

**Theme: The Use of Law and
Constitutional Rights
in Strategies to Tackle
Poverty and Inequality**

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The evidential base of the contributions

The Constitutional Justice Project (CJP) completed for the Department of Justice and Constitutional Development (2013 – 2015) dealing with [the adjudication of] socio-economic rights [by the apex courts] and the implementation of court judgments.

The stakeholders who have been/will be involved in generating recommendations, as engagement between stakeholders around recommendations is a key feature of the methodology used in the MI.

Department of Justice and Constitutional Development, University of Fort Hare (main research partner), Socio-economic Rights Institute, Women's Legal Centre, Lawyers for Human Rights, Foundation for Human Rights, Studies in Poverty and Inequality Institute. There were a mix of governments departments at national, provincial and local levels, civil society organisations, non-governmental organisations, etc.

1. What are the major issues you have identified about the manifestations of structural poverty and persistent, deep inequalities [in your focus area(s)]?

The socio-economic rights (SERs) enshrined in the Bill of Rights are a key part of the Constitution's transformative vision for South African society. For those without work, for example, it is only through the realisation of these fundamental rights that

About this brief

This brief was commissioned by the Mandela Initiative to help inform a synthesis report on its work since the 2012 national conference, *Strategies to Overcome Poverty and Inequality*, organised by the University of Cape Town. The MI provides a multi-sectoral platform to investigate and develop strategies to overcome poverty and reduce inequality in South Africa. While the Nelson Mandela Foundation is a key partner, the Initiative has relied on collaborations between academics and researchers, government, business leaders, civil society, the church and unions.

The synthesis report serves as a framework for reporting on the work of the MI at a national gathering on 12 – 14 February 2018 at the University of Cape Town. The MI *Think Tank* has identified the objectives for the gathering as:

- to anchor the contributions of the MI within an analysis of the current South African political and economic context;
- to share the recommendations emanating from the MI-related work streams at a policy/strategic level to advance the goal of eliminating poverty and reducing inequality;
- to critically engage with the potential impact of the recommendations on eliminating structural poverty and inequality; and
- to discuss ways of promoting popular conversations and debate about what needs to be done to eliminate poverty and reduce inequality, beyond the MI.

The synthesis report aims to assist participants to prepare for the national gathering. The report drew on findings from the sectoral research projects of Think Tank members; the MI's *Action Dialogues*; a report on an MI *Community of Practice workshop* with research chairs from different universities to identify cross-cutting themes emerging from the MI's *research programme*; and the work programmes of others who have expressed an interest in contributing to the goals of the MI.

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THE MANDELA INITIATIVE

Dialogue and action to overcome poverty and inequality



many marginalised and vulnerable people can be helped to lift themselves out of structural and persistent poverty and inequality.

The Preamble to the Constitution, 1996, provides (in part) that the people of South Africa ‘recognise the injustices of our past’ and ‘believe that South Africa belongs to all who live in it, united in our diversity’. We the people, “therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person ... ”. (Emphasis added)

However, despite significant policy commitment and budgetary effort by government, the progressive realisation of SERs has been too slow and uneven in the view of marginalised communities, and of many concerned citizens and scholars.

2. What do you think are the main reasons for the persistence of the deep inequalities and poverty [in your focus area(s)]. These can include policy, capacity or implementation constraints/problems.

The reasons for persistent deep inequalities and poverty are many and varied. However, they include a lack of broad agreement on what the constitutional vision of greater equality means, and on how best to achieve those outcomes. Other reasons include policy uncertainty and incoherence, and uneven quality of governance. These gaps rest, in turn, on the absence of a clear evidence base for a suite of options determining what is possible, what is acceptable, as well as the absence of a clear roadmap for achieving these outcomes.

3. What is being recommended at a macro policy/strategic level to deal with the major issues you have identified?

The traditional conceptualisation of ‘constitutional dialogue’ has been as a formal, stilted, slow ‘conversation’ between the three branches of the state – the executive, the legislature and the judiciary – conducted by means of policy, legislation, and judicial oversight and review.

Based on the research undertaken for the CJP, we propose a **re-envisioned constitutional dialogue** as an avenue for a more open, inclusive ongoing discussion, and related legal, policy and social research, to develop an evidence-based baseline for the minimum core content of SERs that South Africans should be entitled to expect from the state. This reconstituted ‘dialogue’ will also aim to develop a phased and potentially differentiated roadmap with clear milestones for measuring progress towards short-, medium- and long-term goals.



4. What do you think the potential impact of the recommendations will be on eliminating structural poverty and reducing inequality?

- A more coherent evidence base for identifying the dynamic minimum core content of SERs (potentially differentiated, eg by geographic location and physical context).
- A more coherent policy framework and concerted governance effort to achieve faster and wider progressive realisation of SERs.
- A more coherent framework for monitoring and evaluating the progressive realisation of SERs.
- Ultimately, a clearer plan, and more efficient and rapid progress towards agreed shared goals and the ultimate objective of reducing poverty and inequality.

BRIEF narrative

South Africa has acceded to the UnN Convention on Economic, Social and Cultural Rights (UNCESCR). Accession includes the obligation to submit periodic country reports on progress towards ‘full’ realisation of these rights within the resources available to the government over time. The UN Committee has the powers to interrogate country budgets to identify our *de facto* priorities. Although the Reconstruction and Development Programme provided some criteria for the minimum acceptable standards for housing, for example, both our Constitution and the UN Convention require us to make progress towards full enjoyment of all SERs. Some new broad objectives have been set by the National Development Plan – Vision 2030, but clear and detailed goals describing ‘full enjoyment’ are lacking, although government policy and budget allocations do reflect ongoing efforts to extend and expand access to SERs.

In order to meet our constitutional obligations and our duty to report to the UN about the progressive realisation of SERs, it is necessary to establish a baseline to work from and some idea of what the country might regard as ‘full enjoyment’. A baseline doesn’t exist apart from current realities, and measuring and reporting on progressive realisation will remain a matter for dispute in the absence of some shared social consensus over standards and objectives. Indeed, social consensus appears to be unravelling over dissatisfaction concerning inadequate standards and disputes over what constitutes progress. The courts have avoided interfering in this policy domain, arguing that they don’t have the institutional competence or the available evidence to resolve systemic policy debates. A reconstituted constitutional dialogue can identify and contribute to discussion and shared research projects to develop that evidence.

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