



### **SOCIO-ECONOMIC RIGHTS ARE HUMAN RIGHTS**

Human rights are not spoken about much anymore. There is seldom reference to the value of human rights by political leaders on the campaign trail; nor will many articles be written about why rights are good for the citizens.

Instead you are likely to hear platitudes to the effect that people do not eat human rights, missing the point that they may never have an opportunity to eat at all in the absence of a human rights framework that guarantees their socio-economic well-being. A country's social welfare provision and its commitment to social protection are underpinned by a rights-based perspective. In the case of South Africa, the Bill of Rights is a cornerstone.

It is not just in South Africa where concerns about human rights are often raised. In fact, we are said to be one of the progressive countries in this respect. Amnesty international identifies 139 countries where the government arbitrarily restricts freedom of speech, 131 countries that engage in torture, and 93 where citizens are denied the right to a fair trial.<sup>i</sup> This is before considering the millions locked in conflict zones, or the suffering of refugees.

There is a long history of socio-economic rights holding a place of prominence in broader human rights discourse, not least in the case of South Africa, where the constitution enshrines various rights such as "land, housing, healthcare, food, water, social assistance and education."<sup>ii</sup> These socio-economic rights are complex constructions. Few people would have any issue with them as a matter of principle. It is indeed hard to oppose guarantees on the basic conditions of living a safe and healthy life. And yet socio-economic rights differ significantly from others, most importantly in the capacity of the state to assure them.

Core rights do sometimes require active action by government to, for example, guarantee an equal voice for minority groups or act to prevent mob justice from undermining the right to life and safety. But many of these traditional rights were to protect citizens from the government itself, and to guarantee those rights was simply a matter of building institutions that protect people from government encroachment or excesses. Fulfilling socio-economic rights is very different. It requires action to provide significant public resources and financial support to people in need.

Therein lies the core problem with socio-economic rights: their existence in law may mean very little in practice. Governments are rarely held accountable for the provision of socio-economic rights by the judicial system that enforces more basic rights. In fact, there is very little pressure to assure socio-economic rights that stem from being codified as rights. The core reason is that their provision is a function of capable governance and financial capacity, both of which the state is accountable for through the democratic process, but neither of which work as a recipe for holding an official criminally negligent. When there is an outcry over a pending crisis in the administration of social grants, for example, that has implications for socio-economic rights, even if their existence as a concept is never brought to bear on the debate.

Fragmentation of our institutions, as well as tensions between the state and society, undermines the ability to coalesce around a way forward, but it also makes it difficult to prioritise rights. Human rights are at their most complex when they are to be traded-off against other rights; and this often happens when this tradeoff is between the so-called first generation rights and socio-economic rights. Such tradeoffs can lead to a suboptimal fulfillment of the basic needs of citizens.

Finally, there is need to institutionalise socio-economic rights and to use these as a yardstick to evaluate the effectiveness of government. Even with respect to promoting the so-called first generation rights such as freedom of speech, association, exercising the franchise, etc., there needs to be a strong consideration for building capabilities.

Those who earn more in society tend to have far greater capabilities to exercise their basic human rights and to contest their abuse. This is not always the case for those who may lack the means to express their grievances. Even in exercising the franchise, we had a case in South Africa where those who did not have proof of address had hurdles thrown their ways, and were almost not allowed to register as voters, save for the intervention of the courts.

New innovations such as the Socioeconomic Impact Assessment System (SEIAS), institutionalise a necessary level of consideration for how policy will impact different groups. New institutional safeguards are needed, and there are many potential options. Improving employment standards for senior government officials such that someone leading a department must understand the department in question would help improve leadership and service delivery. Deepening career pathways for talented civil servants would help solidify the technocratic base of government operations. And strengthening oversight mechanisms for departments and agencies would act as a fail-safe in case of people slipping through the checks above.

These types of interventions may seem underwhelming in the face of the deep social challenges facing everyday South Africans. But the capacity to provide socio-economic rights is directly related to the strength of the institutions that are guarantors of these rights.

Just as a capable independent judiciary is a necessary precondition of a strong system of basic rights, so a capable set of institutions is needed for an effective system for providing socio-economic rights. None of this will fully resolve the challenges identified above - the fundamental problems of providing socio-economic rights, deep political fragmentation, or differing priorities on certain rights - but it will firmly affix this disagreement to a solid base of institutional good practices to which everyone can agree. Such a base will allow these disagreements to improve debate and implementation of different policies, rather than disrupt the implementation of essential socio-economic rights.

Our basic rights mean little without courts to enforce them; unless we get our institutions right, the achievement of socio-economic rights will remain out of reach for the majority of our citizens.

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<sup>i</sup> Amnesty International, "Human Rights Facts and Figures for 2014":

<https://www.amnesty.org/en/latest/news/2015/02/annual-report-201415-facts-and-figures/>

<sup>ii</sup> Brand D., "Introduction to socio-economic rights in the South African Constitution", Centre for Human Rights, University of Pretoria:

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