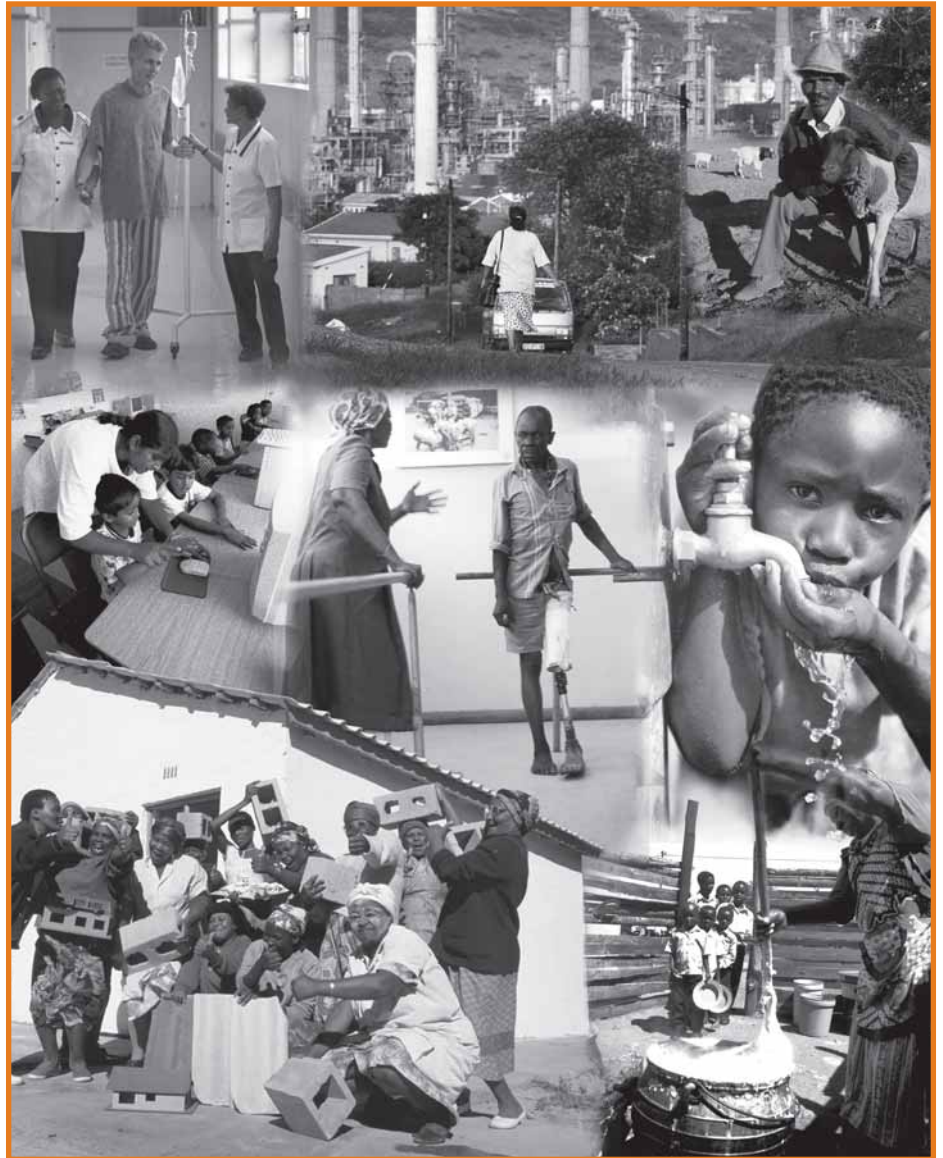


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# Introducing socio-economic rights

## CHAPTER 1



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## KEY WORDS

Access	Able to get, have or use something, eg access to social grants.
Accountable	Being responsible for your actions and having to explain them to others, eg by reporting.
Adequate	Suitable and up to a good enough standard.
<i>Amicus curiae</i>	Friend of the court – when an organisation joins a court case to assist the court with its knowledge of an issue.
Arbitrarily/Arbitrary	Without good reason and not following the law.
Bill of Rights	The list of human rights in our Constitution.
Certification	The process that the Constitutional Court followed to officially declare that the final Constitution had correctly followed the 34 Constitutional Principles of the interim Constitution.
Compliance/Comply	Whether or not you are obeying laws, policies and court judgments.
Constitution	The highest law of the country that all other laws and policies must follow.
Constitutionality	Whether or not a policy, law or action is in line with the Constitution.
Constitutional Principles	The 34 principles listed in the interim Constitution that had to be respected in the drafting of the final Constitution, eg that there must be a Bill of Rights in the Constitution.
Directive principles of State policy	Guidelines in a Constitution that the Government is meant to respect in running the country.
Discrimination	Being treated differently, eg because you are a woman, black, lesbian, living with a disability, or living with HIV.
Enforce/Enforceable	Take action or able to take action to make your rights effective, eg get a remedy if your rights are violated.

Equality clause	Section 9 of the Bill of Rights in our final Constitution, including the right to equality and non-discrimination.
Equitable	Fair and reasonable.
Final Constitution	Our current Constitution (also known as the 1996 Constitution) that took over from the interim Constitution on 4 February 1997.
Horizontal application of the Bill of Rights	The enforcement of your rights against another private individual, body or company.
Interim Constitution	Our Constitution between 1993 and 4 February 1997 (also known as the 1993 Constitution) while the final Constitution was being written by the Constitutional Assembly.
Justiciable rights	Rights that can be enforced in the courts.
Justifiable	Something that can be defended or supported with good reasons.
Minimum core obligation	The duty to provide basic essential levels of each of the socio-economic rights (eg essential food, primary health care and basic shelter) for everyone.
Progressive realisation	Steps to improve access to socio-economic rights over a period of time.
Prohibited grounds of discrimination	Grounds or reasons that the Constitution or other laws say you are not allowed to use to unfairly discriminate against anyone, eg because of race, gender, disability, language or HIV.
Rehabilitation	Community-based services and activities aimed at promoting the healing and recovery of individuals and communities that have been affected by human rights violations.
Remedy	Order by a court or other body that prevents a human rights violation, or that compensates you when your rights have been violated; or finding solutions in other ways, eg through negotiation or mediation.
Reparation	Practical and symbolic steps to compensate the victims of gross violations of human rights, eg financial grants, building of memorials and monuments, and developing museums.
Separation of powers	A principle of constitutional law that says the three branches of government (the legislature, executive and judiciary) have separate powers and functions, and should not trespass on the role of another branch.

Socio-economic rights	Social and economic rights, eg the rights to land, housing, water and education.
Sphere of government	National, provincial or local government.
Submission	Setting out in writing or verbally the views and proposals of your organisation on laws, policies or other official documents.
Systemic	Linked to or part of a system, eg systemic human rights abuses under apartheid.
Undermine	Act in a way that weakens or shows no respect for something, eg undermine human dignity.
Unfair discrimination	A policy, law, conduct or situation that unfairly disadvantages you, eg because you are a woman, black, gay, living with a disability, or living with HIV.
Vertical application of the Bill of Rights	The enforcement of your rights against the State, eg national, provincial or local government.
Violate/Violation	Abuse or not respect, eg a violation of your right to equality.
Vulnerable groups	People that need special protection, eg children, elderly people.

# 1.1

## What are socio-economic rights?

### 1.1.1 Socio-economic rights as human rights

Socio-economic rights are recognised as human rights in a number of international human rights documents. They are recognised mainly in the 1948 *Universal Declaration of Human Rights* (UDHR) and the 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Today, they are also protected in many other documents, including national constitutions, for example, the South African *Constitution (Act 108 of 1996)*.

Human rights are sometimes divided into two groups of rights:

- *Civil and political rights* include the right to life, vote, a fair trial, freedom of speech, movement and assembly.
- *Socio-economic rights* include the right to adequate housing, food, health care, education, social security and water.

For decades, socio-economic rights have been treated differently from civil and political rights. They have often been regarded as ‘mere aspirations or second class rights’ not deserving of the status of human rights. Yet, civil and political rights have always been seen as ‘fundamental rights or first class rights’.

However, the United Nations has confirmed many times that economic, social and cultural rights, *and* civil and political rights, are equally important, indivisible and interdependent. The real life experiences of people show that

the two groups of rights cannot be separated. To lead a meaningful life and to fully develop, a person needs to enjoy civil and political rights *and* socio-economic rights. Each depends on the other to be real and meaningful.

Yet these two groups of rights continue to be treated differently in the legal systems of different countries. Civil and political rights are usually more strongly protected than social and economic rights. This often happens in two ways. Firstly, it is more usual for civil and political rights to

be included in the Bill of Rights as enforceable rights (eg United States Constitution).

Secondly, even if social and economic rights are included in a constitution, they are often included as ‘directive principles of State policy’. This means that they are included as mere guidelines for the government, but cannot be enforced in courts to the same extent as civil and political rights (eg Namibian, Indian and Irish Constitutions).

#### EXAMPLES



#### HUMAN RIGHTS DEPENDING ON EACH OTHER

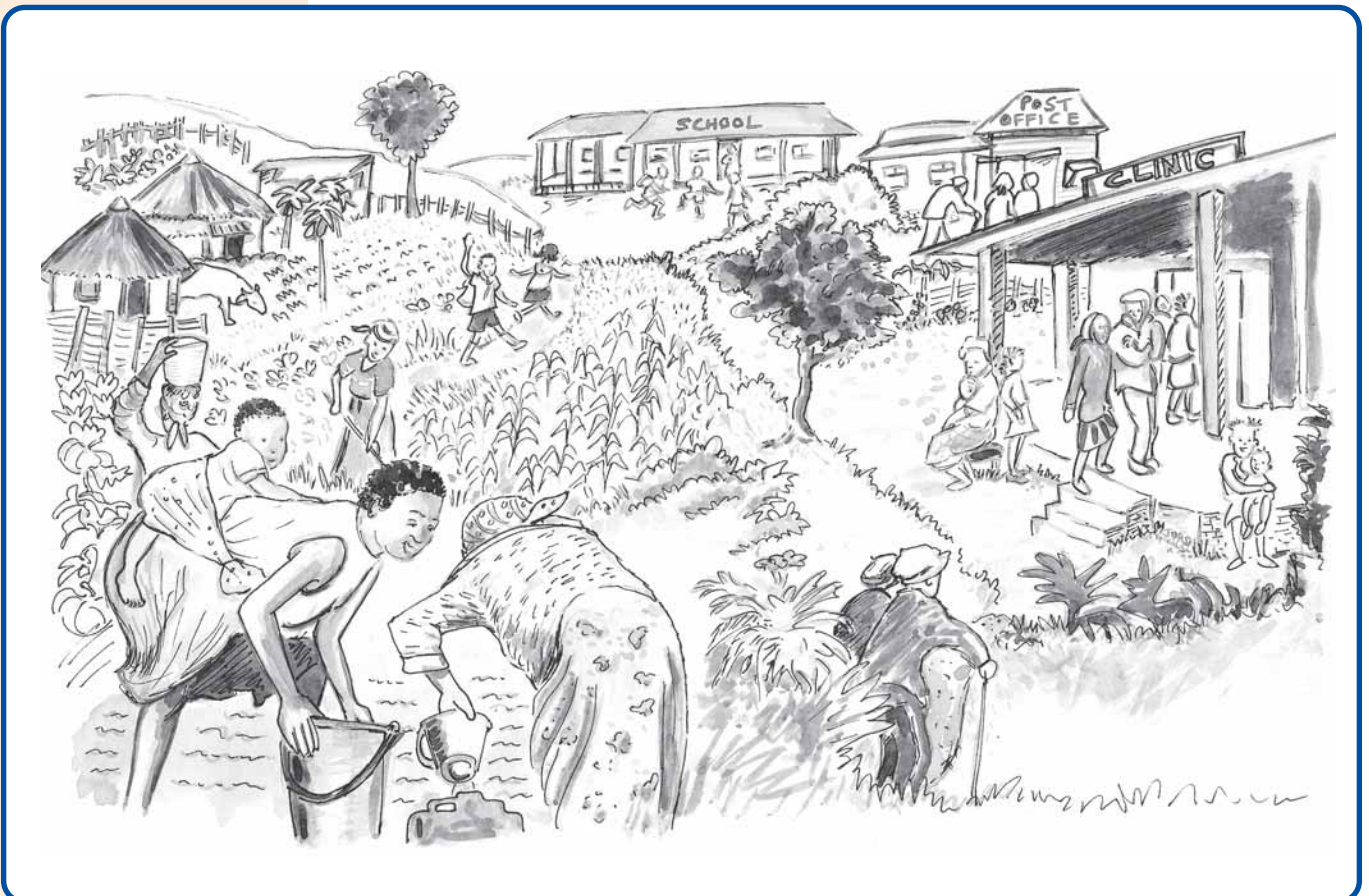
- *Without the right to an education, it is difficult to effectively exercise your civil right to express an opinion and to make a submission.*
- *Without the right to food and basic health care, your right to life as a poor person is threatened.*
- *If you have the right to information and to participate in political decision-making, you have a much better chance of ensuring that the Government meets your socio-economic needs.*

Sometimes the courts are willing to use the directive principles of State policy to give a more meaningful and broad interpretation to civil and political rights. For example, the Indian Supreme Court has said that the right to life and liberty includes access to food (*People's Union for Civil Liberties case, 2001*).

## 1.1.2 The aim of socio-economic rights

Socio-economic rights are those rights that give people access to certain basic needs (resources, opportunities and services) necessary for human beings to lead a dignified life. Government and, in certain circumstances, private individuals and bodies, can be held accountable if they do not respect, protect, promote and fulfil these rights. This means that government must not do things that make it more difficult for people to gain access to these rights, must protect people against violations of their rights, and must assist people to meet their basic needs. The law should also provide effective remedies if these rights are violated.

Socio-economic rights are especially relevant for vulnerable and disadvantaged groups in society. They are important tools for these groups, who are often most affected by poverty and who experience a number of barriers that block their access to resources, opportunities and services in society. Vulnerable groups often experience social exclusion and unfair discrimination because of a number of overlapping grounds or reasons.





### 1.1.3 Implementing socio-economic rights

Through the struggles of human rights activists, the international community is now paying more attention to socio-economic rights. They are realising that it is not enough to simply say that social and economic rights are important and essential to human dignity.

To make socio-economic rights effective:

- Countries need to ratify international agreements and make them a part of a national legal system.
- Countries need to give them strong protection in their national legal systems, including recognising them in the Bill of Rights as enforceable rights.
- Countries need to develop and implement policies and laws to give effect to socio-economic rights at national level.
- People must have access to strong remedies at national and international level if their socio-economic rights are violated.

Although South Africa has not ratified the ICESCR, it has become an international role model by including socio-economic rights as enforceable rights in its Constitution, and having an increasing record of enforcing these rights in South African courts.

The courts have confirmed that socio-economic rights are enforceable under the Constitution. The poor, the vulnerable and disadvantaged have a right of access to courts. They have brought cases before courts challenging government policies and laws that deprived them of access to social services, resources and opportunities.

Apart from going to court, everyone has a right to take complaints to bodies like the South African Human Rights Commission (SAHRC) or the Commission for Gender Equality (CGE) to get a remedy if their socio-economic rights are violated. They can use these rights to advocate and lobby for better service delivery, effective policies and laws that will improve their lives.

Only through knowing our socio-economic rights, and organising to defend and advance these rights, will they become more than 'paper rights'.

## 1.2

## History and socio-economic context in South Africa

### 1.2.1 The legacy of apartheid

Apartheid left a deep-rooted problem of poverty and inequality in South Africa. For the majority of people in South Africa, apartheid meant:

- The dispossession of people from their land and housing.
- The deliberate underdevelopment of black communities.
- Discrimination in the quantity and quality of education, housing, health care and social security.



For a discussion and statistics on poverty and HIV/AIDS, see Chapter 4 on page 133.

Some of the problems inherited in the apartheid era are still visible today. As a result, even the policies and laws developed since the beginning of democracy are struggling to address the size of these problems. Poverty and HIV/AIDS are serious challenges facing South Africa today.

## 1.2.2 Creating a new Constitution

Our current Constitution was adopted to be the foundation of our new, democratic society. It aimed to heal the divisions of the past, and establish a society based on democratic values and social justice. Some socio-economic rights were included in the *interim Constitution (Act 200 of 1993)*, but many internationally recognised rights were excluded, such as the rights to housing and health care.

While writing the final Constitution in 1995 and 1996, the Constitutional Assembly ran an extensive public participation programme aimed at giving ordinary people a voice in the drafting of the final Constitution. One of the major issues was whether socio-economic rights should be included in the Bill of Rights, along with civil and political rights, as rights that can be enforced by the courts.

Most political parties supported including socio-economic rights in some way in the Bill of Rights. A large number of civil society organisations, including human rights and non-governmental organisations (NGOs), church groups, civics and trade unions, campaigned for the full inclusion of socio-economic rights in the Bill of Rights. The arguments that they made are summed up in the extract on the next page from the petition presented to the Constitutional Assembly by 55 organisations in July 1995.

They argued that a Constitution that did not recognise socio-economic rights would not truly 'belong' to the millions of disadvantaged people in South Africa. They were also worried that, without socio-economic rights, the rich and powerful would use certain rights in the Bill of Rights, like the right

to property, to frustrate social transformation and a more fair distribution of resources in the country. Including these rights would give the new democratic government a constitutional mandate to achieve a more just distribution of resources and opportunities in society.

This campaign was successful. As we have seen, the current South African Constitution is one of the few national constitutions to include a full range of socio-economic rights in its Bill of Rights, and to give the courts the power to enforce these rights.

**Petition to the Constitutional Assembly by the Ad Hoc Committee for the Campaign for Social and Economic Rights**

***“We, the undersigned individuals and organisations, believing that:***

- All South Africans are entitled to full citizenship rights.
- The struggle against apartheid was as much about access to social and economic rights as it was about a right to vote and other civil liberties.
- Social and economic rights are essentially development rights.
- These development rights lie at the heart of the government’s Reconstruction and Development Programme (RDP).
- All our citizens have a right to a better quality of life and the right to human dignity in a new and democratic South Africa.
- The most disadvantaged sectors of our society should be granted every available means to protect and progressively realise these individual and collective human rights in South Africa.
- The interim Constitution does not adequately and equally reflect or entrench basic human rights which the majority of South Africans struggled for over many years.

***Call on members of the Constitutional Assembly to:***

- ***Recognise*** that social and economic rights are as fundamental, equal to, and essential as political and civil rights to the transformation, reconstruction and development of a democratic South Africa.
- ***Enshrine*** these development rights as equal and justiciable basic human rights in the Chapter on Fundamental Rights in the Constitution.
- ***Ensure*** that the most disadvantaged members of our society may progressively realise their basic human rights through the highest law of our land – the Constitution.”

### **1.2.3 Defending socio-economic rights in the final Constitution**

Before the final Constitution could be adopted, the Constitutional Court had to certify that the Constitution followed the 34 Constitutional Principles listed in the interim Constitution.

During the certification process, some groups challenged including socio-economic rights. They argued that socio-economic rights would give judges the power to dictate to Parliament and the executive what its social policies and budget priorities should be. They said that this would go against the constitutional principle of 'separation of powers'. They felt that socio-economic rights were not universally accepted fundamental rights and were not justiciable. Other civil society organisations (eg the Legal Resources Centre, the Centre for Applied Legal Studies and the Community Law Centre of the University of the Western Cape) defended including socio-economic rights.

The Constitutional Court supported including socio-economic rights in the final Constitution that came into force on 4 February 1997.

The Constitutional Court has since reaffirmed this position in the Grootboom case (*Government of the Republic of South Africa and Others v Grootboom and Others*) and other cases.

For more on the Grootboom case and other leading cases, see page 31 onwards.

#### COURT CASE



#### SOCIO-ECONOMIC RIGHTS IN OUR FINAL CONSTITUTION

In accepting the inclusion of socio-economic rights in the Bill of Rights, the Constitutional Court decided:

- Many civil and political rights such as equality, freedom of speech and the right to a fair trial, may also result in courts making orders that affect budgets (*paragraph 78 of judgment*).
- Including socio-economic rights does not automatically mean breaking the principle of a separation of powers (*paragraph 77*).
- The fact that socio-economic rights affect the budget does not mean that they cannot be enforced by the courts (*paragraph 78*).
- At the very minimum the courts can protect socio-economic rights from "improper invasion" (*paragraph 78*).

*First Certification judgment, 1996*

## 1.2.4 Monitoring socio-economic rights

The Constitution is committed to making the guaranteed socio-economic rights a reality. It does not only establish the courts to enforce these rights. It also establishes and mandates the SAHRC to monitor, assess, investigate and report on the observance of human rights. It also gives specific powers to the SAHRC to monitor and report on implementing socio-economic rights. Section 184(3) of the Constitution says that:

"Each year, the Human Rights Commission must require relevant organs of State to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment."

The SAHRC has reported on and assessed the information provided by government departments and parastatals. It has produced six reports on socio-economic rights, covering the period 1997–2003. The August 2006 report covers the period 1 April 2003–31 March 2006.

These reports:

- Analyse government efforts to implement socio-economic rights.
- Assess whether the laws, policies and programmes are designed and implemented reasonably.
- Assess whether budgets are allocated reasonably to ultimately ensure realising these rights.
- Assess progress and identify shortcomings or failures in government measures to make socio-economic rights real.
- Recommend to government departments on how these rights could be better implemented to meet the Government's constitutional obligations in the future.

#### EXAMPLE



**SAHRC REPORT DECLARING  
THE GOVERNMENT'S  
PROGRAMMES  
UNREASONABLE AND  
UNCONSTITUTIONAL**

*“That the Government has taken steps towards the progressive realisation of the right to have access to adequate housing is beyond dispute. What is apparent, however, is that as demonstrated in this critique section, the steps adopted by the government cannot be said to be reasonable, as they cannot pass a constitutional muster. It is regrettable to note that this is so despite the landmark decision of the Constitutional Court in Grootboom as millions of people are still living in peril and the programme adopted is not comprehensive as it neglects significant members of the society.”*

*SAHRC, 4<sup>th</sup> Economic and Social Rights 2000–2002 Report: Housing, 62*

The SAHRC submits its reports to Parliament and the Office of the Presidency to consider them and make recommendations.

The increase in court judgments on socio-economic rights means that the SAHRC is expected to monitor State compliance with these judgments. The Constitutional Court has recognised this role. In the Grootboom case, it specifically mandated the SAHRC to monitor the State's compliance with the judgment, and if necessary, report back to it on the efforts made by the State to comply with it. The SAHRC carried out this instruction and reported to the Court.

At the international level, the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has the role of assessing progress reports received from State parties to the ICESCR. The CESCR may have another role of investigating and deciding on cases of violations of socio-economic rights brought by individuals or organisations if the proposed Optional Protocol to the ICESCR is adopted.

For more information on the Optional Protocol to the ICESCR, see Chapter 3 on page 101.

## 1.3

# What socio-economic rights are included in the Constitution?

### 1.3.1 A chart of socio-economic rights

These are the socio-economic rights included in the Bill of Rights of the Constitution:

Section	What is the right?	Who benefits?
24	The right to a healthy environment.	Everyone.
25(5)–(9)	The right of access to land, to tenure security, and to land restitution.	Citizens and individuals or communities who had land rights violated as a result of past racially discriminatory laws or practices.
26	The right of access to adequate housing and protection against arbitrary evictions and demolitions.	Everyone.
27	The right to have access to – <ul style="list-style-type: none"><li>• Health care services, including reproductive health care</li><li>• Sufficient food and water</li><li>• Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.</li></ul> No-one may be refused emergency medical treatment.	Everyone.
28(1)(c) and (d)	The right to basic nutrition, shelter, basic health care services and social services. The right to be protected from maltreatment, neglect, abuse or degradation.	Every child (a person under 18).
29	The right to education.	Everyone.
35(2)(e)	The right to conditions of detention that respect human dignity, including the provision at State expense, of adequate accommodation, nutrition, reading material and medical treatment.	Everyone who is detained, including every sentenced prisoner. This right would include, for example, someone detained in a psychiatric hospital.

For the full text of these sections, see the Bill of Rights on page 442.

## 1.3.2 Socio-economic rights and other rights

### a) Equality and human dignity in socio-economic rights cases

We have seen how all rights are interrelated, indivisible and mutually reinforcing. The rights to equality and human dignity are foundational values of the Constitution. They are closely related to socio-economic rights. For example, the right to equality can be used to make sure that a person does not face discrimination in accessing and enjoying her socio-economic rights.

The Constitution defines *equality* to include “the full and equal enjoyment of all rights and freedoms” (section 9(2)). It says that the State may take steps to protect or advance individuals or groups that have been disadvantaged by unfair discrimination with the aim of promoting the achievement of equality. Therefore, advancing real equality can only be achieved if the State takes positive steps to ensure that vulnerable and disadvantaged groups enjoy meaningful access to socio-economic rights.

*Human dignity* emphasises that human beings must be treated with respect. Socio-economic rights are based on respect for human dignity. As Sandra Liebenberg points out:

#### COURT CASE



#### CONSTITUTIONAL VALUES IN SOCIO-ECONOMIC RIGHTS CASES

“Our Constitution entrenches both civil and political rights, and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society are denied those who have no food, clothing and shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2.”

*Grootboom case, paragraph 23 of judgment*

“Respect for human dignity requires respect for equal worth of the poor by marshalling its resources to redress the conditions that perpetuate their marginalisation.”  
*Liebenberg, 2005, 1*

The Constitutional Court stressed this point even further by saying that it is not only the dignity of the people affected by eviction that is violated when homeless people are driven from pillar to post in a desperate search for:

“...a place where they and their families can rest their heads. Our society as a whole is demeaned when government action intensifies rather than mitigates their marginalisation.” *Port Elizabeth Municipality v Various Occupiers, 2004, paragraph 18*

### b) The right of access to information

The right of access to information is also important for socio-economic rights claims. Making information accessible to the public is an important part of government’s duty to ensure that it is transparent and accountable. However, it is common for government officials to withhold information that is necessary for poor people to have access to special assistance.

## CASE STUDY



### NOT KNOWING AN EXISTING POLICY

During a study conducted in Amahlati and Lukhanji locations in the Eastern Cape, members of these communities said that they did not know of the indigent policy. This was their municipality's policy to assist poor people who cannot afford to pay for basic services like water and electricity.

The study concluded that while the policy existed, officials at the municipalities did not inform the people of this policy.

*Community Law Centre website, 2004*

## 1.3.3 Socio-economic rights and promoting equality

### a) Introducing the Equality Act

The main aim of the *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000* (the Equality Act) is to promote real and meaningful equality. The Equality Act aims to do away with social and economic inequalities, especially those rooted in apartheid, colonialism and patriarchy. The Act thus contributes to realising socio-economic rights. It came into force partially on 1 September 2000 and fully on 16 June 2003.

#### Prohibited grounds of discrimination in the Equality Act

Race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.





## b) Socio-economic status and other related grounds

Socio-economic status does not form part of the list of prohibited grounds of discrimination. However, it is prohibited by the fact that the Act also prohibits discrimination on any other grounds where this discrimination:

- Causes or continues systemic disadvantage, or
- Undermines human dignity, or
- Negatively affects the equal enjoyment of rights and freedoms in a serious way that is similar to discrimination on a listed ground.

The Act also recognises that these four grounds of discrimination are closely linked to systemic disadvantage and discrimination in our society:

- Socio-economic status
- HIV/AIDS
- Nationality
- Family responsibility and status.

## c) When is discrimination fair or unfair?

The Equality Act lists a number of factors to help decide if discrimination is fair or unfair, including:

- The context (setting) where the discrimination takes place.
- When the discrimination harms or is likely to harm human dignity.
- The position of the complainant (the person complaining) in society.
- The nature and extent of the discrimination.
- Whether reasonable steps have been taken to accommodate diversity (eg a range of different languages or religions).

## d) What is not unfair discrimination?

The Act says that it is not unfair discrimination to take steps to protect and advance individuals or groups of people disadvantaged by unfair discrimination – this is usually referred to as *affirmative action*.

### EXAMPLES



### UNFAIR DISCRIMINATION BASED ON SOCIO- ECONOMIC STATUS

- A school excludes a learner because his parents are too poor to afford school fees.
- Banks refuse to give home loans to people living in townships or informal settlements.
- A private hospital refuses to admit a critically injured person because she appears to be poor and unable to pay.

## e) The Equality Courts

The Act establishes any Magistrate's Court or High Court as an Equality Court. Individuals or groups can bring cases of unfair discrimination against the Government, private bodies (eg companies, associations, political parties) or other individuals.

Although the Act does not include *socio-economic status* as one of the specifically listed grounds, socio-economic status can still be brought before the Equality Courts using the principle linking systemic disadvantage *and* discrimination. The Act lists widespread practices that may be unfair discrimination because they deny access to socio-economic rights and benefits.

For examples of these practices, see *What is not unfair discrimination?* on page 29.

### 1.3.4 The equal rights of men and women

The CESCR has issued *General Comment No. 16*. This General Comment explains the nature of State obligations under the equality clause in article 3 of the International Covenant on Economic, Social and Cultural Rights. Article 3 says that:

“States must ensure the equal rights of men and women to all economic, social and cultural rights in the Covenant”.

Much like South Africa's Equality Act, General Comment 16:

- Recognises that women have been historically disadvantaged.
- Directs States to take special measures to ensure that women have fair access to social and economic benefits.
- Spells out a number of examples of these measures.

General Comments are very important in interpreting socio-economic rights at domestic (country) level. They provide clarity on the nature and scope of the rights and also on the obligations. South Africa's courts, particularly the Constitutional Court, have relied on these General Comments to interpret socio-economic rights, such as the right of access to adequate housing in the Grootboom case.

For more on General Comments, see Chapter 3 on page 105.

## 1.4

# What do socio-economic rights mean?

### 1.4.1 Guides to interpreting socio-economic rights

The meaning of socio-economic rights develops in various ways, including:

- Decisions of the courts.
- General Comments or recommendations of international bodies (eg the CESCR, the African Commission on Human and People's Rights, the African Committee of Experts on the Rights and Welfare of the Child).
- The adoption of legislation by parliaments.
- Academic writings.

- The advocacy work of civil society organisations, including NGOs, church groups and trade unions.
- The reports of human rights commissions.

The meaning of socio-economic rights is being developed through a combination of these methods. Their content is being made clearer by court judgments in major cases.

## 1.4.2 Major socio-economic rights cases in our courts

To date, our Constitutional Court has heard four major cases dealing with socio-economic rights. We now discuss each of these briefly.

### a) Soobramoney case – access to health care

#### COURT CASE



#### SOOBARAMONEY

The 1997 case of *Soobramoney v Minister of Health, KwaZulu-Natal* (Soobramoney case) dealt with the right of access to health care. Mr Soobramoney was an unemployed man who had chronic kidney failure.

Mr Soobramoney asked the court to direct the provincial hospital to provide him with ongoing dialysis treatment and to prevent the provincial Minister of Health from refusing him admission to the renal (kidney) unit of the hospital. Without this treatment, he would die. He relied on the right to life (section 11) and the right to emergency medical treatment (section 27(3)) in the Constitution.

The Constitutional Court decided against his claim and said that:

- Mr Soobramoney's claim did not fall under "medical emergency treatment" because his situation was not a case of sudden catastrophe, but ongoing treatment to prolong his life.
- The hospital could not be expected to provide treatment to all patients like Mr Soobramoney.
- The hospital's guidelines for determining who gets the dialysis treatment had been applied in a fair and rational manner.
- The right to health care services is limited by the availability of resources:

"A court would be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters." *Paragraph 29*

### b) Grootboom case – access to adequate housing

#### COURT CASE



#### GROOTBOOM

The 2000 Grootboom case focused on the right of access to adequate housing. A group of adults and children moved onto private land from an informal settlement because of the bad conditions in which they lived.

The group was evicted from the private land and their building materials were destroyed. They applied to the High Court for an order against all three spheres of government to be provided with temporary shelter or housing until they got permanent accommodation. They relied on the right of access to adequate housing in section 26(1) and the right of children to shelter in section 28(1)(c) of the Constitution.

The Cape High Court said that there was only a violation of the right of children to shelter and not the right to adequate housing. On appeal, the

Constitutional Court did not agree with the High Court's interpretation of children's right to shelter. However, it decided that the Government's housing programme did not comply with the obligation to take reasonable steps (section 26(2)).

The Constitutional Court developed a standard of *reasonableness* as a guide to decide if the Government's programme meets constitutional requirements. The Constitutional Court said:

- The programme must be comprehensive, coherent and coordinated (paragraph 40).
- It must be capable of "facilitating the realisation of the right" (paragraph 41).
- It must be balanced and flexible, and appropriately provide for short-, medium- and long-term needs (paragraph 43).
- It must clearly allocate responsibilities and tasks to the different spheres of government, and ensure that financial and human resources are available (paragraph 39).
- It must be reasonably formulated and implemented (paragraph 42).
- It must provide for the needs of those most desperate by providing relief for people who have no access to land, no roof over their heads, and who are living in intolerable or crisis situations (paragraph 44).

### c) **Treatment Action Campaign case – access to health care**



The 2002 case of *Minister of Health and Others v Treatment Action Campaign and Others* (TAC case) involved the right of access to health care.

The Treatment Action Campaign (TAC) challenged the limited nature of government measures introduced to prevent mother-to-child transmission (MTCT) of HIV on two grounds. They argued that:

- The Government unreasonably prohibited administering the antiretroviral drug, nevirapine, at public hospitals and clinics, except for a limited number of pilot sites.
- The Government had not produced and implemented a comprehensive national programme for the prevention of MTCT of HIV.

The High Court and the Constitutional Court applied the test of reasonableness developed in the Grootboom case and decided that:

- The Government's programme did not comply with the right of access to health care services and the duty to take reasonable measures under section 27(2) of the Constitution.

The Constitutional Court developed a new element of reasonableness:

- The Government must be transparent and allow for the participation of a number of stakeholders in the implementation of the programme.

## d) **Khosa case – access to social assistance**

### COURT CASE



### KHOSA

The 2004 case of *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development and Others* (Khosa case), dealt with the right of access to social assistance.

A group of permanent residents challenged the constitutionality of some provisions of the *Social Assistance Act 59 of 1992* and the *Welfare Laws Amendment Act 106 of 1997*. These provisions:

- Restricted access to social assistance to South African citizens only.
- Excluded permanent residents, elderly people and children, who would otherwise have qualified for social grants if there was no requirement of citizenship.
- Excluded primary caregivers from accessing the Child Support Grant for children in their care, especially where these children are South African citizens.

Yet foster care parents did not have to comply with a requirement of citizenship. In other words, children of non-citizens would have to be removed from their families to join a foster family in order to benefit from the Child Support Grant.

The Constitutional Court decided that:

- Permanent residents are a vulnerable group.
- The laws that exclude them from access to the benefit of social assistance treat them as inferior to citizens.
- The costs of including permanent residents in the social security scheme would be small.
- Excluding permanent residents from access to a social security scheme was not consistent with section 27 of the Constitution.
- Excluding children from access to these grants was unfair discrimination on the basis of their parents' nationality and violates their right to social security under section 28(1)(c).

## 1.4.3 **Interpreting socio-economic rights**

### a) **Approach to interpreting socio-economic rights**

In the Grootboom case, the Constitutional Court developed an approach to interpreting socio-economic rights:

- These rights must be understood and interpreted in our historical and social context.
- When looking at the historical and social context, the court may consider the current barriers to access to services and vulnerability of specific groups, such as children, women and the elderly.

## b) What does the right “to have access to” socio-economic rights mean?

As we have seen, the Bill of Rights refers to a right of “access to” housing, health care services, food, water and social security.

The Constitutional Court has given guidance on the meaning of “access to”. In the Grootboom case, it said that the right “to have access to” adequate housing means more than bricks and mortar. It includes land, basic services (eg water, removal of sewage) and the financing of all these, including building a house itself.

In other words, “to have access to” means that the Government must facilitate access to or create an enabling environment for everyone to access a service. It does not mean though that the Government must provide shelter on demand. A range of different strategies, including finance, land and infrastructure, can contribute to realising the right.

### EXAMPLES



### FACILITATING ACCESS TO SOCIO-ECONOMIC RIGHTS

*The Government facilitates access to:*

- **Health care services** by ensuring that hospitals and clinics are built, nurses are employed, and medicines are available and affordable for all.
- **Sufficient food** by ensuring that land is available, cash in the form of social grants or food parcels is given to the poor, and the pricing and safety of food is regulated, so that people can buy food or have access to affordable food.
- **Basic education** by ensuring that schools are built within the reach of all learners, enough and good teachers are employed, classes are sufficiently furnished, books are provided, and poor learners do not have to pay school fees.

To have “access to” can also mean that socio-economic rights are not goods that must be handed out free of charge by the Government to the people. Instead, the Government’s role is to:

- Remove barriers in the way of people getting access to the rights.
- Empower people and community organisations to be able to provide the service themselves.
- Adopt special measures to assist vulnerable and disadvantaged groups to have access to the rights.

In other words, socio-economic rights do not mean that people have to get services for free. But paying for services should not be a barrier that prevents poor people from gaining access to education, water services, health care and other rights. Charges for basic services should be affordable to poor people. People who genuinely cannot afford service charges or fees should be able to talk to the relevant authority for a reduction or other concession. Most municipalities have an indigent policy that is meant to assist poor people who are unable to afford service fees.

The Government must fulfil its duties, but groups and communities are also responsible for participating actively in their own development. This is the approach of the *United Nations Declaration on the Right to Development* (1986). The Declaration says:

On the indigent policy, see Chapter 4 on page 140.

- People are active participants and beneficiaries of the right to development, not passive recipients.
- Communities must protect hospitals, clinics and schools, and pay for fees, where they can afford them.

## 1.4.4 What are the State's duties?

Section 7(2) of the Constitution says that:

“The State must respect, protect, promote and fulfil the rights in the Bill of Rights.”

These duties prevent the State from undermining people's enjoyment of human rights. They also force the State to take positive steps to protect and advance realising these rights.

### a) The duty to respect

The duty to respect rights means that the State should not arbitrarily take away people's socio-economic rights, or make it difficult for them to gain access to the rights. The courts have on many occasions dealt with the duty to respect.

#### COURT CASES



#### DUTY TO RESPECT

Courts have said that a violation of the duty to respect happens in these circumstances:

- When a municipality disconnects the water supply, it limits the right of access to water. The limitation has to be justified (*Residents of Bon Vista Mansions v Southern Metropolitan Local Council, 2002*).
- The eviction of occupiers from private land took place earlier than the date ordered by the Magistrate and in circumstances that saw squatters' homes bulldozed (*Grootboom case, 2000*).
- The law allowing the sale of housing in order to settle small civil debts in situations that could make people homeless, violates the duty to respect in section 26(1) of the Constitution (*Jaftha v Schoeman and Others, 2005*).
- The Government deprives people of access to a socio-economic benefit. For example, it stops payment of disability grants to certain beneficiaries without justification and notice (*The Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government and Another v Ngxuzza and Others, 2001*).
- The Government makes it difficult or impossible for people to gain access to socio-economic benefits. For example, it limits access to a social grant to citizens only, thus excluding a number of vulnerable groups such as permanent residents (*Khosa case, 2004*). Or, because of administrative inefficiencies, social grants are not paid to beneficiaries within a reasonable time (*Mashava v the President of the Republic of South Africa, 2004*).
- A small group of people is evicted from land they occupied for some time without anyone objecting, without anyone stating that they needed to use the land urgently, and without alternative accommodation being made available to the occupiers (*Port Elizabeth Municipality v Various Occupiers, 2004*).

## b) The duty to protect

The duty to protect means that the State must pass laws that prevent powerful people or organisations (eg banks, insurance companies, employers, landlords) from violating your socio-economic rights. The State must also enforce these laws through establishing bodies that will investigate and give effective remedies if your rights are violated.

### EXAMPLE



### REGULATING CREDIT

The new *National Credit Act 34 of 2005* aims to protect consumers and promote responsible credit practices. The *National Credit Act* allows people to have access to a range of economic opportunities and resources that will especially help poorer people to improve the standard of their lives.

The *National Credit Act*:

- Imposes a responsibility on credit providers (eg banks) not to give you credit if you cannot afford it.
- Places a duty on creditors to fully inform consumers of their rights.
- Creates a *National Credit Regulator* to monitor market trends and educate consumers about their rights.
- Establishes a *National Credit Tribunal* to receive individual complaints or resolve disputes on credit agreements.

The *Department of Trade and Industry* emphasises how important the *National Credit Act* is:

*“It is quite easy for credit to lead to financial hardship and destroy a household’s wealth. Taking on extra loans in order to pay back existing loans can lead people into a debt spiral out of which it may be difficult to escape. Over-indebtedness has a negative impact on families and has in some extreme cases even led to family suicides. It also has an impact on the workplace, can lead to de-motivation, absenteeism and a propensity to commit theft.”*

*Department of Trade and Industry website, 2004*

### GUIDELINE



### NATIONAL CREDIT ACT

The new and improved consumer rights guaranteed in the *National Credit Act* will come into force on 1 June 2007.

## c) The duty to promote

The duty to promote means that the State must actively aim to increase awareness and respect for socio-economic rights through methods such as:

- Educating people about policies and programmes that will help them have access to socio-economic benefits.
- Using the media to inform people about their rights and where to go to claim them.



- Making sure that the speeches and actions of government ministers support the constitutional commitment to socio-economic rights.
- Encouraging the work of NGOs and community organisations on socio-economic rights.

## d) The duty to fulfil

The duty to fulfil means that the State must take positive steps to assist people without housing, health care, food, water and social security to gain access to these rights.

It is clear that the full realisation of these rights in South Africa cannot be achieved overnight because of the large backlogs inherited from apartheid and current poverty levels.

The Constitution recognises that fully realising socio-economic rights is a process. Sections 26 and 27 describe the duty of the State to fulfil socio-economic rights:

“The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.” *Sections 26(2) and 27(2)*

This wording is very similar to the wording of article 2 of the ICESCR that sets out the duties of State parties to this agreement.

The Constitutional Court has developed guidelines that can assist in understanding what is meant by the duty to “take reasonable measures”.

For more discussion of guidelines on reasonableness, see page 32.



## EXAMPLES



## REASONABLE MEASURES

- Food relief programmes should reach children who are malnourished or vulnerable to malnutrition.
- Government should inform beneficiaries about a social policy that it is implementing (eg indigent policy).
- Government should involve the public in developing important social policies or legislation.

The principle established in the Grootboom case can also assist the State to defend its decision to come to the assistance of vulnerable groups when a decision on what is “reasonable” is challenged.

## COURT CASE



## DEFENDING VULNERABLE GROUPS

In the 2001 case of *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others*, the Government defended its decision to assist vulnerable groups.

The Government had established a transit camp on State-owned land to house approximately 300 flood victims. A neighbouring residents’ association challenged this conduct as unlawful, saying that there was no legislation permitting it and that it went against an existing town planning scheme, as well as land and environmental legislation. The Government relied on the principle that it has a duty to assist people in crisis situations.

The Constitutional Court decided:

- Providing relief to flood victims is an important role of government in a democratic state, and the Government would have failed in its duty if it had done nothing.
- The steps taken by the Government in this situation were reasonable and thus complied with its constitutional duty.

## e) The duty to realise socio-economic rights progressively

*Progressive realisation* means that rights may not be realised immediately. This means that the State must take steps to achieve the full realisation of rights over a period of time. To achieve this goal, the State must take steps that:

- Are balanced and flexible, and provide appropriately for short-, medium- and long-term needs.
- Facilitate access over time by lowering legal, administrative, operational and financial hurdles to fulfilling the rights.
- Make a service accessible to a greater number of people over time *and* also ensure that a wide range of people benefit as time progresses.
- Include concrete targets and goals that are linked to timeframes.

In the Grootboom case, the Constitutional Court said that passing legislation is not enough. A legislative measure must be supported by appropriate, well-directed policies, programmes and implementation plans.

Targets and goals with specified timeframes allow the State to plan and monitor its own progress. They also help the SAHRC, the CGE, NGOs and the general public to monitor and hold the State accountable for realising socio-economic rights.

## f) **The duty to take measures "within available resources"**

Taking measures within available resources recognises that resources are not limitless, and that the State must do the best it can within the resources it has.

The State can defend an allegation that it is not making sufficient progress in realising socio-economic rights on the grounds that it does not have sufficient resources and is doing all that is reasonably possible in the circumstances. What 'pie' of resources gets taken into account to assess whether government is doing all that is reasonably possible?

The Government cannot indefinitely delay taking clear measures that will advance the rights. It must also make sure that it correctly prioritises its budget and other resources to enable it to fulfil its constitutional commitments. It cannot claim that it lacks "available resources" when its budgetary and financial policies clearly favour privileged groups in society at the expense of disadvantaged groups.

The Government's first priority should be to ensure that vulnerable and disadvantaged groups have access to at least a basic level of socio-economic rights, eg shelter, primary health care, basic education and nutrition. This is what the UN's CESCR calls the State's "minimum core obligations". Even when it is clear that the State does not have sufficient resources to realise the rights fully, it must at least adopt strategies and low-cost programmes to protect vulnerable groups (*General Comment No. 3, paragraphs 10–12*).

For more on claiming resources for socio-economic rights, see Chapter 4.

## g) **Are there 'minimum core obligations' on the State?**

The issue of whether socio-economic rights in sections 26 and 27 of the Constitution impose minimum core obligations on the State is a very controversial one in South Africa.

The CESCR developed the *minimum core obligation* in interpreting the positive obligations of the State to realise socio-economic rights under the ICESCR (*General Comment No. 3, paragraph 10*). It refers to the duty of the Government to provide the basic essential levels of each of the socio-economic rights (eg essential foodstuffs, primary health care, basic shelter and housing) for all its people.

The Constitutional Court has been asked in two cases to decide whether the socio-economic rights in the Bill of Rights impose minimum core obligations on the State. The issue was first brought to the Court by the Community Law Centre (CLC) at the University of the Western Cape and the SAHRC in the Grootboom case, and later by the CLC and the Institute for Democracy in South Africa (IDASA) in the TAC case. These institutions each approached the courts as an *amicus curiae* ('friend of the court').

For more on becoming an *amicus curiae*, see Chapter 2 on page 74.

Although they took different approaches to the minimum core argument, they mainly argued that sections 26 and 27 impose duties:

- To adopt measures that will give everyone a right to some ‘basic’ (minimum) core of services.
- To adopt measures that will ensure that the services are accessible and improved over time.

In the Grootboom case, they argued that the minimum core obligation for the right of access to adequate housing would mean that everyone is entitled to some basic shelter, including shelter for children. In the TAC case, they argued that the minimum core obligation for the right of access to health care would mean that everyone is entitled to receive nevirapine, including pregnant women living with HIV and their newborn babies.

The Constitutional Court rejected the minimum core argument in both cases. The Court said that:

- The drafting and language of the socio-economic rights provisions in the Bill of Rights do not support the idea that these rights impose a minimum core duty on the State.
- It would be difficult to determine a ‘core’, as rights varied a lot and needs were diverse.
- Deciding on a minimum core duty for a particular right requires a lot of information that courts often do not have access to.
- The minimum core idea was, however, relevant to assessing the reasonableness of the measures taken by the State.

## **h) Do unqualified socio-economic rights mean providing services immediately?**

Other socio-economic rights in the Bill of Rights are not qualified in the same way as the rights in sections 26 and 27. Their wording does not refer to “progressive realisation” or the “availability of resources”. These are:

- The right to an environment that is not harmful to health or well being.
- The right against arbitrary evictions or demolitions.
- The right against the refusal of emergency medical treatment.
- Children’s socio-economic rights.
- The right to basic education.
- The socio-economic rights of people in prison or detention.

### **Children as a vulnerable group**

Section 28(1)(c) provides that every child has a right to basic nutrition, shelter, basic health care services and social services. Human rights activists working in the children’s rights sector felt that the direct nature of the duty around children’s rights was justified by the fact that these rights require a ‘basic’ level of the various services. They argue that children are more vulnerable to poverty than any other group.

A number of factors may cause children to be in desperate need:

- There may be no programme or an existing programme may not cater for very vulnerable groups of children (eg children with disabilities).
- Programmes may exist that intend to benefit children, but they do not reach vulnerable children because of poorly formulated and implemented policies. For example, many children do not have access to the Child Support Grant because they do not have an Identity Document (ID) or Birth Certificate that is necessary to apply for a grant. *Liebenberg, 2004a, 5*

## How have the courts interpreted children's socio-economic rights?

### COURT CASES



### DO CHILDREN'S SOCIO-ECONOMIC RIGHTS MEAN PROVIDING THE SERVICE IMMEDIATELY?

In the Grootboom case, the High Court ruled that, because there were children involved, the applicants were entitled to have access to shelter for the children and their families.

The Constitutional Court overruled this and said that this would mean that:

- People with children would then be able to claim housing on the basis of their children's right of shelter. But those people, who have no children or whose children are adult, can only claim under the right of access to adequate housing, no matter how old, disabled or deserving they may be. The Court warned that this would make children "stepping stones" to housing for their parents, instead of them being valued for who they are (*paragraph 71 of judgment*).
- A carefully designed constitutional scheme would make little sense if it could be overridden in every case by the rights of children to get shelter from the State on demand (*paragraph 71*).
- Children's socio-economic rights and rights to family care should be read together. Parents have the main duty to fulfil their children's socio-economic rights. Government has the main duty, though, towards children who are not cared for by their parents. It must also provide the legal and administrative resources necessary for children's rights to be fulfilled (*paragraphs 76–77*).

The Court also said that, by providing maintenance grants and other material assistance to families in need, the Government may be taking one of the steps to meet its obligations in sections 26 and 27. However, the Government had to take care of children that do not have family care, such as when they are orphaned or abandoned.

In the TAC case, the Constitutional Court further clarified its position. It said that the Government duty to provide for children's socio-economic rights did not only arise when children were physically separated from their families. Children born to mothers, who are poor and unable to afford the basic services, are dependent on the State to assist them and their parents.

The issue of whether children have a direct claim to basic services is debatable. What is clear though is that the Constitutional Court has said that these unqualified rights do not necessarily mean that the State has a direct duty to provide services to children without delay.

## i) Can non-nationals claim socio-economic rights?

Some rights in the Bill of Rights clearly belong only to “citizens”. These include the right to vote, the right to enter and to live anywhere in the country, the right to a passport, the right to choose your trade, occupation or profession freely, and the right to equitable access to land.

Most of the other rights in the Bill of Rights, including the socio-economic rights, can be claimed by “everyone”. This means that non-nationals cannot automatically be excluded from access to rights such as education, housing, health care services and food.

### COURT CASES



### NON-NATIONALS AS A VULNERABLE GROUP

In the 1997 case of *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another*, the Constitutional Court said that non-nationals are a vulnerable group in society, as they are a minority and do not have the ‘political muscle’ to defend their interests. This means that excluding certain categories of non-citizens, such as permanent residents, from social benefits and opportunities could be unfair discrimination (*paragraphs 19–20 of judgment*).

In the 2004 Khosa case, the Constitutional Court decided that a group of permanent residents are a vulnerable group and that excluding them from social security was not consistent with section 27 (right of access to social assistance).

For more details on the Khosa case, see page 33.

If the Government wants to restrict access to some socio-economic rights only to citizens or some categories of non-nationals (eg permanent residents), it must prove that this restriction is reasonable and justifiable under the section of the Bill of Rights that allows for general limitations on rights.

International treaties, such as the *Convention relating to the Status of Refugees* (1951), protect the rights of refugees. This includes their socio-economic rights, such as the rights to housing, public education, labour and social security.

## j) Can the State limit socio-economic rights?

All the rights in the Bill of Rights, including the socio-economic rights, can be limited or restricted by the State. Section 36 of the Constitution sets out the conditions for a valid limitation of a right:

- The limitation must be under “a law of general application” – in other words, the law must not target named or easily identifiable individuals or groups, and it must not be arbitrary.
- The limitation must be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

## GUIDELINES



## LIMITING RIGHTS

A court will look at a number of factors to decide if the limitation of a right is reasonable and justifiable, including:

1. The reason why the right is being limited – the purpose of the limitation.
2. The degree to which the right is limited – how much is the right being limited?
3. If there are other less restrictive ways to achieve the limitation – a right should be limited no more than is necessary to achieve the purpose of the limitation.
4. If the Government proved that the limitation of a right is reasonable and justifiable.

## EXAMPLES



## LIMITING RIGHTS

- *The Government may decide that, because it cannot meet the needs of the large number of school-going children from poor families who leave home without proper food, to provide school meals and snacks for schools in very poor areas first.*
- *“Everyone” (not just citizens) has the right to have access to adequate housing. The Government will have to show why restricting housing rights to citizens is reasonable and justifiable in the circumstances.*
- *The Government may claim that it has only enough resources to provide a limited number of shelters for homeless children. The resources may not be enough to accommodate all children in need. The Government will have to prove that there is a good reason for limiting the right of every child to shelter in this way, and that it has not limited the right more than is reasonable and justifiable.*

## 1.5

## Challenges

These are some of the key challenges facing human rights activists focusing on socio-economic rights:

- To advocate for implementing court judgments and orders relating to socio-economic rights.
- To advance interpretations of these rights that will make a real contribution to improving the quality of life of poor people.
- To use strategies that will make a greater impact on understanding and implementing socio-economic rights.
- To advocate for policies, laws and financial steps to effectively and speedily realise these rights.
- To promote establishing a range of accessible bodies and remedies to deal with violations of these rights.
- To advocate for ratifying the ICESCR and the adoption of the proposed Optional Protocol to the ICESCR.

Chapter 2 focuses in more detail on the different bodies and procedures for advancing these rights. Chapter 3 examines socio-economic rights in international law, while Chapter 4 looks at the financial, human and institutional resources needed to implement socio-economic rights.

Chapters 5 to 12, dealing with specific socio-economic rights, will also highlight the laws, policies and bodies relevant to particular rights.

For a discussion on the Optional Protocol, see Chapter 3 on page 101.

## Discussion ideas



### TALKING POINT 1

Clareburg Primary School near Durban in KwaZulu-Natal, applied to the Department of Health to be included in the primary school feeding scheme. The application was turned down on the basis that it was an Indian school, was not regarded as a disadvantaged school, and fell outside the geographical location from which poor schools were targeted. For a school to stand a chance of qualifying, it must be situated in a very poor area and must be previously disadvantaged.

Clareburg challenges the decision on its application and the criteria used to implement the scheme. It argues that the decision and the criteria discriminate unfairly against poor learners that attend the school, and this leads to a violation of these poor learners' right to basic nutrition and access to sufficient food that would enable them to enjoy their right to education.

Discuss these questions in a small group:

1. *Do you think that the school has a valid case?*
2. *What rights in the Bill of Rights may be violated?*
3. *What arguments could the school raise?*
4. *What arguments could the Department of Health raise?*
5. *What would be the grounds for or against limiting the rights?*
6. *What organisations or institutions should the school approach for help?*
7. *What are the advantages or disadvantages of the different strategies that the community could take up?*



## TALKING POINT 2

Take a look again at the elements of reasonableness in the Grootboom case on page 32 and the examples of reasonable measures on page 38. Using these to guide you, discuss these questions in a small group:

1. *Can you think of other examples of a situation, or of Government programmes or policies, that may be seen as unreasonable?*
2. *What socio-economic rights are violated in the examples?*
3. *Can you also identify the civil and political rights that are violated in these examples?*



## TALKING POINT 3

Some commentators have criticised the Constitutional Court approach that says that the State has a duty to develop and implement reasonable socio-economic rights programmes or policies that will include and prioritise people in desperate need. They have argued that:

- This means that a person claiming a socio-economic right is only entitled to a reasonable programme, not a service (eg a house, food or water immediately).
- The Court could have ensured that people's rights were strongly protected by accepting that the State has a duty to provide an essential 'core' (minimum) service to everyone as a matter of priority.

Think about these questions, write down your ideas, and then compare your ideas with colleagues:

1. *Do you agree with these commentators?*
2. *What will be the implications of the Constitutional Court ordering the Government to provide a service (even an essential minimum service) to everyone in South Africa?*
3. *Can you think of circumstances where a court could order that the Government must provide a socio-economic right immediately? What right and groups of people would be involved in this kind of situation?*

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