Human rights ‘made whole’

The New Age, 28 January 2015
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‘Civil and political rights are meaningless without socio-economic ones and the Constitution enshrines both’


South Africa’s ratification of the ICESCR solidifies its position as one of the leading proponents of socio-economic rights globally. It also emboldens the authority and legitimacy of the ICESCR within the global human rights system.

In 1966 the ICESCR and the International Covenant on Civil and Political Rights (ICCPR) were adopted by the United Nations General Assembly, forming the basis of international human rights law. The reason there are two separate human rights treaties relates to Cold War divisions – while Western countries favoured civil and political rights, the Soviet bloc countries favoured socio-economic rights.

However, as recognised by the South African Constitution, civil and political rights are meaningless without socio-economic rights.

Civil and political freedoms (like the right to vote, freedom of expression, and access to justice) are empty promises if you do not have access to basic socio-economic goods such as water, food, housing, healthcare and education.

As such the South African Constitution reinforces the indivisibility and interdependence of all rights.

For example, the Preamble of the Constitution draws no distinction between civil, political and socio-economic rights when it states in its founding provisions that South Africa is founded on “human dignity, the achievement of equality and the advancement of human rights and freedoms”.

To this end, the Constitution enshrines both civil and political, and socio-economic rights.

Given this context, one of the enduring mysteries of the post-apartheid legal order is the fact that – in contrast to the ICCPR, which South Africa signed and ratified in 1994 – it has taken over twenty years to bring the ICESCR into force by ratifying it, after it was also signed by President Mandela in 1994.

There was no substantive progress until October 2012 when Cabinet indicated its intention to ratify the ICESCR.

Between September and November 2013 the issue passed through both houses of Parliament and was approved for ratification.

The ratification itself, which occurred on 12 January 2015, provides a small clue to the reason behind the extraordinary delay. It contains the following declaration: “The Government of the Republic of South Africa will give progressive effect to the right to education as provided for in Article 13 (2) (a) and Article 14 [of the ICESCR] within the framework of its National Education Policy and available resources.”

This is code for the South African government signalling that it likes neither the ICESCR’s guarantee of “free, universal and compulsory primary education” (Article 13.2) nor the provision that those states that have not yet established a system of free compulsory primary education “must rapidly adopt a plan for its introduction within a reasonable number of years” (Article 14).

However, this declaration ignores the fact that South Africa is already bound to provide basic education in terms of section 29(1)(a) of the Constitution, which guarantees everyone’s right to basic education and, unlike other all other socio-economic rights in the Constitution, is not subject to the usual caveat of progressive realisation of the right within available resources.
In other words, even without the ICESCR, the government is obliged to immediately provide basic education.

Notwithstanding this disappointing and ultimately meaningless reservation that has been criticised by education activists, the ratification is momentous and should be celebrated.

**Why is this the case?**

The ICESCR recognises that poverty and inequality are violations of human rights, and obliges state parties to advance access for all people to a basic standard of living.

The ICESR provides an internationally agreed framework to assess the commitments and progress of states parties regarding the realisation of rights under the treaty, which include the rights to work, an adequate standard of living, social security, health, housing, education and water.

More than 160 countries from all over the world have ratified it. Their progress is monitored by the Committee on Economic, Social and Cultural Rights through regular reporting by states. The ICESCR is thus an international mechanism through which poor people’s rights across the world are monitored and protected.

A recent additional treaty (which came into force in May 2013) - the Optional Protocol to the ICESCR (OP-ICESCR) - allows people to directly engage with the ICESCR at the international level.

The OP-ICESCR provides a complaint mechanism that empowers vulnerable and marginalised groups to lodge individual complaints regarding violations of their socio-economic rights, once they have exhausted all domestic remedies.

So far 17 states have ratified or acceded to the OP-ICESCR, including three African countries (Cape Verde, Gabon and Niger).

To retain its role as one of the global leaders of socio-economic rights, it is critical for the South African government to build on the current momentum and ratify or accede to the OP-ICESCR.

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