

Socio-economic rights and basic municipal services

The socio-economic rights in the Bill of Rights bind all organs of state, including municipalities. These rights may also impose positive obligations. Through the delivery of basic services municipalities fulfill some of these obligations. Indeed, the very purpose of municipalities is to be 'developmental' – advancing the living conditions of their communities by providing basic services. Municipalities usually provide these services themselves but they may also use external services providers, including the private sector.

Socio-economic rights

The main socio-economic rights that may be pertinent to local government are the following:

- the right of access to adequate housing;
- the right of access to health care services, including reproductive health care;
- the right of access to sufficient food and water; and
- the right of access to social security, including appropriate social assistance.

The overall thrust of these rights is primarily to assist the poor by protecting and advancing their social and economic interests. They represent a commitment of the new constitutional order that seeks to address apartheid's legacy of poverty and inequality.

The socio-economic rights, along with all the other rights in the Bill of Rights, bind the state.

The state must respect, protect, promote and fulfill the rights in the Bill of Rights. The concrete measures that municipalities must undertake are as follows:

- respecting rights means that the state must refrain from interfering with their enjoyment;
- protecting rights means that the state must prevent violations by third parties;
- promoting rights means that the state must encourage the realisation of the right through, among other things, increasing public awareness; and
- fulfilling rights means taking positive measures, including appropriate legislative, administrative and budgetary measures. The rights of access to housing, health care, sufficient food and water are qualified with reference to reasonable measures, progressive realisation and available resources.

In interpreting the last-mentioned obligation, the Constitutional Court has set a number of principles that define their reach.

First, an individual, in whatever dire circumstances, cannot claim a commodity such as shelter or medical treatment.

Second, the Court is willing to review the reasonableness of policies, legislation and other measures giving effect to the duty of fulfilling socio-economic rights.

The Court has emphasised that it would give a broad discretion to organs of state. It would not prescribe policy choices and would allow a large measure of discretion in setting budget priorities.

The reasonableness review itself will be guided by the following criteria:

- there must be a comprehensive, coherent and coordinated programme to give effect to a right;

key points

- the programme must be capable of facilitating the realisation of the right in the long run;
- the programme must be reasonable in conception and implementation;
- the programme must be able to meet short-, medium-, and long-term needs; and
- the programme must be able to provide relief for those in desperate circumstances, although not for individual relief.

While municipalities are, along with the national and provincial governments, bound by the obligations imposed by the socio-economic rights, the obligation to take positive steps is limited by the scope of local government's constitutional competencies.

Competencies of local government

The competencies of local government are listed in schedules 4B and 5B of the Constitution. These competencies may be increased through the assignment of additional competencies by the national and provincial governments.

A municipality's duties in relation to its socio-economic obligations are circumscribed by the scope of its competencies.

Role of municipalities

The critical question for municipalities is the duty of fulfilling socio-economic rights by having to take positive measures, including appropriate legislative, administrative and budgetary measures. In this area it must be established how the nature of the socio-economic right and the particular functional area of a municipality intersect.

There are two types of intersections. The first is a direct intersection, where the realisation of the right falls foursquare within a municipality's functional areas.

In the second, the functional area does not cover the right directly but a municipality nevertheless plays an important contributory or supportive role in its realisation.

- Municipalities have a duty to comply with socio-economic rights in the provision of basic municipal services.
- Municipalities must undertake developmentally-orientated planning to ensure that they fulfill their socio-economic obligations to the community.
- These include positive measures, including appropriate legislative, administrative, and budgetary measures.

Direct intersection

In a direct intersection, the nature and scope of a socio-economic right corresponds with a municipality's functional area or areas.

For example, the Schedule 4B functional area of "water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal system" intersects directly with the right of access to sufficient water.

Local government would be responsible for the full spectrum of responsibilities to implement this right, including the use of water for drinking, cleansing and sanitation.

Supportive role

In the second category, there is no direct intersection between a socio-economic right and a particular functional area, but the fulfillment of that right is dependent on local government playing a supportive role to the efforts of the other spheres.

Because the fulfillment of the right is dependant on more than one sphere of government, coordination and cooperation in accordance with the principles of cooperative government become vital.

Municipalities' obligation to take positive steps is limited by the scope of local government's constitutional competencies.

The right of access to housing is a case in point. Although there is no direct intersection with any municipal functional area, the Constitutional Court emphasised in the *Grootboom* case that all spheres of government “must ensure that the housing programme is reasonably and appropriately implemented in the light of all the provisions of the Constitution”. The right to housing entails more than “bricks and mortar” and includes “appropriate services such as the provision of water and the removal of sewage”. The particular parts of a national housing programme that a municipality must perform are thus the provision of water and sanitation.

Developmental local government

The close connection between local government’s competencies and the fulfillment of particular socio-economic rights finds expression in the notion of developmental local government. Meeting the basic needs of the community is also the purpose of socio-economic rights.

In the legislation giving effect to the mandate of the Constitution, the provision of services to meet the basic needs of the community is a recurring theme. The Systems Act, in spelling out the duties of municipalities, recognises that municipalities are bound by the socio-economic obligations imposed by the Bill of Rights. Socio-economic rights are a central concern in municipal planning. A municipality must:

undertake developmentally-orientated planning so as to ensure that it...together with other organs of state, contributes to the progressive realisation of the fundamental rights.

Basic municipal services

In giving effect to the constitutional mandate of meeting the basic needs of the community, developmental local government entails, as a minimum, the provision of basic municipal services. The Systems Act defines a basic municipal service as:

a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.

This includes water, sanitation, local roads, storm water drainage, refuse collection and electricity.

Government policy on free basic services

At a national level, government has sought to meet the basic needs of communities through the policy of free basic services. The aim of the policy is to ensure that there is at least a basic level of municipal services to all households. Basic services are defined as “the minimum amounts of service levels that are required in terms of health and environmental considerations”.

In an evolving policy, the government classified water and electricity as free basic services. The Department of Water Affairs and Forestry adopted the policy principle that six kilolitres per household per month should be provided free from 1 July 2001. From 1 July 2003, free basic electricity/energy of 5kWh/50kWh per household per month should be provided, prioritising poor households. Next in line in terms of free basic services will be sanitation and refuse removal.

Conclusion

There is a clear intersection between the obligations of certain socio-economic rights and the functions of local government. Where there is such an intersection, whether direct or in a supportive manner, the function becomes an obligation; the municipality must engage in the functional area by providing the relevant service. Many aspects of the basic municipal services fall in this intersection, such as the provision of water and sanitation.

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