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Socioeconomic rights in post-apartheid South Africa: How do they articulate to poor people's material expectations of democracy?

Ibrahim Steyn

Department of Political Science, UWC

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If democratic rights and liberal values of liberty and equality are to have any meaning they must be concrete, actually realized rights, and to enjoy liberty is not only to enjoy equality before the law, but also to have the capacities, the material and cultural resources to be able to pursue desired courses of action. Thus, political equality cannot be attained without a measure of economic equality, and without it, democracy is likely to become a vehicle for the maintenance of elite dominance (Rita Abrahamsen 2000).

1. Introduction

The 2010 celebration of South Africa's Human Rights Day coincided with the 50th commemoration of the Sharpeville massacre, on 21 March 1960, in which apartheid police officers shot 69 unarmed Sharpeville residents, mainly women and children, in the back outside the Sharpeville police station for protesting against the carrying of the notorious dompas identity document. The Sharpeville massacre was a watershed in the long journey of struggle against white supremacy and institutional racism. It elicited widespread global condemnation of the apartheid regime, economic sanctions, sport boycotts, the banning of the ANC and PAC and ushered in the start of armed resistance.

The dompas was not only a form of political surveillance, but also impaired the social and economic status of blacks. They were restricted to perform cheap menial labour and live in shantytowns decorated with inferior social services to that of white suburban areas. Thus, the political subjugation of blacks meted out by the apartheid system of institutional racism was felt economically and socially. The South Africa's democratic constitution captures this reality. It recognizes the interrelation between formal and substantive equality, based on an understanding that formal citizenship without substantive rights will undermine the very attainment of political and civil rights. That is, political recognition is meaningless, if the material constraints to ones capacity to participate in political life are not remedied.

Former State President, Nelson Mandela, averred this at the ANC's Bill of Rights conference, in 1991: "*A simple vote, without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched. We do not want freedom without bread, nor do we want*

bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society."[1]

Hence, rooted in the RDP vision, a substantive element of socioeconomic rights was included in South Africa's constitutional text, amidst fierce opposition from those on the right and some on the left of the ideological spectrum. Freemarketeers saw the market as the most effective agent to redistribute social goods and some social democrats felt that the boundary between politics and law would be blurred, if a court is allowed to intervene in the legislative output and the policy implementation process of a democratically elected government (Davis 2008). The decision to include socioeconomic rights in the Constitution, supported by many in South Africa's political and civil society at the time, has set the country on a constitutional journey that is about more than just the achievement of formal rights and individual liberties. It enjoins the post-apartheid South African state to make explicit provisions for the systemic socioeconomic discrimination and deprivation suffered by blacks in general and Africans in particular under decades of colonial and apartheid rule.

Whilst, it is true that the post-apartheid state has been providing social services to many poor communities, since 1994, large numbers of poor people are still without houses, electricity, water, etc. Meanwhile, in the context of enduring structural inequality, exacerbated by the adoption of GEAR in 1996, many poor working class communities are struggling to afford these services. In Sharpeville today, poor residents live in shacks or two roomed RDP houses, using kitchens as bathrooms, schools are overcrowded and the dropout rates are high, unemployment and crime are spiralling upwards, young people lack creational facilities, and so on.[2]The sad reality is that the significance of Humans Rights Day has and continues to elude many poor communities, who have experienced little or no actual social change, since the dawn of South Africa's democracy.

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[1] N.R. Mandela 'Address on the occasion of the ANC's Bill of Rights Conference', in a Bill of Rights for a Democratic South Africa: papers and report of a conference convened by the ANC's constitutional committee, May 1991 (Centre for Development Studies, UWC)

[2] "Fifty years of the Sharpeville massacre": a presentation by Dr. Oupa Moshebi to a roundtable discussion on human rights activism and the legacy of Sharpeville, co-hosted by UCT's Democratic Governance and Rights Unit and UWC's Department of Political Studies, 23 March 2010.

Thus, fourteen years after the inauguration of South Africa's new constitutional order, the question that begs is what are the redistributional effects of socioeconomic rights? Put differently, how are socioeconomic rights articulating to the historically marginalised black and African masses' material expectations of democracy? Moreover, given that the decision to include socioeconomic rights in the Constitution was a product of political struggle, how do grassroots citizens claim these rights and what are the pros and cons for collective agency in popular grassroots organisations? To engage these two related questions, the DDP commissioned a brief study of the South African experience of justiciable socioeconomic rights.

The study tapped into extant analyses of social services provisioning trends and rights discourse on the judicial enforcement of socioeconomic rights. In addition, it garnered perceptions of the redistributional effects of socioeconomic rights and rights litigation.

This report presents a comprehensive account of the secondary data amassed for the study and documents some of the key grassroots perceptions garnered.

The structure of the report falls into eight parts:

- In part one I introduce the study
- In part two I explicate the data collection method
- In part three I present a snapshot overview of the poverty and inequality debates in post-apartheid South Africa
- In part four I venture an assessment of the post-apartheid government's housing, electricity, water and sanitation services delivery trends
- In part five I reflect on the judicial enforcement of socioeconomic rights
- In part six I document grassroots perceptions of the redistributional effects of socioeconomic rights and rights litigation
- In part seven I summarise the main findings and propositions of the study

2. Method

I conducted the study between February and March 2010. I did a documentary analysis of local debates on poverty and inequality, housing, electricity and water services provisioning, practices of participatory democracy and socioeconomic rights adjudication with a view to delineating the salient issues and perspectives that encompass these debates. The data was collected from a variety of academic journals, official policy documents, Stats SA and online newspapers.

After the documentary analysis, I organised one roundtable discussion with representatives of popular grassroots organisations in the City of Cape Town to solicit their perceptions on the redistributional effects of socioeconomic rights and the impact of rights ligation on social mobilisation in popular grassroots organisations. No academics or NGO practitioners were invited. The invitation was restricted to organisations located in the CCT for easy access to the meeting venue. It went out to six organisations, of who most sent representatives. All those who participated were aware of the legal existence of socioeconomic rights. Two activists (male and female) from the invited organisations co-facilitated the discussion. Their main brief was to ensure that everyone participates, that there is gender parity in the discussion and to translate into English the observations of participants who prefer speaking in their native tongue. The following three questions framed the discussion: 1) How do you perceive socioeconomic rights? 2) Do you think rights litigation can secure social goods? 3) How does rights litigation affect participation in grassroots organisations? The discussion was illuminating and all participants shared thoughts on the foregoing questions, based on their individual or collective everyday life experience.

Finally, I sent the abovementioned questions by e-mail to six activists in popular grassroots organisations outside Cape Town and received responses from four of them.

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3. A snapshot of debates on poverty and inequality

According to recent official statistics of poverty and inequality, the numbers of people who live below a particular monetary poverty line have declined between 2000 and 2008, whilst the depth of poverty by province and intra-racial inequality increased, during this period (Development Indicators 2009). The official claim that poverty has been declining from the year 2000 onwards is largely based on figures published by Servaas Van der Berg in 2005.[3] He indicated that the proportion of people who live in poverty increased marginally between 1993 and 2000, and then the numbers declined from approximately 18.5 million in 2000 to 15.4 million in 2004. Charles Meth made a sharp riposte, arguing that the main problem with Van der Berg's figures is one of under-reporting.[4] He contends that the numbers of people living in poverty were much higher in the late 1990s and as a result, the fall in numbers is much lower than reported by Van der Berg. According to Meth, the shift in the numbers of people living in poverty was from approximately 19.5 million in 2000 to approximately 18 million in 2004.

Van der Berg also noted that social grants have had a positive effect on reducing household poverty, since the early 2000s. Whilst this might well be the case, in the absence of a comprehensive package of social protection measures, like social services, redistributive assets, employment opportunities, social grants have to pay for multiple social goods, like education, water and electricity, which compromises their potential to expand the opportunities and human capabilities of grant recipients. As recently observed by Viviene Taylor, who is famous for the 2002 Taylor Committee on social security, "*government social assistance benefits are extended to poor unemployed individuals in a residual, safety net fashion. In this way, such benefits essentially seek to ameliorate the difficulties of those who cannot get paid work because of ill health, disability or other factors not related to structural conditions.*"[5]More worrying, she

[3] Van der Berg, S. (2005) Trends in poverty and inequality since the political transition: working paper 01/2005, Department of Economics, University of Stellenbosch

[4] Meth, C. (2006) Income poverty in 2004: A second engagement with the recent van der Berg et al figures: working paper 47, School of Development Studies, UKZN

[5] Taylor, V. (2007) Battle of ideology: what poverty policy for the excluded, New Agenda, Issue 27, Third Quarter, 2007

mentions that close to 10 million individuals live in households without social grants or any other form of income.

Regarding inequality, data obtained from Haaroon Bhorat et al (2009) indicates that wage income, the largest contributor to total income for all racial groups, has been the main driver of inequality between 1995 and 2005. The gini-coefficient – *1 representing total inequality and 0 complete equality* – increased from 0.64 in 1995 to 0.72 in 2005, making 'S.A. the most consistently unequal society in the world'.[6] The data shows income inequality increases by both race and gender during this period. Africans and 'coloureds' experienced the highest growth in income inequality, 0.56 to 0.61 and 0.56 to 0.59, respectively. In male-headed households, inequality increased from 0.63 to 0.70 and in female-headed households, it rose from 0.59 to 0.68. On the other hand, the data records a decline in non-income inequality between 1995 and 2005, although, the African population's share of non-income inequality remains higher relative to other race groups. This is because a large share of the African population is still without access to housing, electricity, water and sanitation.[7]

Jeremy Seekings, in an article titled *Poverty and Inequality after Apartheid*, published in 2007, argues that the basis of inequality shifted from race to class long before 1998. He observes that the inter-racial share of inequality declined from 62% in 1975 to 42% in 1991 and 33% in 1996, whilst the intra-racial share of inequality increased from 38% to 58% and 67% during these periods, respectively.[8] His figures resonate powerfully with Sampie Terreblanche's seminal contribution on the history of inequality in South Africa. Terreblanche explains:

"From 1974 to 1994 the income of Asians increased by 30 percent, the income of the top 80 percent of coloured households by 20 percent and the income of the top 20 percent of African households by 40 percent. The net effect of the negative and positive distributive shifts was to

[6] Bhorat, H., van der Westhuizen, C. & Jacobs, T (2009) Income and Non-income Inequality in Post-apartheid South Africa: What are the Drivers and Possible Policy Interventions, working paper 09/138, Development Policy Research Unit, UCT
[7] Ibid, pp.28
[8] Seekings, J. (2007) Poverty and Inequality after Apartheid, working paper 200, Centre for Social Science Research, UCT

considerably widen the gap between the top 20 percent and poorest 60 percent of the black population".[9]

In addition, Seekings argues that forced removals from large commercial farms, overcrowding in former homelands or Bantustan areas, low quality schooling, and growing capital-intensity of production in most economic sectors are some of the main structural causes of high unemployment among unskilled workers and mass poverty among their dependents. He notes that rising employment has not let to any significant reduction in poverty, instead, it has increased the working poor.[10]

The government's Expanded Public Works Programmes (EPWPs) are a case in point. A recent study by the Human Science Research Council shows that whilst the number of work opportunities in EPWPs has grown, mainly in the social and environmental sectors, from 174,845 in 2004/05 to 316,814 in 2006/07, wages for an EPWP contract declined from R4, 708 in 2004/05 to R2, 673 in 2006/07. The study notes that although there has been an appreciable increase in work opportunities over time, the decline in wages is a result of short-term contracts and stagnant average wages.[11]

Finally, youth unemployment has and remains an intractable theme of the post-apartheid process of transformation. In 2008, an education ministerial task team found that between 11% and 15% of learners in grade 9 drop out of school each year.[12] The task team noted that the drop out rate is much lower in White and Indian communities, which warrants a thorough investigation of the structural reasons why higher drop out rates are experienced among learners from African and 'Coloured' communities. Mariam Altman asserts in a 2007 HSRC study on youth labour market challenge that young people have little chance of finding employment without a post-matric qualification, as South Africa has a dearth of low skills jobs. She observes that in 2005, a quarter of the unemployed searched for jobs for one to three years.

[9] Terreblanche, S. (2002) A History of Inequality in South Africa 1652 – 2002, University of Natal Press, pp.64
[10] Seekings, pp.
[11] Expanded Public Works Programmes (1 April 2004 to March 2007), Human Science Research Council, 2007
[12] Mail and Guardian, February 25, 2008

During this time, 58% of young people, aged 15 to 19 years were unemployed, 50% aged 20 to 24 years and 30% aged 25 to 34years.[13]Interestingly, the 30% of unemployed youth in the 25 to 34 years age bracket is higher than total national unemployment rate, using the narrow definition of unemployment. It is thus safe to surmise that young people continue to make up the lion share of the gigantic army of unemployed in South Africa's national labour market.

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4. Assessing the delivery of housing, electricity, water and sanitation services

4.1. Housing

(1) Everyone has the right to have access to adequate housing.
(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
(Section 26 of the Constitution of the Republic of South Africa, No.108 of 1996)

States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights. (CESCR General comment 4, Art.11 (1): 13/12/91)

The right to adequate housing is defined in the Housing Act of 1997, as "*access to the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social*

[13] Altman, M (2007) Youth Labour Market Challenges, Employment, Growth & Development Initiative, Human Science Research Council

amenities".[14] The Act requires national government to formulate a housing policy and monitor implementation and sets out the roles and responsibilities of the provincial and local tiers of government.

A National Housing Subsidy Scheme was established in 1994 to give effect to the Reconstruction and Development Programme's promise of 1 million houses by 1999. Subsidy amounts are determined by household income. Individuals whose joint household income is between R2 500 and R3 500 are entitled to R8 600, those with a household income of between R1 500 and R2 500 qualify for R15 700, and households whose earnings are below R1 500 can receive R25 800.[15] In addition to income, subsidies are only granted to South Africans, who are over twenty-one, with no property and who have received no previous subsidy.[16]

National government is said to have spent approximately R50 billion on the NHSS for the construction of RDP houses, between 1994 and 2004, however, a lot more have so far been spent on revamping poorly built structures.[17] Meanwhile, with a growing backlog the government's housing programme will remain bedevilled by budgetary constraints. For example, the number of subsidised houses completed or under construction from April 1994 to March 2007 is 2 355 913[18], which is less than the 2.4 million housing backlog recorded in 2007.[19]By implication, it will take government another 13 years (or more) to knock-off this latest backlog. Another baneful reality is the problem of under-spending. Of the R8.2 billion allocated to provinces at the beginning of the 2007/08 financial year for housing delivery, only 35.5% (R2.9.bn) was spent.[20]

[14] Can Government Policies be Said to Be Pro-poor? An exploration of policy, Working Paper No.4, Studies in Poverty and Inequality Institute, Sept. 2009, pp.34
[15] N2 Gateway Project: Housing rights violations as 'Development' in South Africa, Centre on Housing, Rights and Evictions (COHRE) research report, 2009, pp.14
[16] SPII Working Paper
[17] SPII Working Paper, pp.34
[18] 2007/08 South Africa Survey, South Africa Institute of Race Relations, pp.506
[19] SPII Working Paper
[20] 2007/08 South Africa Survey, pp.512

The Prevention of Illegal Eviction from and Unlawful Occupations of Land Act No.19 of 1998 (PIE Act) provides a set of procedural safeguards to persons or groups who unlawfully occupy land or a building without the explicit or tacit consent of the owner. It prevents the owner from evicting unlawful occupiers without an eviction order authorised by a court. The court has to consider whether the unlawful occupier (s) received written notice, at least 14 days before a court hearing of the eviction proceedings, of the grounds on which the eviction is sought and the date and time of the eviction proceedings. The notice must also explicitly indicate the right of the unlawful occupier (s) to oppose the eviction order in court and to apply for legal aid. The court is also expected to consider the circumstances under which unlawful occupation of a property happened. If a property has been unlawfully occupied for more than 6 months, the Act requires the court to consider whether alternative land could be made available to where the unlawful occupier (s) can be relocated.

The Breaking New Ground policy was approved in 2004 and became effective from April 2005. The policy acknowledges that the housing backlog is growing and that houses have been built on single plots in distant locations with weak socioeconomic infrastructure. It thus seeks to enhance housing quality, housing design and housing settlement. Inter alia, it provides for the acquisition of land to build human settlements, area-based in-situ upgrades, re-integration of peripheral housing developments into cities, densification, participation of inhabitants in urban renewal housing developments and area-based upgrading subsidies.[21]However, whilst it is fair to consider the BNG policy as a breath of fresh air, it has been argued that provincial and local housing delivery practices contradict the principles set out in the policy. For example, Richard Pithouse observes that the KZN Department of Housing's Strategic Plan for 2004 to 2007, ignored almost all the interventions of the BNG policy and, instead, listed 'eradicating slums' by 2010 as its top strategic

[21] Business as Usual? Housing rights and 'slum eradication' in Durban, South Africa, COHRE research report, Sept.2008, pp.100

priority.[22] Martin Legassick argues that the following three declared BNG principles have been contradicted, as the N2 Gateway project developed:

- that there should be upgrading in-situ rather than the relocation of residents
- that the "distortions of the inherited apartheid space economy" should be ended, and
- that development should take place through detailed consultation with local communities – Joe Slovo residents first learnt about the N2 Gateway project in the local newspapers .[23]

The state's insistence to eradicate slums or to eliminate informal settlements continues to cause major social and economic disruptions to the daily lives of those who are depended on state housing support. As large scale evictions become the order of the day, those evicted are often left in more precarious conditions, many lavishing for indefinite periods in Temporary Relocation Areas, restively waiting for their formal dwellings promised by the state. For example, a COHRE study conducted on the Cape Town N2 Gateway project found that the Symphony way TRA, colloquially called Blikkiesdorp, is overcrowded. Individual structures are inadequate in size for large families and fail to provide adequate protection against extreme weather conditions. They lacked water and sanitation facilities and people had no information how long they will have to stay in the TRA.[24]

In Johannesburg, the Mandelaville informal settlement community was relocated from Diepkloof, Soweto, to Durban Roodepoort Deep, in 2001. When residents complained that DRP is far from industrial areas, schools, clinics and other essential social services, the local ward councillor retorted that they would be moved whether they liked it or not.[25]According to a COHRE study on forced evictions in Johannesburg, in Diepkloof the Mandelaville residents were 3km away from a

[22] COHRE research report, Sept. 2008, pp. 104
[23] Institutional Participation in the South African Public Sphere, DDP Workshop Publication, Sept. 2009, pp.53
[24] N2 Gateway, COHRE research report, pp.32
[25] Any room for the Poor? Forced Evictions in Johannesburg, South Africa, COHRE research report, March 2005, pp.78

hospital, a municipal clinic was adjacent to the settlement, 20 schools (both primary and secondary) were in a 2.5km radius, the settlement was 1km away from a police station and social grants could be collected from the Diepkloof Community Hall. However, in DRD, the nearest school is 8km, police station 5km and hospital 6km.[26]

However, evictions are not only an urban phenomenon. Data obtained from a national eviction survey indicates that approximately 2.3 million people have been displaced from farms in South Africa, between 1994 and 2004. Of the 1 million evicted, only 1 percent involved a legal process.[27] It is thus paramount that land redistribution be supplemented with settlement support for farm workers and their families.

Finally, the Minister of Human Settlements, Tokyo Sexwale, raised concern about the amount of completed houses that are standing empty, during his 2008 budget vote speech. There is a simple answer to why so many formal houses remain unoccupied. In the context of grinding poverty and extreme levels of income inequality, as illustrated above, very poor households can simply not afford the rental payments of these houses. For example, rentals for the N2 Gateway phase one flats, originally meant for poor households, were initially set at between R300 and R500 and later changed to between R650 and R1050. The Department of Housing announced in 2006 that only households with monthly incomes between R1000 and R7000 would qualify for the flats. The creditworthiness of all applicants was thus assessed.[28]

When one considers levels of income poverty in many of Cape Town's working class communities, it is clear that poorer households will not qualify for the N2 Gateway phase one flats. For example, a 2004 PLAAS survey of 624 households in Khayelitsha and Greater Nyanga found that more than three quarters of households comprised of adults with a average monthly income of R212 per person. That is R976 per

[26] COHRE research report, March 2005, pp.81
[27] National Eviction Survey, Nkuzi Development Association and Social Surveys, Africa Briefing, 30 August 2005
[28] DDP Workshop Publication, pp.54

household with 4.6 adult equivalents. Only 7% of households generated a monthly income exceeding R600 per adult equivalent.[29]

4.2. Electricity

"The state's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas and from person to person. Some may need access to land and no more; some may need access to land and building materials; some may need access to finance; some may need access to services such as water, sewage, electricity and roads" (Grootboom judgment, Section 37, October 4, 2000).

The right to "adequate housing" means more than just a house with bricks and mortar. This was a principle established in the Grootboom case. In section 37 of the Grootboom judgment, Judge Yacoob maintains that the meaning of "adequate housing" depends on the specific context and need of the claimant (s) of the right, which may include electricity. Thus, in the absence of a explicit constitutional provisioning, electricity should be considered as an implicit right, as argued by Jackie Dugard.[30] The fact that electricity is included in government's free services package (the other services are water and sanitation) is an implicit acknowledgment that it is as important as the cluster of constitutionally provided socioeconomic rights.

The Department of Minerals and Energy's Free Basic Electricity guidelines proclaims: "*The decision to provide Free Basic Electricity is based on well-recognised socio-economic benefits of providing affordable basic services to enhance the well being of the poor. The provision of electricity supply makes a direct contribution to the socio-economic well being of the poor, and has a particular incidence on women and female children who are mainly responsible for carrying firewood, and other energy carriers necessary to maintain a functional household. It will also have positive impacts on the health and safety of the*

[29] de Swardt, C. (2004) Chronic Poverty and Development Policy, Cape Town's African Poor, PLAAS Working Paper No.3

[30] Dugard, J. (2009) Power to the people? A rights-based analysis of South Africa's electricity services, in: Electric Capitalism, Recolonising Africa On The Power Grid, edited by David A. McDonald, HSRC Press, pp.266

communities as the need fossil based energy source is reduced". (Department of Minerals & Energy, 9 February 2001)

The DME's electrification programme has been able to connect about 73% of low-income households to the national power grid by late 2006.[31] Moreover, the allocation of FBE has brought some relief for poor household, allowing them to run one or two lights for two or three nights, which makes it easy for children to study at night and gives women and girls some temporary feeling of safety.[32]However, the progressive cast of the government's electrification programme and Free Basic Electricity policy has been undermined by its cost recovery approach to electricity provisioning. Dugard notes that commercialised electricity distribution contradicts the constitutional objectives of human dignity, equality and human rights. She argues that largely because of commercialisation of electricity distribution the post-apartheid state has been unable to use electricity policy to serve the development interests of the black majority in the same way that the apartheid state did for white consumers vis-a-vis industry.[33]

In fact, it is argued in a recent Earthlife Africa analysis on Eskom's cost and tariffs that the policy to discount industry is contributing to Eskom's financial problems and that some industrial users are paying below the cost of production.[34]Residential users consume a mere 4kWh per household a day and pay 44.56c/kWh, whilst industrial and international end-users consume 27kWh and 4kWh and pay a mere 17.28c/kWh and 11.88c/kWh, respectively.[35] It indicates that South African households pay at least 168% more than industrial customers compare to the international average of 51%. More shockingly, Eskom suffered big losses of R9.708bn, R3.195bn and R9.514, whilst BHP Billiton, one of the richest multinational corporations on earth, made R1.3bn out of an Eskom deal. According to the analysis,

[31] McDonald, D.A. (2009) Electric Capitalism ibid, pp.16
[32] Annecke, W. (2009) Still in the shadows: Women and gender relations in the electricity sector in South Africa, in: Electric Capitalism ibid, pp.307
[33] Dugard ibid, pp.272
[34] Sustainable Energy Briefing 18: Eskom costs and tariffs, Earth Life Africa (2009), SECCP
[35] SEB 18, PP.4

at a Free Basic Electricity of 200kWh per household per month, 289, 413, 00 poor households would have had sufficient electricity for a year.[36]

Predominantly black low-income households have to bear the brunt of unequal electricity tariffs, which has hitherto led to mass disconnections. Michael Nefale's 2004 survey of household attitudes to prepaid meters found that credit-metered households in Soweto could only afford to pay R173 on electricity bills, which was 25 percent of the average household monthly income.[37] David McDonald's figures show that 700kWh electricity makes up a small fraction of a suburban household's income that ranges between R10 000 and R15 000, whilst 500kWh electricity constitutes 23 per cent of a low-consuming household with a monthly income of R800.[38]McDonald estimates that approximately 3.25 million people were disconnected across South Africa from the national grid, between 1994 and 2004.[39]

Free Basic Electricity is supposed to mitigate the effects of expensive tariffs on poor households. The DME adopted 50kWh as the FBE amount in 2003 based on a study conducted by the University of Cape Town, which found that 56% of South African households connected to the national grid in Eskom areas consumed less than 50kWh of electricity per month.[40]Greg Ruiters argues that the state has failed to achieve the objectives of its FBE policy. For him, FBE is a crisis response that seeks to control the social behaviours of black poor households rather than empowering them. He challenges the idea that 50kWh is sufficient electricity for poor households: a small fridge alone or a hot plate used two hours a day for 25 days will exhaust the FBE quota.[41]

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[36] SEB 18, pp.8
[37] SEB 18, pp.10
[38] van Heusden, P. (2009) Discipline and the new 'logic of delivery': prepaid electricity in South Africa and beyond, Electric Capitalism, pp.236
[39]McDonald ibid, pp.25
[40] Dugard ibid, pp.277
[41] Ruiters, G. (2009) Free basic electricity in South Africa: A strategy for helping or containing the poor?in: Electric Capitalism, pp.252

In order to qualify for FBE poor households have to accept the installation of a prepaid meter. Ruiters observes that prepaid meters discipline the consumption habits of poor households and force them to pay.[42] Households using prepaid meters do not have the option of not paying their full bill; they either reduce their level of electricity consumption or spend an even higher proportion of their income on electricity. It is a form of self-disconnection because once electricity tokens are used the meter disconnects automatically.

Nefale's survey found a positive correlation between households satisfied with prepaid meters and higher incomes and a negative correlation in the attitudes of households with lower earnings. van Heusden observes that in the City of Cape Town prepaid meters were offered to rich suburban households as a safety measure, as they would not be required to leave their yards open for manual meter reading.[43]Dugard contends that this amounts to unfair discrimination based on socioeconomic status, which is potentially a violation of the constitutional right to equality.[44]

Finally, it is in order to conclude that FBE has not been able to extricate poor black women and girls from the social stresses connected to energy provision, as envisioned in the DME's FBE guidelines. A lack of electricity in the house either because the FBE quota has been exhausted or disconnection from the power grid often make them vulnerable to domestic violence, crime, health risks and other hazardous conditions. In a patriarchical society like ours, poor women and girls are the ones burdened with drudgery, which encroaches on their human development and private life, especially in rural settings where a very large number of households still lack access to electricity.[45]

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[43] van Heusden ibid, pp.236

[44] Dugard ibid, pp.279

[45] According to David Mcdonald, around 16% of urban households do not have electricity – the figure is as low as 9% in Cape Town, but as high as 58% in some rural towns

4.3. Water and sanitation

(1) "Everyone has the right to have access to sufficient food and water"

(2) "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights'

(Section 27 of the Constitution of the Republic of South Africa, No.108 of 1996).

It is important to point out that it would be virtually impossible to navigate the terrain of water services without foraging into the history and political economy of the country, which therefore precedes the discussion outlined above.

As with many sectors in the South African society, access to water bears the mark racial policies of apartheid and colonialism that preceded it. Intended to benefit the white population, these policies were deployed to control land access, housing and migration of black people, confining them to undesirable locations in the rural fringes – with water available for survivalist agriculture, while in urban areas conditions for black people were largely circumscribed through influx control legislation and less than adequate housing and water supplies. With subsistence farming virtually collapsing by the early 1900s, urban and mining employment was to emerge as the part of the livelihood strategy. The influx control legislation, strengthened after the introduction of apartheid failing to stem rural urban migration, large informal settlements emerged both within and on the edges of large urban settlements, which largely lacked water services. As a result, it is not surprising that at the time of the inauguration of the first post apartheid government in 1994, it is estimated that only 43.3% black Africans had access to water distribution compared to 95.4% for 'coloureds', 100% for Indians and 99.9% for whites (SALRU 1994 in RSA 1994). Not surprisingly, water emerged as one of the key issues that the post apartheid government has focused on as a means fighting poverty and improving living conditions.

Legislatively, access to water rights is enshrined in Section 27 of Constitution as well as a plethora of other legislation, but principally under the Water Services Act of 1997 and the National Water Act of 1998. The Water Services Act among other things

elaborates on the right of access to basic water supply and basic sanitation, provides for standards for tariff setting, and the regulatory framework for water institutions. The National Water Act focuses on providing a platform fundamental reform of law relating to water resources in order to, inter alia, meet basic human needs in a sustainable way; promote equitable access and efficient use of water. Even though South African legislation as outlined above distinguishes between water services (water supplies and sanitation) and water resources (water in rivers and dams etc), it is important to point out that the difference needs not be overplayed since water exists within a unitary, interdependent water cycle. The National Water Act, which repealed among other legislation the Water Act No. 54 of 1956, which was based on the riparian system. In recognition of water scarcity, its uneven distribution in the republic and the effects of past discriminatory laws government has assumed overall ownership of water resources in order to ensure equitable allocation to the benefit of all citizens. Yet water allocation reform cannot occur in isolation from other reforms in particular land reform, for agricultural irrigation uses nearly 60% of total water use, a sector that is mainly controlled by white commercial farmers (RSA 2002). The rest of the discussion concentrates on water services, the site of many disputes and often linked to recurrent protests – so called 'service delivery' protest.

Water service delivery has been hailed as one of the success stories of the post apartheid dispensation. The discussion on delivery progress starts with a caveat – there is no universally accepted set of statistics, although the general trend is often similar in the different sets of statistics, indicating some measure of progress. Water services delivery, water supplies in particular form part of the list of successes of the ANC government, often deployed to woo in voters during election periods. Ironically, water services problems frequently appear amongst other issues in the 'service delivery' protests. Notwithstanding the concerted investments in the water supplies undertaken by government since 1994, levels of access have only increased marginally as shown in the figure below, indicating perhaps that delivery has only kept with population increases. The years 1996, 2001 and 2007, for reporting since they are based on census statistics (1996, 2001) and a large scale 'community survey' involving a stratified sample of 238 067 households nationally undertaken to plug

information deficiency between the 2001 census and the 2011 census (Stassa 2008). Ratings of water service delivery have declined, between 2005 and 2008, from 76.1% to 60.5%, which could be attributed, among other things, to delivery interruptions whose spread has increased, from 22.9% to 31.4% of households in the period.

Figure XX: Water Service Delivery

Water Source	**Year**		
	1996^	**2001***	**2007#**
Piped water inside dwelling	44.7	32.3	47.3
Piped water inside yard	16.7	29.0	22.2
Piped water from access point outside yard	19.8	23.2	19.1
Borehole	5.0	2.4	2.6
Spring		1.9	1.0
Dam/pool		1.0	0.5
River/stream	12.5	6.5	5.1
Water vendor	1.2	0.7	0.9
Rainwater tank		0.6	0.6
Other		2.4	0.6

Sources: ^ Statssa 1998, * Statssa 2002, # Statssa 2007

In addition, to the improvements in infrastructural outlays, government instituted the Free Basic Water(FBW) Policy in 2003 as a means of giving effect to the right to water and to cushion poor households. The policy provides for 6000 litres of free water per household, which in practice translates to provision per plot, rather than per household. As of December 2009, 86% of households in the country were receiving free basic water (DWAF 2009). Some municipalities, notably the large metropolitan municipalities currently provide water above the 6000 litres specified in the free basic water policy. The City of Cape Town for example, provides 10200 litres of free water to all individually connected households. In addition, through its

indigent policy poor residents can draw further water based on further rebates where applicable.

Sanitation service delivery on the other hand has lagged behind, with up to 9% of the population having no access to sanitation and only 60.4 % having access to flush toilets in 2007 as shown in Figure XX below. A large proportion of individuals therefore still rely on unsafe or undesirable sanitation technologies such as pit latrines and the bucket system in addition to outright lack of a sanitation facility, a point that often emerges in the so-called service delivery protests.

Overall, the progress of water service delivery in the post 1994 era has been sizeable, at least as far as it has kept pace with population increases although clearly less spectacular than what is often stated. Through its legislative interventions and service delivery programmes government has laid the foundation for further progress in the future, but must now exert more resources into housing delivery, through which sanitation and water supply delivery can truly articulated more meaningfully.

Figure XXX Sanitation Delivery

Type of Toilet			**Year**
	1996^	2001*	2007#
Flush Toilet		51.9	60.4
Chemical Toilet	50.4	1.9	0.4
Pit Latrine (VIP)		5.7	6.8
Pit Latrine (unimproved)	32.4	22.8	21.5
Bucket System	4.7	4.1	2.3
None	12.4	13.6	8.6

Sources: ^ Statssa 1998, * Statssa 2002, # Statssa 2007

5. Judicial enforcement of socioeconomic rights

Two broad categories of socioeconomic rights are assimilated in the constitutional text. There are those that seem immediate and unlimited, like the right of children to shelter, nutrition and basic health care and the right to basic education in sections 28 and 29, respectively. Then are those that could be referred to as access rights contained in sections 26 and 27.

To exercise its responsibility, the South African judiciary has adopted "reasonableness" as its legal yardstick for the enforcement of socioeconomic rights. The aim is to assess whether the state has taken reasonable measures within its available resources to achieve the "progressive realisation" of a particular socioeconomic right, very simply put. In order to pass the test of reasonableness the state has to prove that its legislative output is comprehensive, balanced and flexible and that, within the available budgets, it is giving effect to its positive obligation in terms of the Section 26 and 27 socioeconomic rights provisions of the Constitution.

In the Grootboom judgment, Judge Yacoob presented an elaborative description of the Court's reasonableness criterion, stating:

"A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met."[46]

In addition, he asserted that the state is not obliged to do more than what its available resources permit for the "progressive realisation" of a particular socioeconomic right.[47]

[46] Judgment of the Government of the Republic of South Africa v. Grootboom, October 2000, paragraph 41
[47] Paragraph 46

Professor of Law, Sandra Liebenberg, notes that while the reasonableness criterion provides the state with a potential justification for failing to ensure access to socioeconomic rights, they can also support a finding of unreasonable acts or omissions by the state.[48]For example, in the Grootboom case the state failed to convince the Constitutional Court that its housing programme was comprehensive. Similarly, in the TAC case the state's decision to restrict its Prevention of Mother to Child Transmission of HIV (PMTCT) policy to research sites was found rigid and inflexible and therefore ruled unconstitutional. Liebenberg points out that the constitutional values of human dignity, equality and freedom could contribute to the substantive content of the Court's reasonableness review. It should take into account the position of the claimant in society, the nature and historical causes of deprivation experienced and the impact on others in a similar situation.[49]

Liebenberg's colleague, Professor Marius Pieterse, has been more critical of the reasonableness criterion. He recognises the transformative potential of socioeconomic rights and that the courts are equipped and empowered to give material value to these rights. However, he argues that the proceduralised way in which the courts assess compliance with socioeconomic obligations renders their articulation abstract and conceptually empty. It sidelines the content of socioeconomic rights, thus, leaving their beneficiaries with empty victories that have virtually no tangible benefit.[50]

He observes that in the case of Soobramoney v. Minister of Health, the Constitutional court dismissed the request of an unemployed chronically ill man in desperate need of dialysis treatment to have such treatment at state expense. The Court placed the burden on Mr. Soobramoney to prove that the hospital guidelines for admission to the dialysis treatment programme were unfair. He died subsequently without the treatment.

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[48] Liebenberg, S. Beyond civil and political rights: protecting social, economic and cultural rights under the Bill of Rights: The South African experience: paper prepared for a conference; Protecting Human Rights, Centre for Comparative Constitutional Studies, Melbourne Law School, 25 September 2007

[49] Liebenberg ibid

[50] Pieterse, M. (2007) Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited, Human Rights Quarterly, Vol.29, pp.796-822

In the Grootboom case, the Concourt found that the right to adequate housing does not mean immediate entitlement to a house or shelter upon demand. Instead, it held that "the real question" to be decided was whether the current housing delivery policy qualified as a "reasonable measure" aimed towards the progressive realisation of the right in terms of Section 26 (2) of the Constitution.[51] After eight years of the Grootboom judgment, Ms. Irene Grootboom died without having her right to adequate housing being realised. In the TAC case, the Concourt was at pains to point out that the ruling on government's PMTCT policy did not "mean everyone can immediately claim access to such treatment".[52]

It is clear from the aforementioned cases that access rights in the context of the reasonableness criterion used by the courts to measure compliance do not deliver actual social goods, but merely obliges government to ensure that its legislative measures to provide a particular social good is reasonable. Moreover, the concern of the reasonableness review is not with how and when government provides a particular social good, which partly explains the reluctance of the Concourt to develop supervisory measures to monitor compliance with its orders.

The irony is that, as also observed by Pieterse, what matters for poor people is the actual alleviation of their social hardships and not the minutia of the legal standards to measure compliance with socioeconomic obligations.[53] Pieterse, thus, advocates for an alternative socioeconomic rights discourse that places less emphasis on the institutional and legal specifics of these rights, but focus more on how they resonate with the experiences and needs of rights beneficiaries.

Following Pieterse, Judge Denis Davis argues that the reasonableness criterion has been guilty of conflating the substantive rights contained in sections 26 (1) and 27 (1) with the qualification that the state must take reasonable measures to realise them in sections 26 (2) and 27 (2). He observes that the Concourt made no effort in both the Grootboom and TAC cases to engage with the content of sections 26 (1) and 27 (1).

[51] Pieterse ibid, pp.808
[52] Pieterse ibid, pp.809
[53] Pieterse ibid, pp.804

Davis proposes a two-stage inquiry that entails first determining the core content of a particular right and then assessing the extent to which the Court has taken reasonable measures to realise that core content. However, he concedes that such an approach to inquiring compliance contradicts the Concourt's deferential legal principle, which makes it unlikely that his proposal could be considered.[54]

However, whilst the Concourt might have been more cautious to engage on the content of sections 26 (1) and 27 (1), examples exist where lower courts have done so, moving beyond the legal timidity of the reasonableness criterion. One such example is the case of the City of Johannesburg and Others v. Lindiwe Mazibuko. The High Court accepted the evidence of Dr. Peter Gleick, a water rights expert, that 50 litres of free basic water is the minimum quantum of water the Phiri residents need to fulfil their basic water needs, to protect their health and to live in dignity.[55] However, on appeal by the applicants, the Concourt reinforced its rigid application of the reasonableness test.

The applicants were five residents of Phiri, Soweto, who launched an application at the South Gauteng High court, on 12 July 2006, to challenge the sufficiency of the City's FBW policy and the legality of the City's decision to install prepaid water meters in poor black townships. The five, together with other Phiri residents, have been forced by the City of Johannesburg to accept standpipes located outside their yards or the installation of PPMs. The residents demanded 50 litres of FBW and that the court prevents the City from continuing with its installation plan.[56]

Judge Moroa Tsoka heard their application in December 2007 and delivered his judgment on 30 April 2008. He ruled in favour of the applicants, holding that the City's imposition of PPMs was unlawful and unconstitutional. He ordered that the City provide the applicants and similarly positioned residents with 50 litres of FBW per person per day and the option of a conventional meter. Regarding the installation of PPMs, the Judge observed:

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[54] Davis, D.M. (2008) I-Con, Vol. 6, No.3 & 4, pp.687 - 711
[55] Dugard, J. & Liebenberg, S. Muddying the waters: The Supreme Court of Appeal's judgment in the Mazibuko case, ESR Review, Vol.10, No.2, pp.11-17, 2July 2009
[56] Dugard & Liebenberg, ibid

The prepayment meters discriminate between the applicants and other residents within the municipality of the City. While other residents of the City, for example Sandton, get water on credit from the respondents, the applicants do not. If the residents of Sandton, a wealthy and formerly white area, served by the respondents, fell in arrears with their water bills, they are entitled to notices … before their water supply is cut off. Moreover, they are given an opportunity to make arrangements with the respondents to settle their arrears. Before their supply is cut off, they are not only afforded reasonable opportunity to settle the arrears, but are afforded a reasonable opportunity to make representation concerning the arrears and the settlement thereof. The applicants, the residents of Phiri, a poor and predominantly a Black area, are denied this right. This is not only unreasonable, unfair and inequitable, it is also discriminatory solely on the basis of colour (para 94).[57]

The City of Johannesburg subsequently appealed the judgement and the Supreme Court of Appeal upheld the appeal, on 25 March 2009. However, although, the appeal was upheld, the High Court judgment traversed the strictures of the reasonableness criterion. In that the court's ruling took guidance from section 9 (3) of the Constitution, which enjoins the state to protect persons or categories of persons disadvantaged by unfair discrimination. Moreover, it engaged the content of the right to water, which stands in conflict with the conservative view of the Concourt that the content of socioeconomic rights is the preserve of the legislative and executive branches of the state.

After the Supreme Court of Appeal, the Phiri applicants turned to the Constitutional Court to challenge the constitutionality of PPMs and the adequacy of the CoJ's monthly allocation of 6 kilolitres of FBW per household (or 25 litres per person a day). Judge Kate O Reagan ruled on 8 October 2009, that the CoJ's FBW policy is reasonable and that its plan to install PPMs is not conflict with section 9 of the Constitution. The judgement reads, "*The City's Free Basic Water policy falls within the bounds of reasonableness and therefore is not in conflict with either section 27 of the Constitution or with the national legislation regulating water services. The installation of pre-paid meters in Phiri is found to be lawful. Accordingly, the orders made by the Supreme Court of Appeal and the High Court are set aside.*"[58]

[57] Dugard and Liebenberg ibid
[58] Mazibuko and Others v City of Johannesburg and Others, CCT 39/09 (2009), 8 October 2009

In response, Dale McKinley from the Coalition against the Privatisation of Water (CAWP) charged that the reasoning of the Concourt in relation to the right to water was contradictory. On the one hand, the Court upheld the state's obligation to progressively realise the right to water, but noted that there's no constitutional obligation upon the state to provide a particular amount of water, on the other. Neither is the state obliged to realise the right within a specific time. He observes, "*One is left to seriously ponder then if the constitutional phrase – "progressive realisation" – has any practical meaning at all when it comes to the most basic of all socio-economic rights, other than to allow the state to do whatever it pleases, whenever it pleases and at whatever pace pleases it."*[59]

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6. Grassroots perceptions of the redistributional effects of socioeconomic rights and rights litigation

The following is a sample of the responses to the three guiding questions of the roundtable discussion.

6.1. How do you perceive socioeconomic rights?

Most respondents felt that socioeconomic rights have been nothing more than "paper promises". Whilst they are legally guaranteed, they have not yielded much (and in some cases no) material benefit for poor working class communities.

Qona is 48 years, has two kids and both he and his wife are currently unemployed. He is a member of the shack-dweller social movement, AbahlalibaseMjondolo, in the Western Cape. Qona has been living in Khayelitsha's QQ section for 22 years and was exasperated about the squalid living conditions of his community. ***"We live like pigs and dogs. We live in dirty, very bad conditions. We voted in 1994. The***

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[59] Phiri Water Case: Constitutional Court Fails the Poor & the Constitution, http:www.abahlali.org/node/5876

government promised to give us houses and jobs! We have no electricity, no water, no toilets, nothing!"

Mom Nontwala is a member of the Western Cape Anti-Eviction Campaign, in Gugulethu. She has been on the government's waiting list for houses, since 1996. Mom Nontwala asked; ***"How long are we going to wait for the houses? I think we vote for nonsense, they don't care of the people that are poor. We don't have a space to put on our shacks. We have no rights to do that!"***

Mzonke is the chairperson of AbahlalibaseMondolo, in the Western Cape. He was of the view that socioeconomic rights are interconnected and that without economic resources the beneficiaries of these rights will be unable to benefit materially from these rights. ***"...in reality a child would not learn under conditions that are not conducive. If she does not have access to electricity, if she does not have access to water, even if you campaigning for housing, but, a house on its own will not change poverty in terms of the livelihood of a person. Because once you have a house that person needs to have means to maintain or sustain himself. Then, that person needs a job or employment so that he can be able to maintain the house, and if that person does not have the means, that person will sell the house. And then, even in terms of where the house is situated. Whether that person has access to health care and whatsoever, you know. But, in terms of that, if you interpret this in the context of the Constitution, I guess they are just there, like in a form of paper, you know. In reality, they don't exist at all. It's like, in reality, they are in dreamland."***

Mzonke's perspective resonates with Nosisi's experience. She is a member of the Western Cape AEC and, like Mom Nontwala, has been waiting for a house, since 1996. She explained; ***"I'm approaching 50 years. I don't have a house. I don't have a job. I go everywhere they tell me I'm too old. They want people from 35 years down. It's painful, if you don't have a job. How are you going to survive? I have three kids and they can't find jobs. I have skills, but it is very hard to find a job. Sometimes I go to sleep without food."***

Roy, a member of the Social Movement Indaba, felt that socioeconomic rights are a product of political struggle and therefore should not require further struggle to be

realised. He remarked; ***"The struggle against the apartheid regime was also (a struggle) against poverty, corruption, and for the entrenchment of socio-economic rights; not just on paper and to be struggled for thereafter by the marginalised and dispossessed, but for the immediate implementation by the new regime of self-proclaimed 'liberators'".***

Respondents observed that local councillors are largely invisible in communities and that they use their official status to advance the agendas of their political parties. Qona observed; ***"We never see councillors in our communities because they don't care for us! We must depend on our organisations, not councillors."***

The Mayor of the City of Cape Town was criticised for making promises that are pie in the sky. Thulani, a member of the AbahlalibaseMjondolo, in the Western Cape, said; ***"For me, I got a problem with Dan Plato because that guy, since last year, he promised us a lot. But, the way I see it, there's nothing that he has done so far. At the time when we met with him, he was saying that in June [2010] he'll send some people to bring us service delivery. Tell me, do you think that is going to be possible? Because in June people are going to get busy with sports. Dan, can you tell me that you can go to the sports while you hungry? Can you go to the sports while your house is getting a lot of water? Because that time in June it's winter, it's raining. For me, I don't think that is going to be possible."***

Meanwhile, some responses suggest that discontent over social services provisioning are fuelling tensions between residents of different poor communities. For example, Mom Nontwala observed; ***"...in Khayelitsha there's houses called Mandela Park. They [the government] keep those houses; they make it, 50 something houses. They finish it, they keep it until the people push the door and they go inside. When the people do that, they said, no this houses is not for you. It's for Gugulethu people and then the trouble start. Why you keep it for long-time! We think this houses is for us because it's in the Khayelitsha area, you see. And they were not wrong those people because those houses, they build it for long and they keep it their. They don't put the people inside quick until the people ask, what is going on? What is wrong? And then they start saying, no-no this houses is not for you it's for Gugulethu people. And***

they start saying, no not for Gugulethu people. For us because it's in Khayelitsha area, you see. They make the black to fight with the black and which is wrong."

6.2. Do you think rights litigation can secure social goods?

Respondents saw a role for rights litigation in community struggles for social change, but agreed that rights litigation is not a substitute for direct political action. Many were of the view that rights litigation is incapable of securing social goods. Trevor, a former member of the Soweto Electricity Crisis Committee, puts the blame on the Court's deferential legal principal. ***"I think the clue to this is how, for example, Ms Grootboom won the court case for her community but died still living in a shack...the judges of the constitutional court seem to be retreating from compelling the government to respect and implement human rights, e.g. the Phiri water case and the Thembelihle housing case. In both cases, the judges say they do not have the power to tell government what and how to do things on a legal technical argument which might be fine for the law books but in practice leave the people in the lurch."***

Mzonke noted that the institutional environment of the court alienates poor rights litigants. ***"When you go to court, let's say you go to high court, you not allowed to speak. You want to approach an advocate, you not allowed to approach an advocate directly. You need to appoint an attorney and it's then the attorney that needs to instruct the advocate. And when they speak, they speak the language that we don't understand. You are inside the court, but you don't understand what is been said inside the court while you inside the court with the issue that affects you and the community."***

Thabo slated the Court's failure to supervise the implementation of judgments. ***"...most of the favorable judgments, which have been won by the poor, are gathering dust. The TAC still had to take it to the streets to force government to implement the judgment on ARVs. In the land sector the NKUZI judgment on access to justice was***

pronounced on 2007 and it was only last year that government began after pressure from civil society to put a plan together."

Some respondents bemoaned the financial cost of rights litigation. Roy argued; ***"If there is relief, it comes at a very high financial cost. Lawyers and advocates exploit the problems of the poor for their own financial gain. Court actions favour the legal profession. If the constitution enshrines some socio-economic rights then why is the state not the custodian and implementing arm of those rights?? Why is it necessary for the already impoverished communities to go to court, at the risks of massive costs being awarded against them should they lose the case (for example, on a technicality such as s36)."***

Social movements who resist evictions have been using rights litigation as a technical defence mechanism to delay the state's eviction plans. Mzonke observed; ***"In my experience in the AEC and Abahlali, we tried many times to use the court or litigation to get relief. Like in Delft, when houses were unlawfully occupied, we realise that it would be difficult to resist evictions because of the force of the metro police who come with guns and whatsoever. So, there's one way we need to do, we run straight to court for an interdict.It's just to say that people should not be evicted from their structures without an order that authorises that. But, in terms of reversing the evictions we know that we have zero chances of doing that. It's a technical defence that we using in terms of delaying the process. But, at the end of the day people will be evicted. Just that the law who deals with these things, it says people should not be evicted without a certain procedure being followed. Once that procedure is followed, it's guaranteed, it's likely possible that the eviction will take place."***

6.3. How does rights litigation affect participation in grassroots organisations?

Responses to this question were few. Mzonke observed that negative outcomes of rights litigation cases have a pernicious effect on social mobilisation in grassroots organisations, especially in organisations that lack the financial and technical resources to challenge a particular verdict. ***"During court actions, we are able to mobilise large numbers of people. But, the numbers diminish after court defeats. Once cases are lost, it creates some sort of division within the community, especially where communities lack resources to explore alternative legal routes. Like for instance, the issue of Delft, where there was no resources, no funds, people had to contribute out of their pockets in order for them to afford the services of the advocate. There was 2 groups, because the attorneys charged us R30 000, each group had to contribute R15 000, R15 000. That also created lots of problems."***

However, Trevor felt that rights litigation could have both a positive and negative effect. ***"It all depends on how the leadership and organisation deal with the balance between legal and grassroots efforts. It also depends on the outcome of the legal challenges. In Khutsong for example the community lost at the constituional court but they continued with their struggle and they won. The community was simply too powerful to be defeated given its activism and the issues at stake (ANC electoral concerns). But in some struggles the courts are used as a substitute for mobilisation or to compensate for a weakness in organisation and community power."***

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7. Conclusion

The secondary analysis and grassroots perceptions presented here intimate a disjuncture between the cluster of socioeconomic rights enshrined in the South African Constitution and the material expectations that poor grassroots citizens have of democracy. Many of South Africa's disproportionately poor and unemployed citizens in black working class communities continue to wait restively for the grand democratic promise of "a better life for all", whilst those in the upper social classes – black and white - have been harvesting the economic and social fruits of the 1994 democratic breakthrough.

Hence, socioeconomic rights have been nothing more than paper promises for those enmeshed in social and economic distress in poor working class communities. In fact, the practical value of socioeconomic rights for the poor is buried under the neo-liberal thrust of the ANC-led government's economic and social policies. High skilled employment is being favoured to serve capital-intensive industries operating in global markets. The upshot has been high levels of underemployment and low-skilled unemployment. Meanwhile, with unemployment spiralling upwards the commercialisation of social services, like electricity and water, compromises access to socioeconomic rights. Consequently, although social services are being provided, poverty is reinscribed and the growing inequality gap between the rich and the poor reinforced.

Specifically, the analysis shows that whilst there has been a steady growth in government spending on housing since 1994, the number of houses built or under construction is failing to keep pace with the housing backlog. Instead, there has been a sharp increase in the number of informal settlements and backyard dwellings since 1994. Meanwhile, evictions have become a daily occurrence and the quality of housing structures has been eliciting ubiquitous grassroots anger. Moreover, the majority of South Africa's low-income households are currently connected to national power grid, although a considerable percentage of poor communities, especially in rural settings still lack access to electricity. However, the progressive cast of the government's electrification programme has been undermined by its cost recovery approach to electricity provisioning. On the other hand, there has been a steady improvement in the delivery of water services, although many poor communities remain without proper sanitation facilities.

Furthermore, the negative sentiment expressed by respondents in the study about the redistributional-effects of socioeconomic rights intersects with a conspicuous disenchantment with participatory governance and the representative system. Many felt that the ward committee participatory system is a mechanism of local party political control. They accused the local political elite of being corrupt and invisible and excoriated them for making "empty promises".

The fact of the matter is that participation in state-provided spaces has been largely tokenistic caused by bureaucratic control of the participatory process, downstream technical choices and socially and culturally biased institutional designs.

Regarding the judicial enforcement of socioeconomic rights, the analysis it is argued that the Court's reasonableness criterion to test compliance with sections 26 and 27 of the Constitution has been incapable of securing social goods for grassroots poor citizens. The reasonableness criterion is not primarily concerned with the amount of a particular social service or with how and when government provides it. The responsibility upon government is merely to demonstrate that it has taken reasonable means within the available budgets to provide a particular social service. Meanwhile, all respondents saw a role for rights litigation in struggles for social change, but agreed that it is not a substitute for direct political action. They bemoaned the financial costs of rights litigation and acknowledged its pernicious effect on social mobilisation. Meanwhile, the Concourt has been criticised for failing to supervise the implementation of its judgments.

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