

LAW AND POVERTY
Justice Pius N Langa

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The theme of law and poverty has particular resonance to me, and to those of us who have battled poverty in various ways and at a number of terrains.

The subject of poverty is critical to democracy, development and the sustenance of stability in our constitutional state, and, in South Africa in particular, is of the utmost relevance to reconciliation. I agree with those who say that not enough attention has been paid to the subject of poverty, and even less to its eradication. Many just throw up their hands in despair; others simply accept it as a fact of life that South Africa and the continent will never be able to rid ourselves of this problem. I need hardly mention that the concession to failure is an extremely dangerous one as it affects the sense of urgency with which we attack the problem. Poverty, and our attitudes to it in a country like South Africa may bring with it complex and interrelated challenges that threaten to interfere with our society's commitment to the rule of law, which is a foundational concept and element of our constitutional existence.

Of course there are those who are simply indifferent to the fact that, living as we do in this beautiful and well endowed country, it is still one with perhaps the widest poverty gap on the planet.

We have just been through countrywide elections and are witnessing, as a result, much breast-beating, back-patting and finger-pointing. The elections were preceded by unprecedented levels of service delivery protests as the people flexed their muscles and voiced their dissatisfaction rather volubly against their political leaders. More often than not, the trigger for these protests and upheavals is poverty. The question then is, do we at least have a plan to solve this problem.

In large part, addressing issues of human rights requires grappling with issues of the economic conditions under which the majority of our people live. That is where the battle front is, that is what our people fought for. That in fact is what the Constitution urges us to aspire to achieve.

I have walked among the shacks and I have seen little children without food. I have asked myself what the real meaning is, when the Constitution refers to human dignity and equality, to social justice and to improving the quality of life of every citizen and to freeing the potential of each person.

Without economic security and independence, individuals will be unable to realize individual freedom and express themselves freely in the social and political sphere; They will be unable to educate themselves – a prerequisite for robust political participation; without economic security and independence, culture and civil society cannot flourish; individuals will find themselves turning to crime and violence and disrespect the legal system.

Poverty is therefore an issue that must be placed firmly at the forefront of the human rights agenda. The continued prevalence of poverty is related to lack of education and is tied to lack of economic growth and opportunities. This has resulted largely from wars, fiscal mismanagement and corruption. We know that in recent years, there have been attempts to turn this around with a renewed focus on good governance as well as initiatives such as NEPAD, the African Peer Review Mechanism and the African Union Convention on Preventing and Combating Corruption. These initiatives can only succeed if civil society gets involved in holding governments and institutions accountable and expose them when they fail to uphold the requirements of these conventions and values. The fact is, true leadership means putting people first.

Human rights and the rule of law are all foundational values of most democratic states. However, they remain shallow platitudes without a solid foundation of basic health care, saleable skills, education, security of the person and government's total dedication to an equitable application and interpretation of human rights.

In our time, we have witnessed a sea change in attitudes, what has been referred to as a 'wave of democratization' that has swept the African continent. Yet it is trite to observe that this is but a first step in establishing respect for the rule of law and human rights. Though democratic elections are a critical foundation of the rule of law, they do not begin to guarantee it.

Addressing issues of human rights goes hand in hand with efforts to support the rule of law. Without proper respect for the rule of law, legal guarantees of rights cannot be effectively implemented and remain relatively meaningless.

The fight against poverty has implications for national reconciliation in South Africa. I say I have walked among the shacks. The poorest of the poor have also walked, and looked at what we throw away in our dirt bins. Poverty speaks to our history, to where we come from. National reconciliation therefore has to have resonance to that past. Thus, we fight poverty because we aim to correct a past that went horribly wrong. This is an aspect we should pay attention to, if only out of our own or our national self interest. I am convinced that whilst we allow this very wide gap to exist between the poorest of the poor on the one hand, and the most affluent in our country, the reconciliation that will facilitate our development as a nation will remain a pipe dream.

There is hope. Projects and gatherings like this will bring about the desired understanding, and therefore the national effort and encouragement for us to exert ourselves sufficiently to eradicate poverty from our midst. I would place the emphasis on the national level, rather than the international assistance agencies. It is our country and it is our potential that we must develop for redistributive social justice. We have made a promising start in addressing these problems. We have established a Constitution based on the principles of human dignity, equality, and democracy.

As part of the Constitution's commitment to uplifting the quality of life of all people, it specifically protects a broad array of socioeconomic rights, including specific provisions protecting the rights to health care, food, water, social security, education, housing, land and the environment.

And yet, for all our progress, we cannot rest because we still have far to go to achieve our goals. To move our commitment to the full realization of the rights and their implementation by the State, however, it could be argued that there is room to go beyond a mere enforcement of negative rights. The Constitution's ideal could be said to be not only impose a duty to protect rights, but also to promote and fulfill them as well.

These issues are complex and do not have easy answers. Maintaining our commitment to the Constitution and the Rule of Law is a promising first step, but we must continue to robustly enforce rights, including socioeconomic rights and claim the positive potential that lies within the ideals and values of the Constitution.

• *Langa is a founding member of the Constitutional Court and a former chief justice of South Africa. This is an abridged version of his talk in May 2013 at a Colloquium on Law and Poverty, hosted by Stellenbosch University's Law Faculty as part of the institution's HOPE Project.*