy'. The judge noted further that there was 'no provision made for the disabled, the elderly and other vulnerable groups…I was particularly disturbed by a wheelchair-bound gentleman who had to use a makeshift enclosure. It was constructed with pieces of wood and no roof. Access with a wheelchair was almost impossible' (para 29). An interim order attempted to restore dignity but the City advised that they were incapable of abiding by it due to vandalism of the structures by the community. (para 31).

Summary of the judgment

In the judgment, four main issues were discussed:

- The agreement: whether a legally enforceable agreement was reached with the affected community. The agreement was held to be invalid and unenforceable between the City and the community (para 106)
- The 1:5 ratio: whether the 1:5 ratio was applicable. The Court held that the 1:5 ratio failed to justify the installation of unenclosed toilets (para 118).
- The constitutional issues: whether any constitutional rights of the affected community were infringed. The Court held that there was a violation of the rights in Sections 10, 12, 14, 24, 26 and 27 of the Constitution by the provision of unenclosed toilets. (para 150).
- The counter application: whether certain aspects of the Housing Code is unconstitutional, whether the application is competent (para 76). The counter application was dismissed on the basis that the agreement was unlawful because of the City's failure to comply with the requirements of the Code dealing with agreements, and particularly its failure to recognise the basic human rights of the community (para 186).

Issues arising

A number of issues arising in this case are significant to the protection of socio-economic rights and specifically to the right to water and sanitation.

Enforceable agreement with the community

In considering whether or not there was an enforceable agreement, the judge reviewed other cases. Of particular relevance is his reference to *Joe Slovo* (2010 (3)) in which Ngcobo J stated that 'the requirement of engagement flows from the need to treat residents with respect and care for their human dignity' (para 89). Judge Erasmus went further, stating: '

> One of the requirements of reasonableness under Section 26 (2) of the Constitution is that a housing programme must be framed in a manner that takes account of the needs of the most vulnerable and desperate.

The judge held that the City should have assisted those who were poor and vulnerable and who could not afford to enclose their own toilets and that the agreement was not a valid and enforceable one (par 106). In particular, the nature of the consultation was questioned and whether it truly represented the interests of the poorest members of the community.

The City's primary defence relied on the fact that it provided the open toilets in addition to the enclosed toilets, that the 1:5 ratio is the minimum required for housing projects and that it did not violate the rights of residents as the minimum requirement had been fulfilled (para 107). The Minister of Human Settlements stated that the City was incorrect and that the Code prescribes a minimum ratio of 1:5 in relation to the upgrading of informal settlements. Judge Erasmus accordingly held that the City had taken an interpretation of upgrading informal settlements that is inconsistent with the housing programme itself and that the City could not rely on the 1:5 ratio (para 116 and 118). The fact that it is unhygienic to require many families to share one toilet and in addition to require members of the community to use a toilet in full view of everyone is undignified in and of itself.

Constitutional issues

Judge Erasmus held that the City did not take into account the following:

With regard to human dignity, *Grootboom* (para 83) upheld the right of Section 26 respondents to 'reasonable action by the State in all circumstances and with particular regard to human dignity'. The City argued that the right to dignity had to be properly considered. They argued that although the communal toilets were available to be used, no one was obliged to use an unenclosed toilet. Judge Erasmus held that the communal toilets did not comply with human dignity (para 136).

The Judge referred to the judgment in *Joe Slovo*. The courts have repeatedly held that the State, including municipalities, is obliged to treat vulnerable people with care and concern and to treat human beings as human beings. Housing developments that do not provide privacy and safety are inconsistent with Section 26 of the Constitution (para 143).

The City's decision to install unenclosed toilets lacked reasonableness and fairness; the decision was unlawful and violated constitutional rights in Sections 10, 12, 14, 24, 26 and 27. The counter application was further dismissed. It was argued that unenclosed toilets should never have been an option since they directly infringe on the rights of privacy and dignity of all persons living in South Africa.

Effects of the decision

It is clear from this decision that critical rights within the Constitution were violated, particularly the rights related to privacy and dignity and the achievement of socio-economic rights. Many authors have confirmed the critical link between dignity and the attainment of socio-economic rights (Liebenberg 2005, Chenwi 2010 and de Villiers 1997). It is clear from this judgment that the City failed to fulfil its legal duty to ensure that enclosed toilets were provided to impoverished communities. The issue is and never was the construction of the toilets themselves. The judgment clearly raises issues related to gender, disability and gender-based violence and, more importantly, the crucial link between service delivery and dignity.

A critical issue was the extent to which engagement had occurred between the community and the City in the erection and enclosures of the toilets. The issue of proper consultation and engagement has extensive bearing on whether or not persons have access to their socio-economic rights. It also has a fundamental bearing on dignity as, without proper consultation and the understanding of the needs of communities, effective fulfilment of socio-economic rights will fail. In particular, the City had failed to adequately consult with the entire community and this resulted in the City's inability to understand the needs of different community persons, such as women, girls, and persons with disabilities. This failure to consult properly therefore directly resulted in the infringement of key human rights. It is unfortunate that budgetary constraints are often used as reasons for ineffective service delivery.

A key component of proper consultation is to begin the consultation process during the planning phase of any project involving service delivery. By ensuring community participation at the beginning, it is submitted that the needs of the most vulnerable will be taken into account and budgets prepared accordingly. It is further submitted that proper consultation requires that the City should ensure that meetings are properly constituted to ensure maximum participation by members of the affected community.

> Housing developments that don't provide privacy and safety aren't consistent with the Constitution

In addition, the violation of human dignity, privacy and sanitation cannot be addressed in a gender-neutral manner. Women and persons with disabilities should be consulted primarily in respect to any matter concerning their daily lives and particularly in respect to their socio-economic rights. Budgets should always be gender sensitive and pro-poor, thereby ensuring that the needs of the most vulnerable are addressed. As this case showed, gender was not a consideration, given the manner in which the toilets were constructed as well the assault that took place on an elderly person as a direct result of a toilet that was unenclosed and close to the road. The City therefore failed not only in its inability to effectively consult the community but also insofar as it failed to ensure that the needs of the most vulnerable were budgeted for and that the toilets were constructed in a consultative manner.

This failure had a direct bearing on the safety, privacy and human dignity of the most vulnerable members of the Makhaza community. Shortly after the *Beja* judgement, the SAHRC had occasion to make a similar finding in Rammulotsi in the Free State in which case the bucket system was still being used and many toilets remained unenclosed. Similarly, the SAHRC found the rights to human dignity and privacy to have been infringed. In Kwadebeka outside Pinetown in the eThekwini municipality, uncovered toilets were shared by many households and residents brought this matter to the attention of the local municipality. The main complaints by residents of this community related to maintenance of toilet infrastructure.

All of the above matters related to basic sanitation and particularly the construction and maintenance of toilets which occurred prior to local government elections. They highlight poor service delivery and the deplorable conditions under which members of indigent communities live in respect to basic sanitation, and the health problems that result from the failure of local municipalities to provide proper toilets and water sources, for example, diarrhoea, gastroenteritis, worms and severe rashes. In addition, the poor construction and maintenance of toilets in these communities has further highlighted high levels of violence associated with communities having to relieve themselves in open spaces or in toilets without enclosures.

The lesson that all municipalities should learn from the failure to provide adequate sanitation is that consultation with community residents at the onset of a project, proper budgeting, transparency and accountability are fundamental to meeting the needs of communities in respect to the provision of basic services.

Use of international law

South Africa has ratified various international legal instruments, such as the Convention on the Elimination of all Forms of Racial Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), among others. These ensure the protection of women, children and persons with disabilities. By ratifying these legal instruments, South Africa is bound to apply the relevant international principles to its case law.

In this judgment, Judge Erasmus refers to the Millennium Development Goals (MDGs), which seek to eradicate poverty by 2015 and are closely related to socio-economic rights and alleviation of poverty. South Africa too is bound to ensure that the MDGs are implemented and adhered to in a comprehensive manner.

On 28 July 2010, the UN General Assembly adopted a resolution (A/RES/64/292) on the human right to water and sanitation, in which it recognised 'the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights'. This statement serves to reinforce the integral link between sanitation and human dignity.

However, it still remains a concern that South Africa has, to date, failed to ratify the International Covenant on Economic Social and Cultural Rights (ICESCR). Interestingly, the Covenant has provisions related to human dignity and many other rights which are also guaranteed in our Constitution. An example is the following relating to progressive realisation:

> Article 2 (1). Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The South African Constitution in Section 27 (2) requires states to adopt reasonable measures, making use of its available resources to achieve the progressive realisation of these rights. It is clear from the *Beja* case that the State failed as it admitted to having budgetary constraints in ensuring that the toilets were provided to the community in a manner which satisfied their basic right to human dignity. In addition, it would be important to progressively realise a right which provides dignity. In this regard, budgets should have ensured that sufficient toilets were constructed per household, not to service five households; and secondly, the toilets should have been enclosed to ensure the safety, privacy and dignity of each community member. Progressive realisation should therefore always be applied in conjunction with the principle of non-discrimination, privacy and human dignity, which form the cornerstones of achieving the progressive realisation of socio-economic rights.

Effective participation and consultation of citizens in decisions that affect them hinge on principles of good governance and are meant to reconcile different interests and pursue the objectives of inclusive democracy, stability and economic development. International standards and norms on consultation and participation require consultation to be done through appropriate procedures and institutions. (See article 13 of the African Charter on the right to political participation in the government of the country. See also article 19, 29, 30 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, which lays the standards for free, prior and informed consent to establish the objective of consultations.) Consultations must also be done in good faith, with enough time and well before a decision is made. Mere sharing of information when decisions have already been made does not amount to appropriate and effective consultation.

Ratification of ICESCR and OP-CESCR

In the event that South Africa had ratified the ICESCR and the Optional Protocol on the Covenant on Economic, Social and Cultural Rights (OP-CESCR) prior to this judgment, the applicants, who were unhappy with the findings of national courts, would have been able to seek redress at the international level. This would serve to place international pressure on any given state to ensure the effective delivery of socio-economic rights.

Ratification of the ICESCR will further compel states to ensure that their domestic legislation and policies, as highlighted in *Beja* (Housing Act, UISP), are in line with international obligations. Regular reporting mechanisms at an international level will further compel states to regularly review their policies against recommendations made by the Committee on Economic Social and Cultural Rights (CESCR) and further compel them to ensure that international legal obligations are included in all policies ensuring the provision of socio-economic rights.

The CESCR has specifically dealt with the right to water and sanitation in a specific general comment on the right to water (General Comment Number 15). In September 2010, the Human Rights Council adopted a resolution affirming that:

> the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity (UN HRC Resolution 15/9).

It is clear that there is international acceptance of the link between water, sanitation and dignity and the court in *Beja* could have drawn from this, if ratification had taken place, to enhance the South African jurisprudence more effectively. Ultimately, ratification of the ICESCR will ensure that South Africa is able to interpret the law in a broader

manner than is currently possible in terms of the Constitution. The South African courts will benefit from the international comments, recommendations and jurisprudence on socio-economic rights.

Conclusion

In conclusion, the judgment has raised awareness around basic service provision in South Africa and illustrated the need for the South African government to ensure that basic services are provided with dignity and without discrimination to uphold the values of the Constitution. The effective provision of services will ensure that service delivery protests do not escalate and that human dignity is upheld.

The judgment has further served to clarify the jurisprudence on basic sanitation in South Africa by ensuring that the court grapples with the concept to the extent that communities are satisfied with the provision of such sanitation. The case itself raised the importance of meaningful and effective consultation with communities to ensure that services are delivered in line with the realities of community needs. Government departments therefore need to draw lessons from this judgment and ensure that time and budgetary constraints do not compromise effective consultation or service delivery and ultimately result in the infringement of human rights.

The judgment further serves to reinforce the critical link between basic sanitation and human dignity, which is recognised internationally. It raises the fundamental question of South Africa's failure to ratify the ICESCR and hence the failure to ensure that the rights of the most vulnerable are protected and enforced through international legal instruments.

Anthea van der Burg is a human rights officer at the South African Human Rights Commission.
She writes in her personal capacity.

References

Asia Pacific Forum on Women, Law and Development 2010. 'Women and water and sanitation', available at www.apwld.org/our-work/women-and-water-and-sanitation/.

Beja and Others v Premier of the Western Cape and Others (21332/10) [2011] ZAWCHC 97; [2011] 3 All SA 401 (WCC); 2011 (10) BCLR 1077 (WCC).

Chenwi L and Tissington K 2010. *Engaging meaningfully with government on socio-economic rights.* Bellville: Community Law Centre, UWC.

De Villiers, B 1992. 'Socio-economic rights in a new constitution: Critical evaluation of recommendations of the South African Law Commission' 3 *Tydskrif vir die Suid-Afrikaanse Reg [Journal of South African Law]* pp 421–436.

Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC).

Liebenberg S 2005. 'The value of human dignity in interpreting socio-economic rights', available at www.stias.ac.za/projects/7_social_econ.../sandra_liebenberg.pdf .

Makgoba T 2011. 'Cape Town must set an example on sanitation', available at www.capetimes.co.za/city-must-set-example-on-sanitation-1.1095150.

Morel M 2010. 'UN landmark decision: right to water and sanitation is legally binding', available at www.un.org/waterforlifedecade/pdf/brochure_event_deutsche_welle_law_res.pdf.

Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others [2009] ZACC 16 (*Joe Slovo case*)

Studies in Poverty and Inequality Institute (SERI) 2011. 'Handbook on progressive realisation', available at www.spii.org.za.

Tissington K 2011. *Basic sanitation in South Africa: A guide to legislation, policy and practice.* SERI

The state of human rights for the Roma people in Bulgaria

Sheila Camerer

In South Africa the tribulations of the Roma people of Eastern Europe are far removed from our national discourse. We have enough of our own problems around discrimination based on race, ethnicity and xenophobia to worry too much about far-flung people facing equal if not worse discrimination.

I first encountered a powerful lobby group for Roma rights at the UN World Conference against racism in Durban in 2001, which I attended as a member of South Africa's Parliamentary delegation. The Roma group at the conference was very articulate and certainly dominated some proceedings and I recall watching former UN Secretary General Kofi Annan using all his diplomatic skills to restore order at one of the meetings where Roma issues were on the agenda.

In Bulgaria the rights of the Roma people and the discriminatory practices which subjugate and exclude them is a huge issue, which, from time to time, explodes with very negative consequences which I will address below in turn.. However, as I indicate below, it seems that in accordance with EU requirements from January 2012 the Bulgarian government will have a final strategy for social integration of the Roma in place (Bulgarian Telegraph Agency [BTA], *Daily News* 11 January 2012).

It is appropriate to again draw attention to the plight of the Roma people on the 10th anniversary of the adoption of the Durban Declaration and Programme of Action, recently commemorated in New York.

The focus of my analysis is on Bulgaria where, as the current South African Ambassador, I am more familiar with the Roma issues. Bulgaria is relatively small in size when compared with South Africa, but is a beautiful country on the south-eastern border of the European Union, of which it is the poorest member.

Bulgaria is officially home to an estimated 325 343 people who self-identify as Roma and who constitute 4.9% of the population, although some unofficial estimates double that number out of a total population of approximately 7.5 million (2011 Population Census). According to English news services in Bulgaria, such as *Novinite.com*, BTA *Daily News* and the weekly *Sofia Echo*, it is well known that many Roma avoid being counted in any census. Typically the Roma tend to live in derelict ghettoes with garbage-strewn streets and in ramshackle houses. According to reports in the media, extortion, human trafficking, baby selling and other menaces are rife in Roma ghettoes (Slavka Kukova August 2008).

I first became aware of Roma people when I noticed the young sex workers who always stood on the corner of the ring road where we turn off to the South African official residence.

'Oh, they're Roma,' I was told.

Then on 18 July 2009, which was my first Mandela Day as Ambassador, we adopted and visited two orphanages in a town called Kyustendil at the suggestion of a South African missionary here. We were told most of the children there were from Roma parents. This possibility is supported by figures recently released by the Bulgarian Child Protection Agency, according to which in 2010 there were 3 440 children aged 7–18 in homes for children deprived of parental care and just over half of them were of Roma origin – a totally disproportionate number. According to a study by the Helsinki Committee, in the homes for children aged 0–3 years, 1 190 out of a total of 2 334 children were Roma. In the homes for children with mental disabilities, approximately a third of a total of 956 children are of Roma origin (Slavka Kukova, August 2008).

The Bulgarian Helsinki Committee is very active on this and other socio-economic issues, particularly those affecting women and children. Among the prime reasons it identifies for the institutionalisation of Roma children are poverty, low education status, inadequate housing and inadequate social services for Roma children and families.

Having become more sensitised to the Roma issue in Bulgaria after a few months in the country, it became very easy to identify Roma settlements. They stand out from other residential areas in a way similar to South Africa's informal settlements. It seems the authorities in Bulgaria have little power or inclination to exercise control over these large Roma ghettoes in towns and villages, and clan chiefs or so-called local 'tsars' are left to rule, often with very negative consequences as I will indicate below. Any integration strategy which might have existed on paper seems to have been more honoured in the breach (Report on the Roma Initiative held by European Embassies in Bulgaria May 4–12, 2011).

Not surprisingly the Roma issue, and particularly how it affects women and children, has occupied the minds of a number of ambassadors here and research and visits to Roma settlements have been carried out and reports on this made available to the general community of ambassadors. In May 2010 a number of European Union (EU) embassies in Sofia (Spain, France, Italy, Finland and Hungary) embarked on the Roma Initiative, with the objective of taking stock of the present situation. I was party to some of the events, such as the ground breaking Roma Fashion Show hosted at the Residence of the Italian Ambassador in June 2010, with the particular purpose of spotlighting Roma women in a positive way. He succeeded in this by illuminating outstanding Roma-designed and Roma-made garments through the extensive media coverage of the

show, which helped to boost the image of Roma women in Sofia particularly.

I was also present when a briefing on the field trips undertaken to Roma neighbourhoods by the French and Italian Ambassadors was given to the so-called Non-Group of Ambassadors. (This is a regular monthly event at which some EU ambassadors and some from the IBSA/BRICS and other leading countries meet to exchange information and views over lunch.) There were also round-table discussions on Roma issues. The briefings and the revelations at the round-table discussions paint a picture of neglect and non-inclusion, and the conclusion was that the humanitarian situation found in the neighbourhoods visited should not exist anymore inside the EU.

The Ambassadors were careful to note that they were aware of the complexities of the issue and that the purpose of the initiative, which was well publicised in the media, was not to criticise the Bulgarian government, particularly given the fact that the issue was also of concern to other EU countries. The exercise was a fact-finding one and one of its aims was to share the observations with the authorities in Sofia and representatives of international organisations there, spurred on by the knowledge that the European Commission was developing an EU framework for National Roma Integration strategies up to 2020.

The facts uncovered reconfirmed that the Roma neighbourhoods visited were in effect ghettos. One such ghetto near the town of Sliven is one of the biggest Roma neighbourhoods in Europe, with more than 20 000 inhabitants occupying less than 2km^2. They are clearly separated from the cities of which they are part, with limited access roads. Many roads in the ghettos were not properly asphalted; a majority of households lacked access to quality clean water; there was a lack of functioning waste-water collection systems and little public lighting. The Roma neighbourhood in Sliven is accessed by only one road for cars and a pedestrian tunnel under the railroad. A high wall along the railroad is a symbol of the reduced mobility of the inhabitants and such walls exist in many other Roma neighbourhoods in Bulgaria.

In addition there was a lack of public transport to enter the districts visited. Teachers at the school in the middle of one area had to walk 20 minutes to the nearest bus terminus. There is also a notable absence of public authorities and public investment in these neighbourhoods, with the exception of churches and mosques, which have played a positive role fighting alcoholism and are also used by some NGOs as informal health centres. As a South African this graphically obvious marginalisation of Roma communities gave me a sensation of déjà vu, mixed with outrage that this can be tolerated in a post-apartheid era in that most developed community, the EU.

The reports of the field trips paid particular attention to the problems around education and the plight of girls and women in these ghettos, who suffer badly from the exclusion and the poor living conditions in the Roma communities.

The first major problem affecting girls that the reports emphasised was early marriage. A majority of the girls in the two communities investigated got married between the ages of 12 and 16, a consequence of which is a high drop-out rate from school. This is in violation of Bulgarian law, but little or nothing is done about it. Even girls who don't get married so early live in fear of a 'kidnapping', which seems to be a traditional practice where the girl has no option but to marry the boy who 'kidnapped' her – again contributing to a high drop-out rate from school (Slavka Kukova 2010). The women also suffer much more than Roma men from human trafficking and prostitution. As I indicated on the roads around Sofia and other large cities Roma prostitutes openly ply their trade, and pimps hiding in the background are a common sight. Mixed marriages between Bulgarians and Roma are rare.

According to research of the Bulgarian Helsinki Committee, which has been most active in conducting research into prostitution and trafficking in Roma communities, approximately 80% of those charged with offences related to prostitution are Roma; 70–80% of victims of trafficking of women and children are Roma and 80% of all those trafficked abroad for sexual exploitation are Roma. This is based on empirical evidence obtained from the police at local level as very little data is available through official channels, such as the State Agency for Child Protection and the Ministry of the Interior. Trafficking in human beings was recognised as human rights issue fairly late in Bulgaria. Legislation was adopted and an institutional setup prepared from 2003 onwards. However, the institutions have been developed very slowly, chiefly under pressure from the EU. To this day, while trafficking has been identified as a fast-growing phenomenon by state authorities not much effort has been put into dealing with the problem. Although policies and legislation exist to deal with trafficking at the national level, implementation has been far from efficient (Slavka Kukova 2010).

As an EU member, Bulgaria is signatory to two Council of Europe conventions: first, the Convention on Action against Trafficking in Human Beings (2005); and second, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007). It has a Commission for Combatting Trafficking and a National Action Plan against sexual exploitation of children. However, research by the Helsinki Committee has revealed a lack of funding and poor implementation of policies on trafficking by the government, which have made it difficult to combat trafficking. It would seem that civil society organisations and other international organisations in Bulgaria are more active in addressing trafficking than the Bulgarian government is.

The EU ambassadors' field trips also paid attention to education. The main focus of activists in Roma communities is to promote desegregation by bringing Roma children from the ghettos to downtown schools, where they are educated alongside other Bulgarian children. This is seen as the only way to break the exclusion of the Roma community and integrate them into the general community. The EU ambassadors were involved in these efforts on the basis of EU solidarity. Bulgaria has the lowest GDP per

> There is no alternative to Roma integration, which must comply with EU rules

capita in the EU, which it joined in the beginning of 2007. It is generally admitted that Bulgaria needs financial assistance to meet the challenge of Roma inclusion.

Experience shows that Bulgarian authorities and actors (especially in the schools) have often tried to find ways for better inclusion of Roma communities. However, field workers from the Helsinki Committee have encountered an unwillingness to grapple with the problem at higher levels of government (Slavka Kukova 2008 and Slavka Kukova 2010).

From time to time there are incidents which demonstrate that inclusion is a long way from being achieved. Around 23 September 2011, Bulgaria was jolted by an incident in which, after a dispute, a 19-year old Bulgarian man was run over and killed by the Roma driver of a minibus in a Roma village near Plovdiv (called Katunitsa), Bulgaria's second largest city and home to 40 000 Roma (English on-line services *Novinite.com*, BTA *Daily News* and the *Sofia Echo*, 24 September–6 October 2011). Word soon spread that the driver worked for the local Roma clan boss or so-called 'tsar' and very soon there followed angry protests against Roma and attacks on the 'Tsar's' property in the village and other parts of Plovdiv. Within hours there were large demonstrations in 20 Bulgarian cities, including Sofia. Police guarded entrances to Roma neighbourhoods across the country. In the midst of Bulgarians protesting against Roma and Roma communities arming themselves, hundreds were arrested and charged. The Chief Prosecutor sent orders to local prosecutors to immediately investigate charges of 'inciting ethnic hatreds,' which is a criminal offence in Bulgaria and punishable by up to six years in prison.

The Prime Minister, Boyko Borissov and President Georgi Parvanov made a show of bipartisan unity by visiting the Roma village where the killing occurred. In a speech, Mr Borissov demanded ethnic peace to guarantee Bulgaria's prosperity. Since the incident newspapers regularly carry reports on charges being processed against offenders. A young Bulgarian man of 23 was given a suspended sentence of 10 months and three years' probation for stirring ethnic violence and racial hatred by organising a Facebook event called 'Roma slaughter', about which there were extensive reports in the press and on TV, including the English on-line services *Novinite.com*, BTA *Daily News* and the *Sofia Echo*.

The Roma 'tsar' of Katounitsa himself was arrested on charges of large-scale tax evasion. He is still being held in prison on those and other charges. He recently paid nine years' worth of unpaid taxes to the authorities. Local officials of the National Revenue Agency are being investigated for corruption.

An uneasy peace has since returned. Bulgaria generally prides itself on being a nation tolerant of all minorities – for example, 15% of its population is made up of ethnic Turks who have their own political party in Parliament. A source of pride is that during World War II, Bulgaria saved its 50 000-strong Jewish population from the death camps.

Ironically, the Roma 'tsar' in Katunitsa, whose driver initially caused the trouble, had tried to start a political party for Roma in 1998 but it came to nothing. Currently there is no specific political representation of the Roma community in Bulgaria. Until the Katunitsa event, Roma issues were not on the agenda of any of the 18 political parties which registered to fight the local government and presidential elections on 23 and 30 October 2011. Politically it is still a non-issue.

It is perhaps significant that within six weeks of the Katounitsa incident, on 14 November 2011, Bulgaria announced its own Draft National Strategy for Roma Integration (2012–2020) with much fanfare, at an event launched by the Minister of Interior and Deputy Prime Minister Tsvetan Tsvetanov. The Strategy was drawn up by the working group of Bulgaria's National Council on Ethnic and Integration Issues.

Claiming to be a political framework and strategic document setting out directions for implementation of Bulgaria's Roma social integration policy in line with the EU framework for national Roma strategies, it focuses on five priorities: employment, education, health care, living conditions and non-discrimination. This strategy was adopted by the Cabinet on 5 January 2012. In a speech on November 2011, the World Bank Country Manager for Bulgaria alluded to the fact that only 13% of working-age Roma had completed secondary education and that there was a clear economic reason why Roma inclusion was crucial to Bulgaria (Bulgaria loses an estimated €340M in fiscal contributions as a result of this).

Bulgaria's minister in charge of EU funds and the education minister also spoke at the strategy's launch, making three points: there is no alternative to Roma integration, which must comply with EU rules; appealing for EU funding to assist Bulgarian local government structures to comply with the strategy; and appealing to Roma leaders to cooperate. The education minister said that education will dilute ethnic differences. It seems that at least in terms of political commitment to Roma inclusion the tide has turned, though the jury is still out on the pace of implementation of the strategy. This is an opportune time for South African authorities to explore ways to contribute to what is now an active EU strategy even in its poorest nations.

Sheila Camerer is South Africa's Ambassador to Bulgaria.
She writes in her personal capacity.

References

Bulgarian Telegraph Agency (BTA) 2012. *Daily News*, 11 January.

Data from the National Statistical Institute from the 2011 Population Census.

Draft National Strategy for Roma Integration in the Republic of Bulgaria (2012–2020), published on 14 November 2011 and adopted by a decision of the Bulgarian government on 5 January 2012.

European Roma Rights Centre, 'Trafficking Roma youth and women in Eastern and Central Europe: Analysing the effectiveness of the national laws and policies in prevention, prosecution and victim support', available at http://www.errc.org.

Government of Hungary, 2010. 'Submission to the UN Universal Periodic Review, 11th session of the UPR Working Group of the Human Rights Council , November 2010', available at: http://www.errc.org/cms/upload/file/hungary-upr-08112010.pdf.

Kostadinova, Galina, 2011. *Last ditch chance for EU to deal with Roma issue*. London: Minority Rights Group International.

Kukova, Slavka, 2008. *Thematic study on child trafficking in Bulgaria*. Helsinki: Helsinki Committee

Kukova, Slavka, 2010. *Trafficking of Roma in Eastern and Central Europe: Analysing the effectiveness of national laws and policies in prevention, prosecution and victim support*. Helsinki: Helsinki Committee.

Kukova, Slavka, 2011. *Roma children at risk and an 'unhitched' government system*. Helsinki: Helsinki Committee.

Report of the Bulgarian Child Protection Agency, 2011, Bulgarian Novinite com. and BTA Daily News on-line English services.

Unpublished report on the Roma Initiative held by European Embassies in Bulgaria, 4–12 May 2011.

SAHRC public hearing on water and sanitation

A call for state accountability

On 14 March 2012, the South African Human Rights Commission (SAHRC) held a public dialogue on the right to adequate water and sanitation in commemoration of Human Rights month.

The dialogue was appropriate and timely following a series of events regarding the state of water and sanitation. Of particular importance were the recent incidents that occurred in Makhaza, Western Cape and Rammolutsi Township, Free State. These incidents clearly brought to the fore the shortcomings of government's efforts in realising socio-economic rights of the citizenry.

Prior to the public dialogue, SAHRC held community events in Rammulotsi on 7 March and in Makhaza on 13 March, to monitor and assess the progress made since the initial findings by the SAHRC in 2010.

Under section 184 of the South African Constitution of 1996, the SAHRC is empowered to monitor the implementation of human rights, including socio-economic rights. The SAHRC carries out this responsibility through its protective and promotional mandates. Flowing from complaints received, the SAHRC commissioned the Department of Performance, Monitoring and Evaluation to conduct a nationwide study on access to adequate water and sanitation services in South Africa.

The report on the study showed that at the end of 2010, about 70% of households had access to basic sanitation. The report further revealed that 2.5 million households were using unventilated pit latrines, about 110 000 were using the bucket system and 727 000 households had no toilet at all.

The inter-sectionality of human rights was reinforced as participants spoke about the adverse and disproportionate effects of a lack of sanitation and water on women, school-going children, the elderly and persons with disabilities. Public hearings are important in that they serve as a means of drawing the state's attention to human rights violations experienced by vulnerable and disadvantaged groups. The testimonies and deliberations at these hearing were a reminder that, despite constitutional provisions and rich jurisprudence relating to socio-economic rights, the government has yet to realise South African's socio-economic rights, particularly those of disadvantaged and marginalised groups.

The public dialogue marked the launch of nationwide provincial hearings on the right to adequate water and sanitation.

For further information, visit the SAHRC website at: http://www.sahrc.org.za/home/21/files/Quality%20of%20sanitation%20-%20Exec%20Summary%20%28Fin%29.pdf%20III.pdf

Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights

March 2012

The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights were formally introduced at the Human Rights Council on 5 March 2012. The Maastricht Principles constitute the outcome of the September 2011 deliberations of a group of distinguished experts in international law and human rights from all regions of the world, convened by Maastricht University and the International Commission of Jurists.

The Maastricht Principles are a set of normative principles on the extraterritorial application of human rights treaties in the area of social, economic and cultural rights, which will guide the conduct of states and international organisations. They complement and build on the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997). The principles detail the status of the extraterritorial dimension of human rights law in the area of economic, social and cultural rights, while at the same time contributing to the progressive development of that dimension. The principles clarify the human rights obligations of states beyond their own borders. They make clear that states may be held responsible for the adverse effects that their conduct brings to the enjoyment of rights beyond their own borders. The Maastricht Principles are clear evidence that 'if we accept to build on the extraterritorial obligations of states, the accountability gap that economic globalization has created can be closed'.

The objective of these principles is to clarify the content of extraterritorial state obligations to realise economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international human rights. As one commentator put it:

> there is great opportunity for the consideration and development of the application of the Maastricht Principles on Extraterritorial Obligations in Africa, considering that the African Charter and other regional instruments do not explicitly limit the human rights obligations of States parties to their respective territories.

The Principles emphasise the principles of non-discrimination equality (including gender equality), transparency and accountability. Accountability may take a variety of forms, including criminal accountability or civil accountability before courts or other quasi-judicial bodies. The sanctions for violations of economic, social and cultural rights may be criminal, civil, administrative or disciplinary, and must be sufficiently effective and dissuasive. Victims of violations must have access to effective remedies that have the power to grant reparation for the violation committed and to order the cessation of the violation.

For further information on the Maastricht Principles, see http://hrbaportal.org/archives/noticeboard/launch-of-maastricht-principles-on-the-extraterritorial-obligations-of-states-in-the-area-of-economic-social-and-cultural-rights.

For a commentary on the Maastricht Principles see http://danton1066.files.wordpress.com/2012/03/maastricht-principles-commentary.pdf

Report of Raquel Rolnik, Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context

December 2011

The report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living was presented during the nineteenth session of the United Nations Human Rights Council in December 2011. The report focused on the women and their right to adequate housing. It assessed the progress made in the advancement of this right for women glo-

bally with an aim to identify and make visible the multiple issues which women are currently facing in relation to housing.

In order to assess what progress has been made in the advancement of this right for women globally, the Special Rapporteur launched a worldwide online consultation on women and the right to adequate housing. The e-consultation highlighted a host of issues that have a disproportionate gender impact. As the report put it:

> In all regions, patriarchy and gender discrimination, poverty, and the impact of globalization, neo-liberal economic policies and privatization surfaced as overarching issues of concern which set the stage for violations of women's right to adequate housing. More specifically, the impact of natural and human-induced disasters, conflict and internal displacement, war and occupation, lack of affordable and low-cost housing, forced evictions, homelessness, domestic violence, lack of women's participation in law and policy-making, lack of access to remedies, inadequate and discriminatory laws, and the application of discriminatory customary law, all emerged as relevant barriers to women's right to adequate housing across regions.
>
> While the home should be a place of security, dignity, peace, and equality, for millions of women around the world the right to adequate housing has gone unfulfilled and unrealized.

The report highlights that the 'recognition and realization of every woman's right to adequate housing is necessary to ensuring that every woman is able to live a life with dignity'. For women, the status of their right to adequate housing is intimately connected to their security, health, livelihood and overall well being.

In Africa, urbanisation, climate change, low levels of financial literacy among women, and the rising number of female-headed households all emerged as key issues affecting the current status of women's rights to adequate housing. The report acknowledged that the global financial crisis had a negative impact on women across the world. Ethnic minority women, women single heads of households and women with disabilities were hardest hit by budget cuts in housing programmes, brought on by the global financial crisis.

The report advocates a proactive approach on laws, policies and programming that prioritise and advance women's right to adequate housing. It recommends that states should facilitate women's empowerment to ensure meaningful participation in the design, planning, implementation, monitoring and evaluation of housing law, policy, programming and budgets.

For further information on the 2011 report of the Special Rapporteur (A/HRC/19/53) see http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-53_en.pdf

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

Ebenezer Durojaye

Who Killed Andries Tatane?

It was a day of bliss and blood
It was a morning of funfair and fury
When the crowd gathered in gay and gloom
At Ficksburg, in the Eastern part of Free State
The gathering was not for jamboree
It was a gathering of different kind
Old, young, women and men
Like untamed birds let loose from their cages
All gathered chanting songs replete with agitation
Then suddenly like a flock of serene doves troubled by an assailant
They scampered for safety, rushing helter-skelter
To nowhere but in search of solace
All they asked for was water, shelter, electricity and justice
But instead of water they saw blood
Instead of shelter they were shattered
And instead of justice they suffered savagery
While others panicked and fled in fear
He stood still like the rock of Gibraltar
Tall, heavily built with a heart of lion
He would not be cowed by these maniacs
His intrepidity was taken for insult
So eight of them encircled him
And turned him to a punching bag
They beat him black and blue with bloodied batons
Helplessly he struggled in their midst gasping for breath
But these savages would not stop
They kicked with their boots, rained blows with their batons
And fired shots at a close range
First, came blood flowing like flood from a battered body
Then a big fall, like the felling of an Iroko tree
Followed by a long silence as if signifying the end of a movie
But this was not a movie it was the brutal end
To the promising life of Andres Tatane
Tell anyone who does not know ---- the police have killed Andres Tatane