

Editorial

In this edition of *Law, Democracy and Development* the focus falls on two broad themes – the realisation of socio-economic rights and the public funding of political parties during the upcoming election in May 1999.

The inclusion of socio-economic rights in the South African Constitution of 1996 set a new benchmark internationally for the formulation and enforcement of these rights. In their introduction to socio-economic rights Christof Heyns and Danie Brand outline the initial debate over their inclusion and their eventual formulation in the 1996 Constitution. They distinguish between the norm-setting and norm-enforcement provisions relating to socio-economic rights. They point out that although a number of constitutions recognise socio-economic rights as human rights, the South Africa Constitution may be unique in that it provides for their judicial enforcement and a domestic reporting procedure.

In contrast to the explicit inclusion and clear formulation of socio-economic rights in the 1996 Constitution, the protection of these rights in France occurred by a circuitous route through judicial intervention. Xavier Philippe explains how the Constitutional Council decided in 1971 that the reference in the 1958 Constitution to the 1946 Constitution allowed the Council to enforce the socio-economic rights mentioned in the preamble of the latter Constitution.

With regard to the enforcement of socio-economic rights, the monitoring role of the South African Human Rights Commission is termed “soft” enforcement. Although decisions of the Human Rights Commission are not legally binding, the monitoring of state institutions could play a significant role in the realisation of the relevant rights.

Section 184(3) of the Constitution provides that each year the Human Rights Commission must require “relevant organs of state” to provide the Commission with information on the measures that they have taken towards the realisation of the rights concerning housing, health care, food, water, social security, education and the environment.

Karrisha Pillay explores the scope of this task by analysing the definition of a “relevant organ of state”. An “organ of state” includes all spheres of government at national, provincial and local level, institutions created by the Constitution and statutory bodies exercising a public power or performing a public function. While this casts the net wide, the term “relevant” confines the duty to report to those organs which are principally responsible for the realisation of socio-economic rights.

Pillay identifies local government as one of the key state institutions charged with the task of realising socio-economic rights. Central to discharging this obligation stands access to adequate financial resources. Loan capital is one of the important sources of finance. The Constitution

provides that the national government, a provincial government or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.

David Ailola points out that the guarantee of municipal loans by the other spheres of government would facilitate access to the capital market but it could also prejudicially increase the possible debt burden on the state. He analyses current legislation regarding the regulation of guarantees and finds that there are few guidelines and principles that guide the granting of guarantees to or by local government. National legislation on this issue is thus urgently needed.

Linked to socio-economic rights is the question of freedom of contract. Louis van Huyssteen examines the effect the horizontal application of the South African Bill of Rights may have on freedom of contract. He concludes that although freedom of contract is not as such protected in the Bill of Rights, it may be supported by a number of individual freedoms. While this may lead to a new lease on life for this doctrine, other provisions, and the right to equality in particular, will constrain the scope of this freedom. In a comparative note, Emmanuel Putman reflects on the similar question in France.

Freedom of contract is probably curtailed most in the area of the employment contract. Two significant pieces of legislation – the Basic Conditions of Employment Act and the Employment Equity Act – have been enacted in the past two years. Their aim has been, *inter alia*, to address discrimination and exploitation in the workplace. Roseline Nyman examines women's status in the labour market as a category of people who experience discrimination and then discusses the question whether these two Acts address the obstacles experienced by women in the workplace.

With the second democratic election scheduled for May 1999, one aspect of electoral law is of particular importance – the financing of political parties in general and election campaigns in particular. Nico Steytler examines whether the Public Funding of Represented Political Parties Act of 1997 meets the requirement of the Constitution that, in order to enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis. He criticises the Act for failing to address, first, the regulation of private funding, second, the funding of political parties during election campaigns, and third, the exclusion of new parties from public funding.

The most expensive item in any political party's election budget is access to the media, in particular the electronic media. This may lead to influence-peddling by monied interests. Pierre de Vos thus argues that the state should also indirectly fund political parties by providing free access to state-controlled media. To enhance multi-party democracy, the distribution of free air time should also take place on an equitable and proportional basis.