



Parliamentary accountability mechanisms for poverty reduction: the case of South Africa

Presentation by Zonke Majodina to Social Forum 2005

Theme - Poverty and Economic Growth: Challenges to human rights

Introduction

It is significant that the Social Forum is meeting shortly after the G8 summit whose agenda included a session on debt cancellation for African countries. The summit brought unprecedented attention to the crisis of poverty in Africa. Speaking on the eve of the summit, the UN Secretary general Kofi Annan is quoted as having said that it would be a make or break moment for poverty alleviation worldwide.

In a world characterized by the great economic divide between rich and poor nations, it is not surprising that poverty has become the global issue that it is. There is at the same time growing evidence that poor developing countries are acknowledging that the democratization processes they are embracing have to be underpinned by a strong culture of human rights. Certainly at regional level, the African Union has endorsed the position that its programme of political and economic development of the African continent can only be realized if African show commitment to the principles of good governance, transparency and accountability. From this it would seem that the real make or break strategy regarding poverty reduction revolves around these principles, with parliamentary accountability being one important dimension.

The case of South Africa

With the advent of Constitutional democracy in South Africa 1994, successive governments in the post apartheid era have identified poverty reduction and achievement of equality as national priorities. Mindful of the legacy the country has inherited from its apartheid past, such priorities reflect a commitment to give effect to the values enshrined in the South African Constitution, namely equality, dignity and human rights in one of the world's most unequal societies. Eleven years after apartheid was officially ended, research indicates that the country has one of the most unequal distributions of income in the world as measured by the Gini coefficient (0.57 in 2000)¹. Approximately 19 million of the country's 43 million people are classified as living below the poverty line, with 72% of the poor living in rural areas².

Against the backdrop of these realities, the Constitution enshrines the right to equality before the law and makes provision for measures of redress for persons, groups of persons or communities that were and continue to be disadvantaged. It further provides for a mechanism whereby economic and social rights can be made progressively accessible and realizable. This reflects a commitment to redress the systemic inequalities that remain deeply embedded in the social structure, practices and attitudes³ of South African society.

In this regard, Section 184(3) of the Constitution mandates the South African Human Rights Commission (hereafter the Commission) to "require relevant organs of state to provide (it) with information on the measures that they have taken towards the realization of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment". This role is consistent with the Vienna Declaration's reaffirmation of the importance and constructive role national institutions can play, in this case championing socio-economic rights for both targeted groups and all individuals.

¹ Statistics South Africa: Earning and spending in South Africa, 2002

² M. Finnemore, Introduction to Labour Relations in South Africa, 2002, Lexis/Butterworths, Durban

³ Preamble to the Promotion of Equality and Prevention of Unfair Discrimination Act 2000

Accountability of the Commission to Parliament

While the Bill of Rights enumerates these rights in detail, the Constitution makes provision for the Commission to give effect to the many corresponding duties that a culture of human rights entails: the duty to respect, the duty to protect and the duty to promote and fulfill⁴. In addition it adds the further obligation “to monitor and assess the observance of human rights in the Republic”⁵. To perform these duties, the Commission has the power to investigate and report on the observance of human rights in South Africa. It may take steps to secure appropriate redress where human rights have been violated. The Commission may also carry out research on the promotion and protection of human rights and provide education on the promotion and protection of human rights⁶.

In terms of the Constitution⁷, the Commission is accountable to parliament and must report on its activities and performance of its functions to the National assembly at least once a year. The Commission is further obliged to submit quarterly reports to the President and Parliament on its investigations and findings at any time if it deems this necessary.⁸

It must be evident that the submission of such reports is not an end in itself but serves a number of important functions; as a tool to inform parliament, as a valuable public record of the monitoring process, as a means of engaging organs of state on how to improve access to these rights, educating them about their obligations, making well considered recommendations, raising public awareness and identifying areas of priority for the next monitoring cycle.

The essence of the Commission’s accountability to Parliament lies in not only reporting to Parliament but in the fact that the Commission complements Parliament in two important respects: in the accountability and oversight role of Parliament over the executive as well as in legislation monitoring.

⁴ Section 184(1) (a) (b) of the Constitution 1996

⁵ Section 184(1) (c) of the Constitution 1996

⁶ Section 184(2) of Constitution; Section 7 of Human Rights Commission Act 1994

⁷ Section 181(5) of the Constitution 1996

⁸ Section 15(2) of the Human Rights Act No 54 of 1994

Broader Parliamentary Accountability and Oversight

In any constitutional democracy where the notion of separation of powers prevails, a central tenet in the exercise of power by the executive is the notion of responsibility, which demands ultimate political accountability of government to the electorate.. In the South African context, the Constitution demands legislative oversight of the executive and all organs of state. This is the essence of parliamentary accountability. Indeed, section 42 (3) of the Constitution sums up the functions of the National Assembly as being “to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action”. The executive’s duty to inform parliament is captured in section 92(3) of the Constitution which demands that ministers must provide information about the policies and the activities of their departments, answering questions about their activities, submitting to scrutiny, making redress for wrongs and correcting errors. This flow of information from the executive to parliament goes to the core of oversight and accountability.

The South African Constitution makes provision for a further layer of accountability. In addition to the Commission, there are a number of constitutional bodies⁹ that have a duty to complement Parliament in its oversight role. Other institutions set up in terms of the Constitution perform similar functions.¹⁰ All these bodies have an obligation to table their reports to parliament. For example if the Gender Commission reports on systemic discrimination against women in accessing educational institutions, while the Human Rights Commission gives a report on the state of substantive equality in the country, the combined impact has much more force. In the end this certainly contributes to making the implementation of government programmes relating to poverty reduction a reality. The work of these bodies is further enhanced by their engagement with various subcommittees of parliament. It has become a tradition that after presenting its socioeconomic report, the Commission is invited or called upon to brief

⁹ Commission on Gender Equality; Public Protector, Commission on Cultural, Religious and Linguistic Communities; Auditor General; Independent Electoral Commission,

¹⁰ Independent Broadcasting Authority; Public Service Commission; Financial and Fiscal Commission; Judicial Services Commission

committees on particular human rights issues to assist them in understanding and carrying out their oversight role.

Last but not least, the Commission has statutory reporting obligations to report on two pieces of legislation that have relevance to poverty reduction: the Promotion of Access to Information Act and the Promotion of Equality and Prevention of Unfair Discrimination Act. With regard to the latter, there is a specific requirement¹¹ that the Commission includes in its annual report “an assessment of the extent to which unfair discrimination on the grounds of race, gender and disability persist”. Clearly, legislating such a measure captures South Africa’s unique commitment to reducing levels of disadvantage among marginalized groups.

Legislation Monitoring

It is a statutory requirement in the country that legislation at national, provincial and local governments as well as any other delegated form of legislation must comply with the Constitution or the Bill of Rights. In complementing parliament’s oversight role, the Commission considers legislation monitoring as a critical aspect of its work. Conventional wisdom of course teaches that legislation making is a function of parliaments. However, the Commission starts from the premise that initiating legislation is the responsibility of the executive. In this regard, the Commission pays particular attention to monitoring position papers and policies even before they are presented in parliament. Once in parliament, the Commission

- Comments on draft legislation, presents written submissions to parliamentary committees and appears before them to present the submissions
- Provides advice to committees on human rights issues relating to draft legislation
- Consults with civil society groups particularly in sectors that are in the frontline in poverty reduction programmes

This latter role highlights a unique feature in legislation drafting in South Africa. This is the requirement that extensive public consultation must take place in parliament before a bill is finally passed into law. The public

¹¹ Section 28 (2) of the Promotion of Equality and Prevention of Unfair Discrimination Act

participates by making submissions to bills at various stages. Once a bill becomes law, there is an opportunity for further public participation in the making of regulations to new legislation. First the executive is required to publish a notice of intention to adopt such regulations. This is followed by the publishing of draft regulations to elicit public comments. When the final regulations are published, mention must be made in summary form of inputs received from the public and the reasons why they were or were not taken into account

Such a long drawn out process serves to strengthen accountability of the executive to parliament. It provides an opportunity for Constitutional bodies and civil society to follow up their participation in the law making process by playing a monitoring role at the stage of implementation. The role of an independent national institution for human rights is central in this process in view of its position vis-à-vis civil society, the executive and parliament.

Conclusion

One of the UN Millennium development Goals is to reduce poverty by half in 2015. There is a lot of skepticism already as to whether this goal will be realized ten years from now. On the one hand, there is a growing acceptance by the international community that collective efforts are needed to reduce poverty worldwide, hence the debt relief item on the agenda of the recent G8 meeting. On the other hand, developing countries themselves are demanding that debt relief measures be accompanied by a leveling of the playing field in the global market to tilt the balance towards realizing the Millennium Development Goals.

Given the wave of democratization sweeping through many of these countries, national level mechanisms such as parliamentary accountability will increasingly be used to commit states to their core obligations. In Africa the emergence of the African Union and NEPAD with its peer review mechanism should be seen as initiatives designed to make the issue of governments' accountability to their people central to good governance and the democratic project.

Finally, I have two recommendations to make to the Social Forum

The first is to reiterate calls that have been made earlier regarding the need for an Additional Protocol to the UN Convention on Economic, Social and Cultural Rights

Secondly, in developing a human rights framework to monitor and adjudicate Poverty Reduction Strategies, it is imperative that we develop human rights indicators. This is one important way we can sharpen our monitoring tools that measure the effectiveness of poverty reduction programmes. Human rights institutions have a big role to play in this process of ensuring that the accountability mechanisms we develop for poverty reduction are sustainable.