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978-1-107-02114-3 - Socio-Economic Rights in South Africa: Symbols or Substance?

Edited by Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi

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## SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA

The embrace of socio-economic rights in post-apartheid South Africa has featured prominently in scholarship on constitution making, legal jurisprudence, and social mobilisation. But it has also attracted critics who claim that this turn towards rights has not generated substantive social transformation in practice. This book sets out to assess one part of the puzzle. It asks what has been the role and impact of socio-economic strategies and tactics used by civil society actors. Focusing on a range of rights and national trends in law and political economy, the book's authors show how socio-economic rights have influenced civil society discourse and action. The evidence suggests that some strategies have achieved positive (and occasionally negative) material and political impacts, but this is conditional on the nature of the claims, the degree of mobilisation and alliance building, and the underlying constraints.

**Malcolm Langford** is a Research Fellow at the Norwegian Centre for Human Rights, University of Oslo, and Visiting Scholar at the Centre for the Study of Law and Society, University of California (Berkeley).

**Ben Cousins** is a DST/NRF Research Chair and is based at the Institute of Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape.

**Jackie Dugard** is Visiting Senior Fellow at the School of Law, University of the Witwatersrand, and former Executive Director of the Socio-Economic Rights Institute of South Africa, where she is currently a Senior Researcher.

**Tshepo Madlingozi** is Senior Lecturer at the Faculty of Law, University of Pretoria.

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# Socio-Economic Rights in South Africa

## SYMBOLS OR SUBSTANCE?

Edited by

**MALCOLM LANGFORD**

University of Oslo

**BEN COUSINS**

University of the Western Cape

**JACKIE DUGARD**

University of the Witwatersrand

**TSHEPO MADLINGOZI**

University of Pretoria



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## Contributors

**Kristina Bentley** is a Senior Research Associate with the Democratic Governance and Rights Unit in the Department of Public Law, University of Cape Town. From 2002 to 2006, she was a Chief Research Specialist with the Democracy and Governance Programme of the Human Sciences Research Council, South Africa. In 2002 she was awarded a PhD by the University of Manchester. Her current research focuses on emerging applications of human rights. She is the co-editor of *Politikon*, the official journal of the South African Association of Political Studies.

**Richard Calland** is Associate Professor in public law at the University of Cape Town and Director of its Democratic Governance and Rights Unit. For the past sixteen years Calland has worked on issues of governance and human rights in South Africa and the continent, with a special focus on the right of access to information. He founded the Open Democracy Advice Centre in 2000 and worked for IDASA (Institute for Democracy in Africa) until 2011. In 2010, he was a founding member of the Council for the Advancement of the South African Constitution. He is co-director of the International School for Transparency and a member of the World Bank's Access to Information Independent Appeals Panel.

**Nyasha Chingore** is a Researcher and Project Manager at the Centre for the Study of AIDS, University of Pretoria, where she heads the centre's collaboration with the AIDS and Human Rights Research Unit of the Centre for Human Rights. In addition to managing several research projects, she ran a justice-sector stakeholder training project that trained magistrates, public prosecutors, and lawyers on HIV/AIDS and the law, and she worked with national human rights commissions in the Southern African Development Community. She manages a paralegal advice centre, PLACE. She holds an LLM in human rights and democratization in Africa from the University of Pretoria and an LLBS from the University of Zimbabwe.

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**Ben Cousins** is a DST/NRF Research Chair at the University of the Western Cape and is based at the Institute for Poverty, Land and Agrarian Studies (PLAAS). He has worked in agricultural training and extension in Swaziland and Zimbabwe and has carried out research on rural social dynamics and land reform in Zimbabwe (1986–91) and South Africa (1991–2011). His main research interests are small-scale farming, trajectories of agrarian change, and the politics of land and agrarian reform. He is the co-editor (with Aninka Claassens) of *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act* (Ohio University Press, 2009).

**Jackie Dugard** is a Visiting Senior Fellow in the School of Law, University of the Witwatersrand, and the former Executive Director at the Socio-Economic Rights Institute of South Africa, where she is currently a Senior Researcher. With a background in social sciences and law, Dugard works to advance access to justice and basic services in poor South African communities, and she has published widely on the role of law and courts in affecting socio-economic change, as well as on basic services-related rights. Her most recent publication, with Malcolm Langford, is 'Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism', in *South African Journal on Human Rights* (Vol. 27, 2011).

**David Fig** is a South African environmental sociologist, political economist, and activist. He is an Honorary Research Associate in the Environmental Evaluation Unit at the University of Cape Town and a Fellow of the Transnational Institute, Amsterdam. He holds a PhD from the London School of Economics and specialises in questions of energy, the extractive industries, and corporate accountability. He chairs the board of Biowatch South Africa, which is concerned with food sovereignty and sustainable agriculture, and he works closely with various environmental justice non-government organizations. Recent publications include work on the nuclear and shale gas industries and the Biowatch legal battle with Monsanto.

**Liesl Gerntholtz** is the Director, Women's Rights Division, at Human Rights Watch. She has worked and written extensively on violence against women and HIV/AIDS in Southern Africa. Her work at Human Rights Watch has included documenting access to safe and legal abortion in Ireland and sexual and gender-based violence in Haiti in the aftermath of the earthquake. Before joining Human Rights Watch, Gerntholtz worked for some of the key constitutional institutions promoting human rights and democracy in a post-apartheid South Africa, including the South African Human Rights Commission and the Commission on Gender Equality. A lawyer by training, she was involved in high-profile, strategic human rights litigation to promote women and children's rights.

**Beth Goldblatt** is a Visiting Fellow in the Australian Human Rights Centre, Faculty of Law, University of New South Wales. She is an Honorary Senior Fellow of the



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Faculty of Law, University of the Witwatersrand. She worked at the Centre for Applied Legal Studies at the University of the Witwatersrand for 12 years. She has also held research positions at the University of Sydney and the University of New South Wales. Goldblatt has been involved in research, advocacy, litigation, law reform, policy work, and teaching, and she has published in many areas, including gender, family law, equality and discrimination, disability, social security, and human rights with a focus on economic and social rights. She co-edited *Women's social and economic rights* with Kirsty McLean (Juta, 2011).

**Adam Habib** is Deputy Vice-Chancellor of Research, Innovation and Advancement at the University of Johannesburg, South Africa. He has held academic appointments over the past decade at the Universities of Durban-Westville and KwaZulu-Natal and at the Human Science Research Council. Before being appointed Executive Director of the Democracy and Governance Programme of the Human Science Research Council in 2004, he served as the Founding Director of the Centre for Civil Society and as a Research Professor in the School of Development Studies at the University of KwaZulu-Natal. Habib has served as co-editor of both the social science academic journal *Transformation* and the official disciplinary journal of the South African Association of Political Science, *Politikon*. He also sits on the editorial boards of *Voluntas*, *South African Labour Bulletin*, and UNESCO's 2009 *World Social Science Report*. Habib's research interests include democratisation and development, contemporary social movements, giving and solidarity, institutional reform, race, redress and citizenship, and South Africa's role in Africa and beyond.

**Ruth Hall** is an Associate Professor at the Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape, South Africa. She holds a DPhil in politics from the University of Oxford, where she also obtained a master's degree in development studies. Hall's major publications are *Farm workers and farm dwellers in Limpopo province, South Africa: Struggles over tenure, livelihoods and justice* (PLAAS, 2013, with Poul Wisborg, Shirhami Shirinda and Phillan Zamchiya); *Land, memory, reconstruction, and justice: Perspectives on land claims in South Africa* (Ohio University Press, 2010, edited with Cherryl Walker, Anna Bohlin, and Thembele Kepe); *Another countryside? Policy options for land and agrarian reform in South Africa* (edited, PLAAS, 2009); and *The land question in South Africa: The challenge of transformation and redistribution* (HSRC Press, 2007, edited with Lungisile Ntsebeza).

**Zaheera Jinnah** is a Researcher at the Africa Centre for Migration and Society where she teaches a course in Migration and Human Rights and supervises post-graduate students. She holds degrees in anthropology and development studies. Her research interests are the Somali diaspora, gender and labour migration. Recent

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*Contributors*

publications include work on migrant mobilisation in South Africa and Kenya and sexual and reproductive health and livelihoods of Somali women in Johannesburg.

**Peris Jones** is a Human Geographer and Senior Researcher at the Norwegian Institute of Urban and Regional Research, Oslo. Jones currently lives in Nairobi, Kenya. His research focuses upon social change and human rights, particularly the politics of rights implementation. Jones is the author of two books: the monograph *AIDS Treatment and Human Rights in Context* (Palgrave, 2009) based on local field work in South Africa, and the edited collection, *Democratising Development: The Politics of Socio-Economic Rights in South Africa* (Martinus Nijhoff, 2005, edited with Kristian Stokke). He has also published related works on development and human rights in several international journals (e.g. *International Journal of Human Rights*, *Health and Human Rights*, *Political Geography*, *Urban Studies*, *African Affairs*, *Third World Quarterly*, *Journal of Southern African Studies*, and *Journal of Eastern African Studies*).

**Malcolm Langford** is a Research Fellow at the Norwegian Centre for Human Rights (NCHR), Faculty of Law, University of Oslo and Visiting Scholar at the University of California (Berkeley). He was previously a research Fellow in the South Africa Programme and the founding Director of the NCHR's Socio-Economic Rights Programme. He is an adviser to different UN agencies, governments, and NGOs, and he leads a number of international research networks. He has published on a wide range of topics in human rights, law, and economics, and his books include *Global justice, state duties: The extra-territorial scope of economic, social and cultural rights in international law* (Cambridge University Press, 2013, edited with M. Scheinin, W. Vandenhoe, and W. Van Genugten) and *Social rights jurisprudence: Emerging trends in international and comparative law* (edited, Cambridge University Press, 2008).

**Sandra Liebenberg** currently holds the HF Oppenheimer Chair in Human Rights Law in the Law Faculty of the University of Stellenbosch and is Co-Director of the Law Faculty's Socio-Economic Rights and Administrative Justice Research Project (SERAJ). She previously served as a Member of the Technical Committee advising the Constitutional Assembly on the Bill of Rights in the 1996 Constitution of South Africa. In 1997, she founded and directed the Socio-Economic Rights Project based at the Community Law Centre (University of the Western Cape). She serves on the editorial boards of *South African Journal on Human Rights*, *African Human Rights Law Journal*, and *Human Rights Law Journal*, and is Chair of the Board of Directors of the Socio-Economic Rights Institute of South Africa. She has been involved in research, advocacy, and supporting litigation in the area of socio-economic rights for a number of years, and she has published widely in this field. Her monograph, *Socio-economic rights: Adjudication under a transformative constitution* was published by Juta in 2010.

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**Jennifer MacLeod** is Harvard Law School Holmes Fellow at the Socio-Economic Rights Institute of South Africa. She is also a Founding Director of Lawyers against Abuse, an integrated approach to gender-based violence, which led to her keen interest in the cross-over between socio-economic deprivation and gender-based violence. She was formerly Senior Fellow at the Institute for International Law and Human Rights, based in Washington, DC, and Baghdad, where she produced *Women and the law in Iraq*, a book addressing the status of women in Iraqi law and potential improvements to such laws.

**Tshepo Madlingozi** is a Senior Lecturer in the Faculty of Law, University of Pretoria. He is a member of the editorial committee of *African Human Rights Law Journal*, a member of the management committee of the Pretoria University Law Press, and a member of the Board of Trustees of Khulumani Support Group and Zimbabwe Exiles Forum. He is a Member of the Advisory Council of the Council for the Advancement of the South African Constitution. He has undertaken consultancy work for the UN Office of the High Commissioner for Human Rights, the African Union's Pan-African Parliament, and other government and non-government institutions. He has published in journals such as *Journal of Law and Society* and *Journal of Human Rights Practice*. He is currently a PhD candidate at Birkbeck, University of London.

**Tara Polzer Ngwato** is a Senior Researcher with the African Centre for Migration & Society at the University of the Witwatersrand. With an inter-disciplinary background in social and political sciences (BA from Cambridge University) and development studies (MSc and PhD from the London School of Economics and Political Science), she has written extensively on refugee and migrant integration, especially in border zones, and policy responses to Zimbabwean migration in Southern Africa. She also works on issues relating to conflict transformation and humanitarian preparedness.

**Solange Rosa** is a doctoral candidate at the University of Stellenbosch and Chief Director of Policy and Strategy in the Premier's Department in the Western Cape Provincial government, responsible for social policy and planning. She worked at the Children's Institute, University of Cape Town, as a Senior Researcher from 2002 to 2006, focusing on children in poverty and the right to social security. She was also Advocacy Coordinator for the Alliance for Children's Entitlement to Social Security and Chair of the Basic Income Grant Coalition, based in Cape Town. She has also worked internationally for Oxfam International and the UN Development Programme. She has researched, written, and published broadly on human rights, social justice, and development, particularly on freedom of expression, access to information, prisoners' rights, criminal justice, gender, children's rights, social security rights, participatory rights, socio-economic rights, and poverty.

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**Stuart Wilson** is the Executive Director at the Socio-Economic Rights Institute of South Africa. A practicing advocate and member of the Johannesburg Bar, Wilson has appeared before the South African Constitutional Court and Supreme Court of Appeal in several leading socio-economic rights cases. Wilson writes and publishes on constitutional law, property law, and the intersection of law and society. His present research interests are in assessing the social and legal impact of public-interest litigation, especially where driven by the organised urban poor. His most recent publication is J. Brown and S. Wilson (2013) "A Presumed Equality: State and Citizen in Post-Apartheid South Africa", *African Studies*, Part 1.

**Rachel Wynberg** is an academic, activist, and policy adviser based at the University of Cape Town where she holds a DST/NRF Research Chair on the Bio-Economy. She has two masters degrees from the University of Cape Town and a PhD from the University of Strathclyde, Glasgow, and is a founding member and existing trustee of two South African NGOs (the Environmental Monitoring Group and Biowatch South Africa) and a board member of the trade association PhytoTrade Africa. Wynberg's work is focused on biopolitics, the commercialization and trade of biodiversity, and the integration of social justice into biodiversity concerns and environmental governance. She has published widely on these topics, including more than 140 scientific papers, technical reports, book chapters and popular articles, as well as four recent co-edited books.

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## Preface

The origins of this book are diverse. The kernel of the idea was born in a discussion in 2009 about the impact of the South African Constitutional Court's landmark *Grootboom* judgment.<sup>1</sup> Was it an illustration of everything positive or everything negative about the uptake of socio-economic rights in post-apartheid South Africa? Was the judgment and its various impacts a vindication of the housing rights for highly marginalised urban dwellers, facilitating emergency assistance and protection from eviction? Or was it Exhibit A of the danger that relying on socio-economic rights might narrow the frame of political struggle and leave communities and individuals without any remedies of substance.

The discussion itself occurred in the context of a meeting of South African civil society organisations and university centres that benefitted from Norwegian government support for work on human rights, particularly on socio-economic rights.<sup>2</sup> As this decade-long programme of support came to an end in 2010, it was pertinent to ask: what have these and other organisations achieved through their turn to socio-economic rights as a means to address poverty and inequality in the post-apartheid era? What is the actual evidence and how should we assess it?

The result is this volume of fifteen contributions, which draws together scholars and some advocates from a range of disciplines. Together, the authors analyse the effects of different socio-economic rights and strategies employed by civil society

<sup>1</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) (*Grootboom*).

<sup>2</sup> Since 1998, support for human rights was included in development cooperation between South Africa and Norway as part of the human rights and democracy portfolio. The support was coordinated by the Royal Norwegian Embassy and administered by the Norwegian Centre for Human Rights, University of Oslo. In the period 2005–2010, these organisations were supported: PLAAS (The Institute for Poverty, Land and Agrarian Studies, University of Western Cape), Rape Crisis, Community Law Centre (University of Western Cape), Open Democracy Advice Centre, Women's Law Centre, Centre for Applied Legal Studies, Tshwaranang Legal Advocacy Centre, Legal Resources Centre, Church Land Programme, Centre for Human Rights (University of Pretoria), International Center for Transitional Justice, Coma Care, and Lawyers for Human Rights.

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*Preface*

formations and organisations, and more broadly assesses the relevance of socio-economics rights as a political and legal resource for tackling poverty and inequality and strengthening social mobilisation and action. We are deeply grateful to all the authors for their willingness to grapple with the objectives of the book – we hope all have benefitted as much from the process as we have. We thank the authors particularly for new insights and perspectives shared.

This book would not have been possible without generous and sustained support from the Norwegian Embassy in South Africa. Special thanks go to Ingrid Skølass and Mai-Elin Stener at the Embassy for facilitating this process. Thanks also go to the University of Western Cape and the Legal Resources Centre, which together organised the first workshop in 2010 at which the themes for the book were partly discussed and to Tara Smith who organised a follow-up authors' workshop in 2011. At the Norwegian Centre for Human Rights, Cheryl Lorens and Tara Smith provided invaluable editorial assistance and Siri Skåre and Kristin Høgdahl provided helpful guidance on the process; at SERI, Katherine Drage and Elisabeth Koek carefully read and proofed each chapter. In the production of the book, we are very grateful to John Berger at Cambridge University Press for his deep support in driving the project forward; Shana Meyer at Aptara, Inc., for shepherding the book through its various phases; and Katherine Faydash for her painstaking copyediting of the entire manuscript.

Ultimately, we express our gratitude to our various 'research objects', the organisations and individuals who have struggled in different ways to improve the situation in South Africa. We hope that the pages of this book contribute to a critical and informed approach to the question of rights and social change in the cauldron of practice. Socio-economic rights still represent a relatively new paradigm and should be subject to more experimentation and ongoing reflection rather than hard and fast conclusions. The essential message of this book is that these rights can be a lever for change but that their potency is dependent on underlying factors and strategic choices.

*Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi*