

**A critical analysis of the violation of the rights to adequate housing,
health care, food, and social security of people living in informal
settlements in South Africa with specific reference to human
development**

by

**Khothlang Moseli
(2018292728)**



**A mini-dissertation submitted in fulfilment of the requirements in respect of
the Master's Degree of Human Rights in the Free State Centre for Human
Rights, Faculty of Law at the University of the Free State**

Supervisor: Dr Annelie De Man

Co-supervisor: Dr Carol Chi Ngang

Date: 30 November 2020

DECLARATION

I declare that this mini-dissertation is my own unaided work. It is submitted for the degree of Master of Human Rights at the University of the Free State, Bloemfontein. It has not been submitted before for any other degree or examination at any other University.

Signed _____

Khothlang Moseli

November 2020

ACKNOWLEDGEMENT

First and foremost I want to thank God who has afforded me the strength, confidence, dedication, and determination to complete this study. It was not an easy journey. However, His grace was sufficient and He has looked upon me with love and kind favour.

I would also like to convey my sincere gratitude to my supervisors, Dr Annelie De Man and Dr Carol Chi Ngang whose expertise, understanding, and patience added considerably to my academic growth. I will forever cherish your unconditional support, inspiration, and intellectual guidance throughout the study.

Moreover, I would like to express my gratefulness to the Moseli family for their patience, perseverance and understanding throughout the study. I extend my appreciation of your undivided love, support and encouragement. To my late father, Thabo Richard Moseli, your wish that I should become educated and break the generational curse of our family has come true. I will remain grateful that you always believed in me, even when it was unfavourable to do so. You will forever remain in my heart.

Lastly, I extend my warmest appreciation to my friends, Kgotso Motemekoane, Thembisa Leeuw and Thandolwethu Mogweni, for the encouragement, counsel, and loyal support that you have shown me.

ABSTRACT

This mini-dissertation is an investigation into the violation of human rights to adequate housing, health care, food, and social security of people who live in informal settlements in South Africa. It explores their quality of life in informal settlements. The rights to have access to adequate housing, health care, food, and social security are enshrined in sections 26 and 27 of the constitution of the Republic of South Africa of 1996.

In order to observe the entitlement of these human rights, the South African government has, since 1994, embarked on legislation, policies, and programmes to improve access to adequate housing, health care, food, and social services among vulnerable and disadvantaged groups in South Africa. However, these efforts have not effectively addressed the challenges faced by informal dwellers in South Africa. Currently, the rights to adequate housing, health care, food, and social security of informal dwellers are being violated in South Africa. The Constitution and several international human rights instruments call for their realisation. However, compared to other rights such as freedom of speech, less effort has been made by the government and non-governmental establishments to fulfil these rights for the betterment of informal dwellers' living conditions, well-being, and human development. The research question for this study is therefore: How can a rights-based approach to development (RBAD) contribute to the fulfilment of the rights to adequate housing, health care, food, and social services for informal dwellers in South Africa?

In order to respond to this question, a desktop analysis and a socio-legal approach were employed to gather information. This study is largely theory-driven; it relies on various sources of evidence namely, on primary and secondary literature, on conducted-research, and on official government instruments that speak to the state of informal settlements in South Africa. This process was guided by four research aims: a) to examine the obligations of the South African government to fulfil human rights; b) to explore the problems experienced by people living in informal settlements that are unique to them, including the factors that have an impact on the realisation of their rights; c) to examine the impact of the non-realisation of human rights on human development and well-being, and; d) to recommend remedial measures to mitigate the violation of the human rights of people who live in informal settlements in South Africa.

Informal settlements seem to defy the realisation of socio-economic rights. In their reports, various United Nations Special Rapporteurs present informal dwellers mostly as the victims of human rights violations. This study reveals that there are many barriers to the enjoyment of the rights to adequate housing, health care, food, and social security in informal settlements in South Africa. These mainly have to do with the living conditions of those who are poor, vulnerable, and marginalised. The study observes that unemployment, poverty, bad governance, and corruption are the main contributors to the plight of people who live in informal settlements in South Africa. To address the challenge of informal settlements and, consequently, to ensure that the state respects, protects, promotes, and fulfils the human rights of the poor and the marginalised, this study has observed the need for an RBAD in South Africa. It recommends attaching human rights principles, norms and standards to development processes in South Africa. These principles will improve the living conditions of isolated and disadvantaged groups and will translate into the realisation of human rights. The outcome of this study relates to those who are working actively for the promotion and realisation of human rights, especially for socio-economic rights in South Africa.

KEY WORDS: Breaking New Ground, development, food, health care, housing, human rights, informal settlements, rights-based approach to development (RBAD), social security, Upgrading of Informal Settlements Programme

LIST OF ABBREVIATIONS

AIDS	- Acquired Immunodeficiency Syndrome
CEDAW	- Convention on the Elimination of all Forms of Discrimination against Women
CRC	- Convention on the Rights of the Child
HIV	- Human Immunodeficiency Virus
ICCPR	- International Covenant on Civil and Political Rights
ICESCR	- International Covenant on Economic, Social and Cultural Rights
GEAR	- Growth, Employment and Redistribution
NDP	- National Development Plan
NGO	- Non-governmental organization
PICC	- Presidential Infrastructure Co-ordinating Commission
RBA	- Rights-based approach
RBAD	- Rights-based approach to development
RDP	- Reconstruction and Development Programme
RD	- Right to Development
SA	- South Africa
SAHRC	- South African Human Rights Commission
SASSA	- South African Social Security Agency
SERI	- Socio-Economic Rights Institute
SPII	- Studies in Poverty and Inequality Institute
StatsSA	- Statistics of South Africa
TB	- Tuberculosis
UDHR	- Universal Declaration of Human Rights
UN	- United Nations
UNESCO	- United Nations Educational, Scientific and Cultural Organization
WHO	- World Health Organisation
OHCHR	- Office of the United Nations High Commissioner for Human Rights

Table of Contents

CHAPTER 1: INTRODUCTION.....	9
1.1 Introduction.....	9
1.2 Background and research problem.....	9
1.3 Motivation for the study	13
1.4 Research goal and aims	14
1.5 Research questions.....	16
1.5.1 Main question.....	16
1.5.2 Sub-questions	16
1.6 Research methodology.....	16
1.7 Structure of the Mini-dissertation	17
CHAPTER 2: CONTENT OF THE RIGHTS OF ACCESS TO ADEQUATE HOUSING, HEALTH CARE, FOOD, AND SOCIAL SECURITY	18
2.1 Introduction.....	18
2.2 Access to adequate housing, health care, food, and social security under international and in regional human rights law.....	19
2.3 The rights to adequate housing, health care, food, and social security in the South African Constitution	21
2.3.1 Convergence between the right to adequate housing, health care, food and social security, and other fundamental rights in the South African Bill of Rights.....	25
2.4 Constitutional obligations of the state	26
2.5 Conclusion.....	29
CHAPTER 3: THE RIGHTS-BASED APPROACHES TO DEVELOPMENT.....	30
3.1 Introduction.....	30
3.2 The convergence between human rights and development	31
3.3 The rights-based approach to development: Definition and principles	34
3.3.1 Definition of a rights-based approach to development	34

3.3.2	Principles of the rights-based approaches to development	35
3.3.2.1	Participation	35
3.3.2.2	Empowerment.....	36
3.3.2.3	Equality and non-discrimination	37
3.3.2.4	Accountability.....	39
3.4	Advantages of the rights-based approach to development.....	40
3.5	Limitations and critiques of a rights-based approach to development	44
3.6	Conclusion.....	46
CHAPTER 4: EXPLORING THE QUALITY OF LIFE OF PEOPLE LIVING IN INFORMAL SETTLEMENTS		48
4.1	Introduction.....	48
4.2	Background and description of informal settlements	49
4.2.1	Description of an informal settlement	49
4.2.2	Motivation for informal settlements.....	51
4.3	The primary challenges of informal settlements	53
4.3.1	Access to adequate housing	53
4.3.2	Access to Water	54
4.3.3	Access to adequate sanitation	56
4.3.4	Electricity.....	57
4.3.5	Health and environment	58
4.4	Constitutional Court Jurisprudence: Lessons from the <i>Grootboom</i> , <i>Treatment Action Campaign</i> and <i>Khosa</i> cases.....	60
4.4.1	The <i>Grootboom</i> case: access to adequate housing	60
4.4.2	The <i>Treatment Action Campaign</i> case: access to health care	62
4.4.3	The <i>Khosa</i> case: access to social assistance	63
4.5	Government responses to address the informal settlements challenge	64
4.5.1	The South African Housing Act 107 of 1997	64

4.5.2 Breaking New Grounds and Upgrading the Informal Settlement Programme	65
4.5.2.1 Breaking New Grounds	65
4.5.2.2 Upgrading of Informal Settlement Programme	67
4.5 Conclusion.....	68
CHAPTER 5: CONCLUSION AND RECOMMENDATIONS.....	70
5.1 Summary of the findings.....	70
5.2 Recommendations.....	72
5.2.1 Participation	73
5.2.2 Equality and non-discrimination	75
5.2.3 Empowerment.....	76
5.2.4 Accountability	77
5.3 Conclusion.....	77
LIST OF REFERENCES	79
1. TEXTBOOKS AND ELECTRONIC BOOKS	79
2. JOURNAL ARTICLES	82
5. WORKING PAPERS, REPORTS AND STATEMENTS.....	89
6. DECLARATIONS, CONVENTIONS AND TREATIES	92
7. ELECTRONIC RESOURCES.....	93
8. NEWSPAPER ARTICLES	97
9. CASES	97
10. LEGISLATION.....	98

CHAPTER 1: INTRODUCTION

1.1 Introduction

The growing number of informal settlements in South Africa are characterised by many factors, including a lack of service delivery with regard to adequate housing, water, sanitation, health, and electricity. This study critically explores the violations of the rights to adequate housing, health care, food, and social security of people living in informal settlements in South Africa.

This introductory chapter presents the background and research problem, the motivation for the study as well as the research goal and aims, questions, methodology, and structure of the mini-dissertation.

1.2 Background and research problem

Human rights were seldom the subject of constitutional law in South Africa prior to 1994¹, resulting in gross violations of human rights and infringement by the then apartheid government of South Africa. In particular, many South Africans, black citizens, have been deprived of the enjoyment of their basic human rights and have been excluded from basic service delivery and economic opportunities. Discrimination, high economic disparities have subjected them to the high levels of poverty and from enjoying their rights.² However, this was changed by the 1996 constitution of the Republic of South Africa when it accepted human rights as valuable instruments for creating an equitable and just society.³ It featured a number of provisions guaranteeing enforceable socio-economic rights, such as the right to adequate housing, health care, food and social security. In order to transform the socio-economic well-being of disadvantaged and oppressed communities, the incorporation of these rights has proved promising. They act as valuable tools to make it possible for people to have access to the basic social services and resources required to live a life that is

-
- 1 Trilsch M 2009. What's the Use of Socio-Economic Rights in a Constitution. *Taking a Look at the South African Experience*, 42.
 - 2 Adato M, Carter MR and May J 2006. Exploring poverty traps and social exclusion in South Africa using qualitative and quantitative data. *The Journal of Development Studies*, 42(2):.226-247, 226.
 - 3 Rosenberg A 1995. Equality, Sufficiency, and Opportunity in the Just Society. *Social Philosophy and Policy*, 12(2), 54-71, 54.

compatible with human dignity.⁴ However, as effective as they are, at least on paper, they have not achieved significant socio-economic change in practice.⁵

As a result of the apartheid regime, many poor South Africans, particularly black people, are still living in conditions that deprive them of human development, freedom, and well-being.⁶ Many of these people live in informal settlements with no access to essential services such as water, electricity, and sanitation. In 2019, it was estimated that more than 4 million people or 1.25 million households lived in informal settlements in South Africa.⁷ Given the past and current lack of service delivery, it is likely that this number has increased and will continue to increase.⁸ Moreover, informal settlements in South Africa are characterised by inequalities in access to basic services such as water, sanitation, electricity, and health care. The inequalities in the equal distribution of basic services have a negative impact on the standard of living of informal settlement dwellers on the basis of their race, geographic location, and economic status. This also causes multiple deprivations such as inadequate housing and limited access to water and sanitation.⁹

Owing to the growing concern for informal settlements, Chenwi argues that the presence and growth of informal settlements with little or no access to services and infrastructure is a common feature in South Africa.¹⁰ In addition, the Socio-Economic Rights Institute of South Africa (SERI) states that informal settlement inhabitants experience many challenges, partly because they do not have access to adequate housing or essential services.¹¹ In many informal settlements, inhabitants' lives are

4 Liebenberg S 2002. South Africa's evolving jurisprudence on socio-economic rights: an effective tool in challenging poverty?. *Law, Democracy & Development*, 6(2):159-191, 159.

5 Langford M, Cousins B, Dugard J, and Madlingozi T eds., 2013. *Socio-economic rights in South Africa: Symbols or substance?*. Cambridge University Press.

6 Chenwi L 2008. Putting flesh on the skeleton: South African judicial enforcement of the right to adequate housing of those subject to evictions. *Human Rights Law Review*, 8(1):105-137, 113.

7 Royston L and Ebrahim T 2019. Urban land reform: Start with informal settlements. *Daily Maverick*, 4. Available at <https://www.dailymaverick.co.za/article/2019-07-04-urban-land-reform-start-with-informalsettlements/#:~:text=Urban%20informal%20settlements%20are%20the,live%20in%20Urban%20informal%20settlements>. (accessed 26 September 2020).

8 Statistics South Africa (StatsSA), 2016. General household survey: 2016 [homepage on the Internet]. *Electronic citation*. Available at <http://www.statssa.gov.za/?p=9922> (accessed 26 September 2020).

9 Brown-Luthango M, Reyes E and Gubevu M 2017. Informal settlement upgrading and safety: experiences from Cape Town, South Africa. *Journal of Housing and the Built Environment*, 32(3):471-493, 473.

10 Chenwi 2008: 114-130.

11 Socio-Economic Rights Institute of South Africa (SERI) 2018. Informal settlements and human rights in South Africa. Submission to the United Nations Special Rapporteur on adequate

characterised by an inadequate standard of living, as well as social and economic exclusion with no political will to enhance their standard of living. Although the democratic government has inherited a fragmented system with disparities in housing, health care, and other essential services of the poor and marginalised, the government has not had success in eliminating these disparities.

Many efforts have been made to deal with informal settlement challenges by implementing policies such as the basic macro-economic policy of the South African government known as the Growth, Employment and Redistribution (GEAR) plan.¹² Moreover, the underlying social development policy and the Reconstruction and Development Programme (RDP),¹³ which were developed to address needs such as housing and other services, have not adequately addressed the problem of the lack of service delivery and the inequalities that are prevailing in the country. With an increasing number of informal settlements, it is clear that inequalities, specifically in the unequal distribution of resources, do not compliment the constitutional principle of equity in access. Thus, essential services related to socio-economic rights such as adequate housing, health care, food, and social security are immensely overlooked, and a reasonable standard of living has not yet been achieved.

The rights to adequate housing, health care, food, and social security are recognised in international human rights instruments. Moreover, the Bill of Rights contained in the South African Constitution of 1996 recognises in section 26(1) that everyone has the right to have access to adequate housing,¹⁴ while section 27(1) entrenches the right to health care, sufficient food and water, and social security.¹⁵ The government must take reasonable measures to ensure the full realisation of human rights; it is obligated

housing as a component of the right to an adequate standard of living. Available at <https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/SERI.pdf>, 5. (accessed 30 March 2020).

12 Department of Finance 1996. Growth, employment and redistribution: A macroeconomic strategy. *Republic of South Africa, Private Bag X115, Pretoria 0001*.

13 South Africa, 1994. *White paper on reconstruction and development: government's strategy for fundamental transformation*. Johannesburg.

14 Constitution of the Republic of South Africa, 1996; Sec 26(1) states that '[e]veryone has the right to have access to adequate housing'.

15 Sec 27(1)(a)(b)(c) of the Constitution states that '[e]veryone has the right to have access to— (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance'.

to protect, promote, and fulfil human rights.¹⁶ However, this is not the case in South Africa because the non-realisation of these fundamental rights is still a stumbling block, specifically to informal settlement dwellers.

Although the past two decades have seen economic improvements and democratisation, progress in human development has been uneven and the distribution of resources has caused considerable controversy over the years. Despite an increase in national economic growth, many people are still living below the national poverty line and with no access to adequate housing, health care, food, and social security.¹⁷ The policies that are intended to enhance human well-being, particularly public policies in essential areas such as social services, often neglect the poor and favour the privileged, with far-reaching consequences to the achievement of human dignity and to the well-being of all.¹⁸

The term “human rights violation” can be understood as rights that are being disregarded, deprived, and overlooked when a person is deprived of their fundamental rights.¹⁹ The rights to adequate housing, health care, food, and social security certainly constitute an essential part of human rights laws. Since they represent several rights, they are inextricably linked to employment, access to services, health, security, self-identity, self-respect, and dignity.²⁰ The latter is in line with the principles of indivisibility and the interrelatedness of human rights which are contained in international treaties.²¹ The increasing lack of access to essential services by informal dwellers displays difficulties of the state to realise these rights. When the rights to adequate housing, health care, food, and social security are not fulfilled, then these have a negative impact on other rights and on human development.

16 Ngang CC 2014. Judicial enforcement of socio-economic rights in South Africa and the separation of powers objection: The obligation to take other measures. *African Human Rights Law Journal* 14(2):655-680, 662.

17 Statistics South Africa 2019. Five facts about poverty in South Africa. Available at <http://www.statssa.gov.za/?p=12075> (accessed 26 September 2020).

18 Darrow M and Tomas A 2005. Power, capture, and conflict: a call for human rights accountability in development cooperation. *Human Rights Quarterly*, 471-538, 475.

19 Cawthra G 1993. *Policing South Africa: The South African police & the transition from apartheid*. David Philip Publishers.

20 Ismail MIE 2005. The integration of housing rights into the informal settlement intervention process: An international review (Doctoral dissertation). University of the Witwatersrand, 41.

21 See art 1 of the UDHR art 1, Preamble of the ICESCR, and art 2 of the African Charter.

1.3 Motivation for the study

This study is motivated by the sentiments expressed by the former South African President, Nelson Mandela, during the African National Congress Bill of Rights Conference in 1991. He stressed that:

A simple vote, without food, shelter and health care is to use first-generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, which by implication socioeconomic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.²²

As already mentioned, the South African Constitution contains a Bill of Rights that recognises civil and political rights, as well as social, economic, and cultural rights. Accordingly, the government has both a negative duty not to interfere with the enjoyment of these rights and a positive duty to promote, fulfil, and protect the rights of those within its jurisdiction. Although the Bill of Rights affirms the protection and fulfilment of human rights, in particular the rights to adequate housing, health care, food, and social security, informal dwellers continue to live in conditions that deprive them of human dignity and of well-being. These rights are supposed to guarantee all citizens equality, freedom, and human dignity irrespective of race, colour, and sex, including their economic and social status.²³ This was confirmed in the case of *Social Justice Coalition v Minister of Police in the Western Cape*²⁴ where the Equality Court ruled that poverty constitutes grounds for unfair discrimination.

The South African government remains merely rhetoric in enforcing and fulfilling equal human rights for all. Although rights and obligations demand accountability, the state is rarely held accountable for human rights violations in South Africa.²⁵ The non-realisation of human rights does not only affect people living in informal settlements but it also has an impact on South African citizens. For example, informal dwellers live in extreme poverty without having their basic needs met such as access to adequate food. Consequently, many resort to crime in order to survive which, in turn, affects all

22 Mandela NR 1991. Address on the occasion of the ANC's Bill of Rights Conference, in a Bill of Rights for a Democratic South Africa: papers and report of a conference convened by the ANC's constitutional committee, May 1991 (Centre for Development Studies, UWC), 9 – 14, 12.

23 Van Rensburg LJ and Lamarche, L 2005. The right to social security and assistance. *Brand*, 151-194, 171.

24 *Social Justice Coalition & Others v Minister of Police* 2019 4 SA 82 (WCC).

25 Mubangizi JC 2005. Know your rights: Exploring the connections between human rights and poverty reduction with specific reference to South Africa, *South African Journal on Human Rights*, 21(1): 32-46, 38-41.

the people of South Africa. Besides, the lack of access to essential services and to other associated factors such as pollution, overcrowding, and poor waste management in informal settlements could harm the economy. Today, South Africa is ranked among the countries with the highest unemployment rates, poverty, and crime. The people most affected are the poorest and the most vulnerable.

According to Mubangizi, the full realisation of human rights requires a rights-based approach (RBA) towards human development, including active and informed participation by the poor in the formulation, implementation, and monitoring of development strategies.²⁶ Thus, this research explores the extent of non-realisation of fundamental human rights of people living in informal settlements, namely the rights to adequate housing, health care, food, and social security; how these ultimately have an impact on their human development; and how an RBAD could contribute to the equal fulfilment of rights.

1.4 Research goal and aims

This study critically analyses violations of the rights to adequate housing, health care, food, and social security of people living in informal settlements in South Africa with specific reference to human development. The study critically explores what contributes to the realisation or non-realisation of the human rights of informal settlement dwellers. The overall goal of the study is to gain an in-depth understanding of the extent to which the abovementioned rights are not fulfilled in informal settlements and what impact this has on human development by looking at government obligations and the nature of development in South Africa. Furthermore, the study demonstrates the importance of human rights and development as interrelated concepts that could enhance social well-being.

To achieve this goal, the following aims were formulated:

- a) To examine the South African government's obligations to fulfil human rights;
- b) to explore the problems experienced by people living in informal settlements that are unique to them and the factors that have an impact on the realisation of their rights;
- c) to examine the impact that the non-realisation of human rights has on human

26 Mubangizi 2005: 38.

development and well-being; and d) to recommend remedial measures to mitigate the violation of the human rights of people living in informal settlements in South Africa.

Moreover, this study recommends that an RBAD should be applied to the public policies of the government that are geared towards the realisation of the rights, which is the focus of this study and towards human development upon the whole. An RBAD calls for the inclusion of human rights, norms, and legal standards in development strategies. Also, Darrow and Tomas argue that an RBAD brings both a normative and an instrumental approach to development.²⁷ The normative-based approach ensures that human rights form a compulsory part of an operational frame of reference through legal and moral obligations. Normative standards reflect that human rights are ends in themselves and that they must be given distinct and clear consideration in developmental processes. Furthermore, the instrumental approach stems from a conviction that an RBA produces more effective programming for poverty reduction and development.²⁸ The adoption of this approach would allow informal settlement dwellers to participate in decision-making that affects their lives. Furthermore, it will empower them to enhance their lives efficiently without fear of discrimination.

In view of the growing number of informal settlements, this approach is recommended mainly because the comprehensive approach, which is represented by the National Development Plan (NDP)²⁹ and which is reinforced by the Presidential Infrastructure Co-ordinating Commission's (PICC)³⁰ strategy on infrastructure, has proven to be inadequate to address the growing concern of informal settlements. In 2013, former Human Settlements Minister Tokyo Sexwale, stressed that “[t]he NDP further highlights the need to professionalise the public service, including the creation of capacity and competency, particularly at local government level”.³¹ This study argues that the only way to achieve the latter is by adopting an RBAD in South Africa.

27 Darrow & Tomas 2005:92

28 Darrow & Tomas 2005: 493.

29 National Planning Commission 2012. National Development Plan 2030: Our future-make it work.

30 Presidential Infrastructure Coordinating Commission 2012. A summary of the South African national infrastructure plan. *Presidential Infrastructure Coordinating Commission, South Africa*. Available at <http://www.gov.za/issues/nationalinfrastructure-plan> (accessed 26 February 2020).

31 Sexwale T 2013. Informal settlements a problem. *IOL*. Available at <https://www.iol.co.za/news/politics/informal-settlements-a-problem-sexwale-1488954> (accessed 18 October 2019).

1.5 Research questions

1.5.1 Main question

The main research question of the study is: How can an RBAD contribute to the fulfilment of the rights to adequate housing, health care, food, and social services for informal dwellers in South Africa?

1.5.2 Sub-questions

- a) What are the human rights obligations of the government of South Africa concerning the rights to adequate housing, health care, food, and social security?
- b) What are the challenges experienced by people living in informal settlements that are unique to them and the factors that have an impact on the realisation of their rights?
- c) To what extent are their rights being realised or not being realised?
- d) How does this violation or non-realisation contribute to their overall development and well-being (including the realisation of other human rights); and
- e) What is an RBAD and how can it contribute to the equal fulfilment of the rights of informal settlers in light of the advantages and limitations of this approach?

1.6 Research methodology

For this study, a qualitative approach was employed. According to Denzin and Lincoln, such an approach is a multi-perspectival one that attempts to understand events in their natural setting.³² Therefore, based on the nature of the topic being investigated, a qualitative study, guided by an exploratory, descriptive, and contextual research design was employed.

Moreover, a desktop approach was used to gather information. A desktop approach refers to a study that is carried out exclusively by using publicly available data or information.³³ This methodology was employed to analyse, describe, explain, and conceptualise data. In addition, this study follows a socio-legal approach in which the “analysis of law is directly linked to the analysis of the social situation to which the law

32 Denzin NK 2005. The discipline and practice of qualitative research. In. NK Denzin & YS Lincoln. *Handbook of qualitative research*, 1-42.

33 Management Study Guide 2013. Desk research—methodology and techniques. Available at <https://www.managementstudyguide.com/desk-research.htm> (accessed 18 October 2019).

applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and/or change of the situation”.³⁴

Relevant literature such as international legal sources, including customary international law, treaties, declarations, resolutions, and reports as well as general principles of law, judicial decisions, interpretative human rights instruments, academic works, public policies, stories, and studies on development in South Africa were reviewed.

1.7 Structure of the Mini-dissertation

This mini-dissertation consists of five chapters. The introductory chapter presents the background to the study, the research problem, the research goal and aims, the research questions, the methodology and an outline of the study.

The second chapter provides a historical background of the rights to adequate housing, health care, food, and social security by examining international human rights law treaties, regional and national legislations. It further looks at the obligations of the government to respect, protect, promote, and fulfil human rights.

The third chapter analyses the RBAD framework by illustrating on the one hand, how human rights can improve development programming and, on the other hand, how development can enhance the realisation of human rights.

The fourth chapter examines the quality of life of people living in informal settlements; it focuses specifically on the description and causes of informal settlements. The challenges faced by informal dwellers and the remedial measures employed by the government in response to the growing challenges of informal settlements are also discussed. The concluding chapter presents a summary of the findings and offers recommendations.

34 Schiff DN 1976. Socio-legal theory: social structure and law. *The modern Law review*, 39(3):287-310, 287. Available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1976.tb01458.x#:~:text=According%20to%20a%20socio%2Dlegal,or%20change%20of%20the%20situation.> (accessed 20 October 2020).

CHAPTER 2: CONTENT OF THE RIGHTS OF ACCESS TO ADEQUATE HOUSING, HEALTH CARE, FOOD, AND SOCIAL SECURITY

2.1 Introduction

The notion of human rights is a prominent global phenomenon that has been used to eliminate inequalities, discrimination, and other injustices affecting humankind. Human rights perceive all people as equal without distinguishing, among others, between sex, race, culture and religion.³⁵ Human rights seek to protect people against economic, political, social, and cultural injustices and to ensure that they enjoy the liberties that are essential for well-being and for better living standards. Human rights violations that are related to these liberties are commonly observed in vulnerable communities such as informal settlements and slums, which are quite common to South African societies. The Bill of Rights provides for and guarantees socio-economic rights, civil, and political rights. The government is constitutionally obligated to ensure their full realisation. Section 7(1) of the Constitution reads as follows: “This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom”.³⁶

The enforcement of the right to adequate housing, health care, food, and social security is an essential requirement for the full enjoyment of all fundamental human rights. These rights are constitutionally recognised and guaranteed in sections 26(1),³⁷ and 27(1) of the South African Constitution.³⁸ The obligation of the government to human rights law is thus to respect, promote, protect, and fulfil these rights.³⁹

This chapter contains a comprehensive account of the content on the right to adequate housing, health care, food, and social security. Section 2.2 examines access to adequate housing, health care, food, and social security under international and

35 Ngang 2014: 658.

36 Sec 7(1) of the Constitution of the Republic of South Africa, states that ‘[t]his Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom’.

37 Sec 26(1) of the Constitution of the Republic of South Africa, 1996 states that ‘[e]veryone has the right to have access to adequate housing’.

38 Sec 27 of the Constitution.

39 Fukuda-Parr S 2013. Human rights and politics and development. In M Goodhart 2013. *Human rights: Politics and practice* 2nd ed Oxford University Press: Oxford, 167-170.

regional human rights law. Section 2.3 explores the rights to adequate housing, health care, food, and social security in the South African Constitution. This section further analyses the convergence between the rights in question and other rights. Section 2.4 examines the obligation of the government to ensure the realisation of socio-economic rights in South Africa.

2.2 Access to adequate housing, health care, food, and social security under international and in regional human rights law

The Universal Declaration of Human Rights (UDHR) affirms the rights to adequate housing, health care, food, and social security.⁴⁰ These rights are indivisibly linked to other socio-economic, civil, and political rights.⁴¹ This is enshrined in article 25(1)⁴², which reads as follows:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control.

On the one hand, the socio-economic rights incorporated impose no binding obligations on countries to ensure their realisation due to the fact that the UDHR is just a declaration and not a treaty. On the other hand, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴³ is a legally binding treaty instrument that imposes obligations on state parties to ensure the realisation and protection of the rights contained in it.⁴⁴ South Africa ratified the Covenant in 2015.⁴⁵ The ICESCR

40 UNG Assembly 1948. Universal declaration of human rights. UN General Assembly, 302(2) (adopted on 10 December 1948). http://www.verklaringwarenatuur.org/Downloads_files/Universal%20Declaration%20of%20Human%20Rights.pdf. (accessed 10 February 2020).

41 <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx#:~:text=All%20human%20rights%20are%20indivisible,economic%2C%20social%20and%20cultural%20rights>. (accessed 19 October 2020)

42 Art 25(1) of the UDHR.

43 International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966 and entered into force 3 January 1976). (<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>). (accessed 10 February 2020).

44 Kalantry S, Getgen JE & Koh SA 2010. Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR. *Human Rights Quarterly* 32(15):254-279, 255.

45 Moyo 2016: 7-8.

guarantees the rights to adequate housing, health care, food and social security in articles 9, 11 and 12 respectively.⁴⁶

Furthermore, the African Charter on Human and Peoples' Rights, which was adopted in 1981, affirms that everyone has equal rights by virtue of being human.⁴⁷ Article 16(1) of the Charter notes that everyone has the right to enjoy the best attainable physical and mental health. In addition, article 24 provides that everyone is entitled to an acceptable environment that is favourable to their development.⁴⁸ This is a recognition of the need to have access to adequate housing, health care, food, and social security. The Convention on the Rights of the Child, the Rome Declaration on World Food Security, and the Convention on the Elimination of all Forms of Discrimination against Women also protect the rights to adequate housing, health care, food, and social security.⁴⁹

The United Nations (UN) Declaration on the Right to Development (DRD), which was adopted in 1986, acknowledges the rights described above in article 8.⁵⁰ This declaration emphasises the fact that states should take the necessary measures to ensure the right to development by taking significant steps in providing access to

46 Art 9 states that '[t]he States Parties to the present Covenant recognise the right of everyone to social security, including social insurance'. Art 11 states that '[t]he States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent'. Art 12 provides that '[t]he States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. See also Chowdhury 2012:62; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, available at <https://www.refworld.org/docid/47b17b5b39c.html> (accessed 1 October 2020).

47 African Charter on Human and People's Rights (adopted in 1981 and entered into force on 21 October 1986). Article 16(1) provides that '[e]very individual shall have the right to enjoy the best attainable state of physical and mental health'.

48 Art 24 states that '[a]ll peoples shall have the right to a satisfactory general environment favourable to their development'.

49 De Vos P *et al* 2015. *South African Constitutional Law in Context*. Oxford University Press: Oxford, 676; Convention on the rights of the child (adopted 20 November 1989, entered into force on 2 September 1990); Declaration R 1996. Rome declaration on world food security and world food summit plan of action; UNGA 1979. Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979 and entered into force on 3 September 1981).

50 Declaration on the Right to Development (adopted on 4 December 1989). Art 8(1) states that '[s]tates should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income'.

essential resources, education, food, health care, housing, and a fair share of income.⁵¹

The recognition of the relevant socio-economic rights in the international instruments that have been explored, confirms that they are indeed essential rights for human existence in order to maintain and sustain well-being. These rights are crucial primary tools required to protect the poor who need protection to survive. Although these rights have been fully endorsed in international instruments, the deficit of resources, corruption and maladministration at national level hinder their realisation. Millions of people in South Africa, particularly in underdeveloped communities, are still being denied enjoyment of their fundamental socio-economic rights.⁵²

2.3 The rights to adequate housing, health care, food, and social security in the South African Constitution

The right to housing is a fundamental human right acknowledged both in international human rights instruments and in the South African Constitution.⁵³ Under section 26(1) of the Constitution, everyone has the right to adequate housing. Section 26(2)⁵⁴ stresses that the government must take legislative and other procedures within its means and available resources, to progressively realise the right to housing. Moreover, section 26(3) prohibits all arbitrary evictions. It states that no one may be “evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances”.⁵⁵ The meaning of section 26 and, specifically, section 26(3), has been interpreted in many court cases, including the *Grootboom* case.⁵⁶ In this case, the Constitutional Court found the government's housing programme unreasonable because it made no provision for access to housing for people in need. The Court held that a government programme “must clearly

51 Art 8(2) states that '[e]ffective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices'.

52 Currie I & De Waal J 2013. *The Bill of Rights handbook*. Juta and Company Ltd: Cape Town, 451-573.

53 Dugard J, Clark M & Stuart T 2016. The right to housing in South Africa. *Socio-economic rights: Progressive realisation* 155-262, 156.

54 Sec 26(2) of the Constitution.

55 Williams LA 2013. The right to housing in South Africa: an evolving jurisprudence. *Columbia Human Rights Law Review* 45:817-845, 820-823.

56 *Government of the Republic of South Africa v Grootboom* 2000 (1) SA 46 (CC) para 19-20.

allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available”.⁵⁷

The concept of housing means providing comfort and stability in the form of shelter as a place to sleep, eat, relax, and raise a family.⁵⁸ This implies that a house is a primary element for the realisation of human well-being. Human rights, as mentioned above, are indivisible, interrelated, and interdependent. Therefore, the right to adequate housing cannot be envisaged in isolation without taking into consideration other rights such as health care, food, water, and education.⁵⁹ Moreover, the South African Human Rights Commission (SAHRC) has stressed that the right to housing is inherently linked to broader economic developments such as labour markets, geographical, and migration aspects that affect access to housing.⁶⁰

Similarly, as with the right to adequate housing, South Africa has experienced numerous health issues. Since 1994, the government has been implementing legislation, policies, and programmes to improve access to health care services among vulnerable and impoverished communities in South Africa.⁶¹ Health care services in South Africa have gradually been affected by past racial and gender divisions, by socio-economic conditions, and by several other arbitrary factors.⁶² Previous racial divisions reflect in the current socio-economic fragmentation of health care delivery systems, where a small number of privileged people have broader access to private health insurance and to private health care facilities.⁶³ Unfortunately, a large number of the population solely depend on overstrained and under-resourced

57 *Grootboom* case: para 40; Olivier M 2002. Constitutional perspectives on the enforcement of socio-economic rights: Recent South African experiences. *Victoria University of Wellington Law Review* (33):117-152, 133.

58 South African Human Rights Commission 2016. *The Right to Adequate Housing Factsheet*, 2. Available at <https://www.sahrc.org.za/home/21/files/Fact%20Sheet%20on%20the%20right%20to%20adequate%20housing.pdf> (accessed 3 March 2020).

59 Smith 2007: 43.

60 SAHRC 2016:2.

61 Ebi 2016: 35.

62 Moyo K 2016. Realising the right to health in South Africa. Socio-economic rights-Progressive realisation, 3. Available at <https://www.fhr.org.za/files/7215/1247/1732/Health.pdf> (accessed 30 October 2019).

63 McIntyre, D, Thiede M, Nkosi M, Mutyambizi V, Castillo-riquelme M, Gilson L, Erasmus E, and Goudge J 2007. 'SHIELD work package 1 report: a critical analysis of the current South African Health System'. Available at <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=EC8CF46176281B7F550C45B988D5B882?doi=10.1.1.192.5891&rep=rep1&type=pdf>, 73. (accessed 1 October 2020).

public health care facilities. Moyo⁶⁴ stresses that, although there have been attempts to improve the health care system, the quality of services being provided remain poor. Moreover, many people do not have access to clean water, sanitation, nutrition, and electricity, which is a catalyst for poor health.

Despite increased budgetary allocations in the healthcare sector and despite improved social policies, South Africa has not yet addressed health disparities in society efficiently. Considerable inequities remain that are primarily due to biases in resource allocation. However, section 27(1) of the Constitution guarantees that everyone has the right to access health care services.⁶⁵ The right to have access to health care services, including reproductive health care, is intended to advance the quality of life and living standards of all South African citizens.⁶⁶ Moreover, section 27(1)(b) stresses that no person can be denied emergency medical treatment. Access to health services is furthermore provided in section 28(1)(c), which guarantees that every child has a fundamental right to access health care services. De Vos *et al* state that section 39(1)(a)⁶⁷ of the Constitution requires us to “promote the values that underlie an open and democratic society based on human dignity, equality and freedom when interpreting the Bill of Rights”.⁶⁸ This shows that the government has the primary duty to ensure that the right to health care is realised. For example, the government is obligated to take measures, to consider available resources, to provide accessible health facilities such as clinics and hospitals, and to provide affordable health care for the poor and the vulnerable.⁶⁹

Regarding the right to food, millions of people around the world go to sleep on an empty stomach. Hunger and other associated aspects are of global concern. An estimated 870 million people are believed to be affected by hunger, especially in

64 Moyo BH 2016. *Advocating for the right to food in South Africa-an analysis of judicial activism, public interest litigation and collective action in South Africa as a strategy to secure the right to food*. Doctoral dissertation, University of the Witwatersrand, Johannesburg, 27. Available at <http://wiredspace.wits.ac.za/handle/10539/21891> (accessed 25 October 2019).

65 Sec 27(1) of the Constitution.

66 The South African Human Rights Commission 2018. *Access to health care: final Access to Health Care Educational Booklet*, 3. Available at <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> (accessed 3 March 2020).

67 Sec 39(1)(a) of the Constitution states that ‘[w]hen interpreting the Bill of Rights, a court, tribunal or forum—(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom’.

68 De Vos *et al* 2015: 670.

69 De Vos *et al* 2015: 670.

developing nations.⁷⁰ Similarly, many South Africans, including children, are faced with challenges brought about by hunger. The situation is worse in rural areas and in informal settlements. The food plight, which is a global phenomenon, has led to the recognition and protection of the right to food.⁷¹

The right to food is guaranteed both in international law instruments and in the South African Constitution. It is affirmed in section 27(1)(b) of the South African Constitution, which states that “[e]veryone has the right to have access to sufficient food and water”.⁷² The right to food also includes the right to assist those who are not able to take care of themselves. However, this assistance should take place in a dignified manner. Furthermore, the right to food includes access to land, security and prosperity, and access to water and seeds, to mention but a few.⁷³

Moreover, section 27(1)(c) further affirms that everyone has the right to have access to “social security, including, if they are unable to support themselves and their dependents, appropriate social assistance”.⁷⁴ The government further has a duty to take right-based legislative and other measures within its available resources to achieve the progressive realisation of this right.⁷⁵ Unlike adults, children have rights to claim directly from social security and the right to social services. It is entrenched in a cluster of other economic and social rights granted to children, as stipulated in section 28(1)(c) of the Constitution. This section provides that every child has the right to adequate nutrition, essential health care services, and social services.⁷⁶ According to Plagerson and Ulriksen, social security is a way of redressing the injustices that have happened in the past. However, poverty and inequality in South Africa have continued to worsen by constraining the realisation of the right to social security and assistance;

70 Durojaye E & Chilemba E 2018. Accountability and the right to food: *A comparative study of India and South Africa*, 1-37, 1.

71 MacLaren D, Moyo B & Jeffery J 2015. The right to food in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to food. *Johannesburg, South Africa: Studies in Poverty and Inequality Institute Working Paper*, 36.

72 De Schutter O 2012. *From charity to entitlement: Implementing the right to food in Southern and Eastern Africa* (Vol. 5). Briefing Note No. 6. Special Rapporteur on the right to food – OHCHR.

73 Durojaye & Chilemba 2018:2.

74 Sec 27(1)(c) of the Constitution.

75 Olivier M & Van Rensburg LJ 2009. Protection and enforcement of the right to social security. *Law, Democracy & Development*, 4(1): 87-99, 90-91.

76 Sec 28(1)(c) of the Constitution states that ‘[e]very child has the right to basic nutrition, shelter, basic health care services and social services’.

many people remain trapped in the cycle of poverty and inequality.⁷⁷ Consequently, the affected groups are further exposed to discrimination, isolation, and extreme hardship.⁷⁸

2.3.1 Convergence between the right to adequate housing, health care, food and social security, and other fundamental rights in the South African Bill of Rights

The 1948 UDHR stresses that all human rights are indivisible, interrelated, and interdependent in nature.⁷⁹ It implies that human rights cannot be conceived or function in isolation, each one influences the other. In other words, the realisation of a specific right substantially affects the achievement of other rights and, consequently, the well-being of humans.⁸⁰ Similarly, the violation of one right leads to the breaching of other rights. For example, deprivation from food can have an impact on a person's health and thus on their right to the highest standard of attainable health.

Under the South African constitutional dispensation, it is demonstrated that no right can be enjoyed to the exclusion of other rights. The Constitution does not distinguish between socio-economic, civil, and political rights. In other words, the Constitution affirms that all human rights are accorded the same status. This implies that the rights to access adequate housing, health care, food, and social security interrelate with other rights as they would require a particular set of rights enshrined in the Constitution to be enforced.⁸¹ The Court's decision in *Ngalo v South African Social Security Agency (SASSA)*,⁸² demonstrates the interrelatedness of the rights. Moreover, the Constitutional Court's decision in *Grootboom*,⁸³ equally stresses that the Constitution supports and has a substantial impact on the dignity of peoples and on their quality of

77 Plagerson S & Ulriksen MS 2017. The right to social security in South Africa. *In Socio-economic Rights: progressive realisation* (457-516). Foundation for Human Rights, 7.

78 Du Plessis P & Conley L 2007. Children and poverty in South Africa: *The right to social security. Educational Research and Reviews*, 2(4): 049-059, 049.

79 The preamble recognises that '[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. See also Alston P & Goodman R 2013. *International human rights*. Oxford University Press: Oxford, 139.

80 Killander M 2008. International human rights in context - Law, politics, morals. In Alston P & R Goodman: recent publications. *African Human Rights Law Journal*, 8(2), 617-619.

81 Moyo 2016: 41.

82 *Ngalo v South African Social Security Agency* (2740/11) [2013] ZAECMHC 4 [2013]: para 26.

83 *Government of the Republic of South Africa v Grootboom* 2000 (1) SA 46 (CC): para 19-20.

life.⁸⁴ It is therefore within the powers of the government as duty-bearers to ensure the full respect, protection, promotion, and enforcement of all human rights equally.

2.4 Constitutional obligations of the state

According to Ngang⁸⁵, socio-economic rights are a matter of obligation and a rule of law that must be fulfilled. The government as the primary duty-bearer of the rights to adequate housing, health care, food, and social security must respect, protect, promote, and enforce all human rights enshrined in the South African Constitution. The government should not, at any given time, compromise the rights of the people or render these difficult to realise. Section 7(2) of the Constitution states that “[t]he State must respect, protect, promote and fulfil the rights in the Bill of Rights”.⁸⁶ These duties prevent the government from interfering with the enjoyment of individual human rights. Moreover, they force the government to take the requisite measures to achieve these rights.⁸⁷

Concerning the obligation to respect, the government must not arbitrarily deprive or deny access to socio-economic rights. Courts have, on many occasions, dealt with the obligation to respect. For example, the Constitutional Court in the *Grootboom* case held that the government neglected its duty to respect the rights of the occupiers of privately owned land. Occupiers were evicted from their homes earlier than the date ordered by the court and under circumstances that saw settlers’ homes destroyed.⁸⁸

Regarding the obligation to protect, the government must draft and implement legislation that prevent people or organisations such as banks, insurance companies, employers, and landlords from violating socio-economic rights. For example, the government should protect the right to food as a negative right by passing and enforcing laws to prevent individuals and companies from violating this right. The government must also enforce these laws by establishing bodies that will investigate and provide effective remedies should these rights be violated.⁸⁹

84 Ebi 2016: 44.

85 Ngang 2014: 662.

86 Sec 27(2) of the Constitution.

87 Khoza S 2007. *Socio-economic rights in South Africa: A resource book*. Community Law Centre, University of the Western Cape, 35.

88 *Government of the Republic of South Africa v Grootboom*, 2000 (1) SA 46 (CC).

89 Welch AR 2005. Obligation of State and Non-state Actors Regarding the Human Right to Water Under the South African Cohabitation, *Sustainable Development Law & Policy*, 62; Landman T

Similarly, the government has a duty to promote means of ensuring that it remains active to increase an awareness of socio-economic rights. This includes educating people about policies and programmes that will help them in having access to their socio-economic benefits. For example, the government may use media outlets to inform people about their rights and about how and where to go in order to claim them. As such, the obligation to promote compels the government to create a conducive environment that enables right holders to claim and exercise their rights. This is only achievable when the government creates sufficient awareness of human rights by educating the public about their rights and about how to seek redress when there has been a violation.⁹⁰ Attention should be drawn to an over-dependence on the law, as the option of engaging in legal processes to claim rights can be lengthy, expensive, and often not accessible to those most in need.⁹¹

The duty to fulfil means that the government must take steps to assist people without housing, health care, food, water, and social security to gain access to these rights. It is clear that the full realisation of these rights in South Africa cannot be achieved overnight because of the large backlogs inherited from apartheid and due to current poverty levels. The Constitution recognises that fully realising socio-economic rights is a long-term process.⁹² Sections 26 and 27 describe the duty of the government to fulfil socio-economic rights: “The State must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of each of these rights”.⁹³ Taking measures within available resources acknowledges that resources are not limitless and that the government must do as much as possible with the resources available.⁹⁴

This wording is very similar to the wording of article 2 of the ICESCR that sets out the duties of states that are party to the Covenant. The Constitutional Court has developed guidelines that can assist in understanding what is meant by the duty to “take

2004. Measuring human rights: Principle, practice, and policy. *Human Rights Quarterly*, (26):908-931, 906.

90 Mubangizi JC 2004. Protection of human rights in South Africa: public awareness and perceptions. *Journal for Juridical Science*, 29(1): 62-87.

91 Ebi 2016:123.

92 Kende M S 2003. The South African Constitutional Court's embrace of socio-economic rights: A comparative perspective. *Chapman Law Review*, (6):137-160, 139.

93 Sec 27(2) of the constitution.

94 De Vos *et al* 2015: 684.

reasonable measures”, which includes the obligation of the government to involve the public in developing critical social policies or legislation.⁹⁵

Concerning the socio-economic rights in sections 26(2) and 27(2), the government is mandated to take legislative and other measures to ensure that the entitlements imposed by the rights are progressively realised.⁹⁶ The government thus holds the primary mandate to engage in policy formulation and in decision-making about the progressive realisation of these rights. The government has to provide coherent and flexible plans and measures to make these rights achievable. The plans must include concrete targets and goals that are linked to timeframes. This allows the government to plan and monitor its own progress. In addition, proper planning helps human rights organisations such as the SAHRC, non-governmental organisations (NGOs), and the general public to monitor and hold the government accountable to its commitment to ensure the realisation of socio-economic rights.⁹⁷ However, Ngang poses a pertinent question about what would happen when the government fails to live up to expectations in response to the constitutional duty to enforce the socio-economic rights, but instead uses its powers to subjugate the people.⁹⁸

The Constitution contains all the answers. Section 8(1) orders the judiciary to ensure that the rights contained in the Constitution are fulfilled.⁹⁹ In addition, all the branches of the government are bound by the Bill of Rights to fulfil human rights. Section 34¹⁰⁰ states that everyone should have access to courts. This is applicable where individuals, groups, or the community feel that their rights are violated or not met. Section 38¹⁰¹ also allocates extensive remedial powers to the courts to provide appropriate relief when an infringement or threatened violation of a right is established.¹⁰²

95 Khoza 2007: 37.

96 Sec 26(2) and 27(2) of the Constitution.

97 Khoza 2007: 40.

98 Ngang 2014: 662.

99 Sec 8(1) of the Constitution.

100 Sec 34 of the Constitution states that '[e]veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'.

101 Sec 38 of the Constitution states that '[a]nyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights'.

102 Ngang 2014: 663.

2.5 Conclusion

This chapter has examined the content of the rights to adequate housing, health care, food, and social security. Access to adequate housing, health care, food, and social security are some of the most significant human rights that have the potential to restore human dignity and, consequently, human well-being. These rights are protected in many international human rights instruments such as the UDHR and the ICESCR, in regional instruments such as the African Charter on Human and Peoples' Rights, and in the South African Constitution. These rights also interlink with other human rights, including civil and political rights. As affirmed in the UDHR, human rights are indivisible, interrelated and interdependent. Thus, they ought to be respected, protected, promoted, and fulfilled equally and simultaneously.

However, with many socio-economic issues experienced by South Africans, particularly by the poor black communities, one would question the government's role in respecting, promoting, protecting, and enforcing these rights. The following chapter focuses on the RBAD. It explains how the adoption of such an approach could enhance development and increase the realisation of socio-economic rights in South Africa.

CHAPTER 3: THE RIGHTS-BASED APPROACHES TO DEVELOPMENT

3.1 Introduction

Human rights and development have been understood as diverging notions with no compatibility for an extended period of time.¹⁰³ Historically, development was only considered for its role in advancing the economic growth and wealth of individual countries; it had no connection with human development and well-being. In 1945, development became a central theme of the UN after the adoption of the UN Charter and, for the first time, of the international community.¹⁰⁴ Furthermore, the link between human rights and development was acknowledged.¹⁰⁵ Human development became central to the realisation of human rights. After many years of the development and the human rights debate, it was agreed that human rights standards and principles are indeed reinforcing. In the 1990s, an RBAD¹⁰⁶ emerged and changed the global order of development.¹⁰⁷

In this chapter, it is argued that in the quest for improving living conditions of the poor and marginalised (the informal dwellers), human rights and development cannot be understood as separate notions. Furthermore, it is argued that development and human rights share the same goals namely, to promote the dignity and worth of a human being by creating an environment in which people can reach their full potential.¹⁰⁸

To critically examine the significance of an RBAD, it is important to understand the process that leads to its emergence. Section 3.2 of this chapter examines the convergence between human rights and development, Section 3.3 provides the definition and underlying principles inherent to an RBAD, while Section 3.4 examines the advantages inherent to an RBAD. To evaluate the significance of such an

103 Sano HO 2000. Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development. *Human Rights Quarterly* 22. 734–752, 739.

104 Jackson P 2007. A Prehistory of the Millennium Development Goals: Four Decades of Struggle for Development in the United Nations. *United Nations Chronicle* XLIV(4):7-9, 7, 7.

105 Uvin P 2007. From the Right to Development to the Rights-based Approach: How “Human Rights” Entered Development. *Development in Practice* 17(4-5):597-606, 597.

106 Marks SP 2003. The Human Rights Framework for Development: *Seven Approaches*. Reflections on the Right to Development. India: SAGE Publications.1-29, 5.

107 Sano 2000: 751.

108 Marks 2003: 1-2.

approach accurately, Section 3.5 explores the limitations and critique that have been raised against the RBAD.

3.2 The convergence between human rights and development

After many years of discussions about the relationship between human rights and development, an RBAD came into existence. The emergence of an RBAD has resulted from the recognition of the link between human rights and development. Human rights became a central factor in bringing about a socially oriented order.¹⁰⁹ Development was perceived as a process of change and human rights were suited to give meaning to the process of change by incorporating human rights, norms, obligations, and principles to influence the outcome of development programming.¹¹⁰ The inclusion of human rights, norms, standards, and principles was recognised in the 1990s as a significant aspect to advance development policies and planning. It was argued that human rights had the capacity to influence policy content and to provide a conceptual framework for guiding development and execution.

Since then, the RBAD has gained global recognition and it has extended over the years as a vital developmental tool for promoting human development and well-being.¹¹¹ Darrow and Tomas¹¹² reminds us that integrating human rights, norms, and standards into development is fundamental and that their integration will enhance the potential of enjoying human rights in the development process.

The link between human rights and development was first formally recognised in article 22 of the African Charter, which was adopted in 1981.¹¹³ Moreover, the UN Declaration on the Right to Development (DRD) recognised development as an inalienable human right. According to the Declaration, development is defined as

[a]n inalienable human right under which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realised.¹¹⁴

109 Sano 2000: 740-741.

110 Banik D 2010. Support for Human Rights-based Development: Reflections on the Malawian Experience. *The International Journal of Human Rights* 14(1):34-50, 37-38.

111 De Man 2019:460; UNDP 2000: 21.

112 Darrow & Tomas 2005:501.

113 *African Charter on Human and People's Rights* (adopted in 1981 and entered into force on 21 October 1986).

114 Declaration of the right to development.

The right to development integrates the norms, standards, and principles of the international human rights systems into development policies and processes. Thus the right to development has given meaning to the notion of people-centred development and human empowerment.¹¹⁵

In addition, the right to development emphasises the primary role of the government in creating favourable conditions for the realisation of the right to development at national and at international levels.¹¹⁶ In other words, the essential aim of this right is to achieve the highest standard of living at a local level through support from national and international development actors.¹¹⁷ This includes fulfilment of the right to adequate housing, healthcare, food, and social security and the right to equitable benefit from development processes that improve human freedom, well-being and to realise their value.¹¹⁸ Article 2 of the DRD recognises that “[t]he human person is the central subject of development and should be an active participant and beneficiary to the right to development”.¹¹⁹

Although development has gained a new tone from the recognition of the right to development as a composite and multifaceted human right compatible with other human rights.¹²⁰ The right to development and human rights-based approach appear to be mutually reinforcing and may have positive effect if properly developed.¹²¹ The realisation of the right to development requires the implementation of a rights-based approach. The two notions puts the individual in the center of action for realisation of their rights. It stresses that individuals and peoples in the process of development should be viewed as subjects, but not objects.¹²² For example, people are entitled not only to participate effectively in consultation processes for the implementation of development policies to be applied, but also to make their own contribution to the

115 Marks 2003: 15.

116 Piovesan & Fachin 2018:2.

117 Ngang CC & Ageh PA 2019. Intellectual property protection of African traditional medicine within the legal framework of the right to development. *African Journal of International and Comparative Law*, 27(3):426-445. 437.

118 Sengupta A 2001. Right to development as a human right. *Economic and Political Weekly Vol. (36)*. 27, 2527-2536, 2529; Osmani SR 2000. Human Rights to Food, Health, and Education. *Journal of Human Development* 1(2):273-298, 120.

119 Seabrook J 2009. *The no-nonsense guide to world poverty*. Oxford: New Internationalist. 27.

120 Piron LH 2002. *The right to development: a review of the current state of the debate for the department for international development*, 31.

121 Hayrapetyan A 2011. The Right to Development and Rights-Based Approach to Development: Two Mutually Reinforcing Concepts?. *European Union Foreign Affairs Journal*, 32.

122 Hayrapetyan 2011:41.

establishment of their own development policies in the form of active involvement in decision-making.¹²³ This involvement enables the government to reshape and apply human rights norms and standards in the implementation of any development agenda in the territory of its jurisdiction in accordance with national development policies.¹²⁴

However, critiques argue that the right to development has limited powers to bring about effective change. This is because the right to development as it is formulated in the Declaration, is non-binding and it carries no legal obligations at international level.¹²⁵ For example, the right to development have no clear textual presence in many constitutions including that of South Africa.¹²⁶ Though the South African 1996 Constitution does not mention the right to development as a human right, however, the Bill of Rights guaranteeing socio-economic rights comprises the protection of the right to development.¹²⁷

In 1995, the relationship between human rights and development was sustained after the publication of *The Rights Way to Development*¹²⁸ by the Human Rights Council of Australia. It considered development activities as an integral part of human rights work.¹²⁹ In support of these views, article 10 of the 1993 Vienna Declaration of Human Rights,¹³⁰ recognises that development forms part of the human rights framework.

Moreover, during the 1990s human rights proponents argued that the creation of opportunities for people and groups to participate in development is a human right. Furthermore, human rights and development work closely together in various aspects concerning the same target groups to advance human development and the well-being of people. To some extent, both human rights and development seek to empower those who are excluded and disadvantaged by processes that affect their lives. Thus, the link between human rights and development is understood to create

123 Hayrapetyan 2011:41.

124 Hayrapetyan 2011:33.

125 Uvin 2007:598; Sano 2000:738.

126 Shai I 2019. The right to development, transformative constitutionalism and radical transformation in South Africa: Post-colonial and de-colonial reflections. *African Human Rights Law Journal*, 19(1):494-509, 507.

127 Kamga SD 2018. *The right to development in the African human rights system*. Routledge, 210.

128 Human Rights Council of Australia (eds) 1995. *The Rights Way to Development: A Human Rights Approach to Development Assistance: Policy and Practice*.

129 Human Rights Council of Australia 1995.

130 Declaration, Vienna Programme of Action 1993. UN GAOR. In World Conference on Human Rights, 48th Session, 22d plenary meeting, UN Doc. A/CONF (Vol. 157, 24).

conditions in which human rights can be realised.¹³¹ For example, human rights are not only recognised to protect individuals and groups against those in power but they also oblige the government to create decent living conditions for citizens.¹³²

3.3 The rights-based approach to development: Definition and principles

3.3.1 Definition of a rights-based approach to development

The RBAD was formally recognised at the 1993 Vienna World Conference on human rights in that “development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”.¹³³ At the conference, it was also reaffirmed that all human rights are of equal worth, validity, and that they are interconnected. The recognition of human rights principles such as participation, equality and non-discrimination as well as accountability in the area of development, laid the foundation for the emergence of the RBAD (also referred to as development based on human rights).¹³⁴

The RBAD has been defined in many ways. On the one hand, Gauri and Gloppen¹³⁵ define an RBAD as principles that justify demands against privileged actors and that are made by the poor or by those acting on their behalf using national or international instruments to protect the disadvantaged. On the other hand, Darrow and Tomas define an RBAD as “a framework for understanding and managing the negative impacts of discrimination and disempowerment, not a one-dimensional and static formula”.¹³⁶ In addition, the UN Research Institute for Social Development defines an RBAD as “[a] conceptual framework that is capable in all development fields, and that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”.¹³⁷

The RBAD treats international human rights law as an essential conceptual framework which is accepted by the international community and which can give a coherent

131 McInerney-Lankford 2009 53.

132 Sano 2000:741.

133 World Conference on human rights (1993) at para 8; Payne & Phillips 2010:122.

134 Darrow & Tomas 2005:497.

135 Gauri & Gloppen 2012:3.

136 Banik 2010:38.

137 UN Research Institute for Social Development (UNRISD) 2016. The human rights-based approach to social protection “Issue Brief 2”. Geneva, 1. Available at [https://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument](https://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument) (accessed on 02 September 2020).

system of principles and norms in the development arena.¹³⁸ Following this approach, principles such as equality and non-discrimination are included in developmental policies and strategies.¹³⁹ Therefore, development plans, policies, and projects that are anchored in a system of human rights will correspond with obligations established in international law. Uvin asserts that an RBAD motivates a redefinition of the nature of the problem. In addition, the aims of the development initiative, when translated into claims, duties, and mechanisms, can promote respect and determine the violation of rights.¹⁴⁰ The protection of human rights helps in: promoting sustainability; empowering the marginalised; participating in policy development; and holding those who must act accountable.¹⁴¹ The 2003 UN *Statement of Common Understanding* also confirms that all UN development programmes have sought to further the realisation of human rights as laid down in the UDHR and in other international human rights instruments.¹⁴²

3.3.2 Principles of the rights-based approaches to development

3.3.2.1 Participation

For a full implementation of the human rights framework for development, participation of people affected by development is compulsory for planning and decision-making. The nature of participation as a human right means that the government has to encourage, promote, and ensure free, meaningful, and active participation of all individuals and groups in the execution and evaluation of the development process.¹⁴³

Participation can be used as a method to measure and identify needs and priorities at the local level. This also includes political participation, which requires institutionalised participation such as periodic elections and social participation. It also affords people

138 Abramovich 2006:34; McInerney-Lankford 2009:73.

139 Abramovich 2006:35.

140 Uvin 2007:602.

141 Abramovich 2006:36-37.

142 3-5 May UN 2003. The human rights-based approach to development cooperation: towards a Common Understanding among UN Agencies. Interagency Workshop on a human rights-based approach. Available at https://unsdg.un.org/sites/default/files/The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (accessed on 02 September 2020).

143 Piovesan & Fachin 2018:4; Filmer-Wilson 2005:216-217.

the opportunity to exercise certain essential rights such as the right to association and assembly, freedom to unionise, and freedom of speech and information.¹⁴⁴

For effective participation, essential preconditions should be met and human rights should be fulfilled. Citizens should be equally empowered to claim their rights and they should be given a chance to partake effectively in decision-making processes that affect their lives.¹⁴⁵ For example, they could be active in planning, designing, and executing programmes aimed at meeting their needs. In following an RBA, organisations and other duty-bearers shift from being executors to being facilitators of the development process.¹⁴⁶ The power of the marginalised lies in the strength to participate in their development process, because being able to influence the development process puts the poor and marginalised in a better position to assert their socio-economic rights.

Finally, not only should participation contribute to the success of development programmes, it also “involves conflict, and demands a capacity to analyse, negotiate, and alter unequal relations at all levels”.¹⁴⁷ It should therefore be understood as a process of nurturing fundamental consciousness and decision-making as the basis of active citizenship.

3.3.2.2 Empowerment

An RBAD aims to achieve empowerment through the recognition of rights. It is believed that once this concept has been implemented in a policy context, the focus of policy-making will not be limited to a specific portion of the society with unmet needs. Rather, it will include all who have enforceable rights.¹⁴⁸ Empowerment is a process of increasing interpersonal or political power so that individuals, families, and communities can take action to improve their situations. It guarantees the freedom of all to enhance their choices.¹⁴⁹

144 Abramovich 2006:43-44.

145 Osmani 2000:122.

146 Filmer-Wilson 2005:218-219.

147 Darrow & Tomas 2005:506; Kindornay S, Ron J & Carpenter C 2012. Rights-based approaches to development: Implications for NGOs. *Human Rights Quarterly* 34(2):472-506, 477-480. Available at <http://muse.jhu.edu/journals/hrq/summary/v034/34.2.kindornay.html> (accessed 22 May 2020).

148 Abramovich 2006:36-37.

149 Uvin 2007:601.

An RBAD strives to restore dignity and respect for the inherent worth of individuals, groups, and communities affected by poverty.¹⁵⁰ The empowerment of disadvantaged and excluded sectors in the community comes from the recognition of their rights with corresponding legally binding obligations to the government.¹⁵¹ An RBAD empowers people to claim their entitlements because “what was once understood as ‘charity’ becomes ‘justice’ from the corresponding duty-holder”.¹⁵²

Therefore, people are no longer human beings “with needs who receive welfare benefits or other forms of discretionary provision, but possessors of rights who have the legal and social power to demand certain forms of behaviour from the State”.¹⁵³ Darrow and Tomas maintain that empowerment suggests the following variety of programme priorities:

1. Education and access to information
2. strategies for inclusion and participation in decision making and local and national level priority setting
3. accountability of government officials, public employees, and private actors, and
4. the building of local organisational capacity.¹⁵⁴

The recognition of rights means establishing legal measures to enable their holders to strive for redress if these are not fulfilled by the duty-bearers and to be able to hold the duty-bearers accountable.¹⁵⁵ In other words, the possessors of the rights will be empowered in a way that can restore balance in social situations that manifest noticeable inequalities.¹⁵⁶

3.3.2.3 Equality and non-discrimination

Inequality and discrimination is a major global crisis. However, the human rights framework brings to the development process the principle of equality and non-discrimination to ensure fair and balanced development programming. The government is required to not only commit to non-discrimination but also, to some degree, adopt affirmative measures to guarantee the inclusion of population groups or sectors that have traditionally been discriminated against.¹⁵⁷

150 Filmer-Wilson 2005:217-218.

151 Abramovich 2006:34.

152 Filmer-Wilson 2005:217.

153 Abramovich 2006:38, states that ‘people with needs who receive welfare benefits or other forms of discretionary provision, but possessors of rights who have the legal and social power to demand specific forms of behaviour from the State’.

154 Darrow & Tomas 2005:494-495.

155 Gready 2008:736.

156 Abramovich 2006:38-39.

157 Abramovich 2006:43; Gasper 2004:1-2.

Several international human rights instruments give guidelines for the promotion of equality and non-discrimination. Article 2 of the UDHR declares that everyone is free to claim their rights without any denial based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁵⁸ Resembling statements can be drawn from the International Covenant on Civil and Political Rights (ICCPR)¹⁵⁹ and from the ICESCR.¹⁶⁰ Moreover, article 20(2) of the ICCPR and article 10(3) of the ICESCR emphasise commitment to reject any form of discrimination in the recognition, promotion, and protection of all human rights.¹⁶¹

The principle of equality and non-discrimination places the focus on vulnerable individuals and on groups such as women, children, and refugees.¹⁶² The government has to establish regulations that will protect its citizens against discrimination and it has to adopt exceptional measures that involve active protective policies.¹⁶³ Programmes seeking to empower local people should be clear and they should safeguard against potential discrimination between among others, women and men, landowners and peasants, and workers and employers.¹⁶⁴

158 Universal Declaration of Human Rights (adopted on 10 December 1948), Art 2 states that '[e]veryone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'; United Nations High Commissioner for Human Rights (UNOHCHR) Economic, social and cultural rights: annual report 2004 implementation of activities and use of funds, 143.

159 International Covenant on Civil and Political Rights (adopted on 16 December 1966 and entered into force on 23 March 1976). (<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>).

160 International Covenant on Civil and Political Rights (adopted on 16 December 1966 and entered into force on 23 March 1976), Art 2(1) states that '[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966 entered into force on 3 January 1976), Art 2(2) states that '[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'; Oberleitner G 2006. 'International human rights Lexicon'. *The Modern Law Review*, Vol. 69, No. 6. 1035-1037. Available at <https://www.jstor.org/stable/4123375> (accessed 11 July 2020).

161 Smith & Van den Anker 2005:269-272; Art 20(2) states that '[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. (ICCPR); Art 10(3) states that '[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions'. (ICESCR).

162 Abramovich 2006:42.

163 Osmani 2000:123-124.

164 Darrow & Tomas 2005:505.

According to Abramovich, the inclusion of the principle of equality and non-discrimination in development processes can “influence the budget allocation and social spending criteria”.¹⁶⁵ According to this view, the principle is sufficient enough to influence public policy reviews.¹⁶⁶ Similarly, the addition of the principle of equality in development policies and strategies will ensure that vulnerable and marginalised groups enjoy their human rights.¹⁶⁷ The aim of this principle is to ensure that the benefits or successes of development processes are equally distributed. It is important to note that both direct and indirect discrimination should be taken into consideration when ensuring equitable development programming.¹⁶⁸

3.3.2.4 Accountability

In many development projects and programmes, there has been a dearth of accountability for failed projects. Assigning direct accountability has been a challenge in all areas of development, including development projects of governments, international agencies and financial institutions, local businesses, and associations.¹⁶⁹ However, adopting an RBAD brings legal obligations which ensure that all duty bearers are accountable for their actions in development programming. In the application of an RBAD, the need for accountability is central and, in turn, this emphasis entails commitment.¹⁷⁰

The RBAD views development issues as matters of rights and duties, rather than as a matter of charity. It strengthens the level of accountability in the development process by linking claim holders and duty-bearers.¹⁷¹ Also, the principle of accountability deepens existing accountability measures and it helps in filling some of the perceived accountability gaps in horizontal (state to state) and in vertical (citizens)

165 Abramovich 2006:43; Fukuda-Parr 2013:170.

166 McInerney-Lankford S & Sano HO 2010. *Human rights indicators in development: an introduction*. The World Bank. Washington D.C. 97-100.

167 Alston P 2005. Ships passing in the night: The current State of the human rights and development debate seen through the lens of the Millennium Development Goals. *Human Rights Quarterly* 27(3):755-829, 801-805.

168 Darrow & Tomas 2005:506.

169 Darrow & Tomas 2005:488; Banik 2010:46-47.

170 Osmani 2000:123; Sano 2000:745-747.

171 Cornwall A & Nyamu-Musembi C 2004. Putting the “Rights-Based Approach” to development into perspective. *Third World Quarterly* 25(8):1415-1437, 1426-1428; Darrow & Tomas 2005:511; Alston 2005:805.

relationships.¹⁷² The collection of high quality, timely, and reliable data from all aspects of the development process as required in an RBAD, contributes to accountability.

The relationship between the government and citizens are at the heart of the principle of accountability.¹⁷³ The latter ought to be able to participate so that those directly affected by policies can hold their government or agencies acting on their behalf accountable. Effective accountability measures can be, among others, judicial, administrative, and/or community-based. Similarly, international and regional treaties adopted by states bind the government to international accountability for the realisation of human rights.¹⁷⁴ People affected by development processes should be able to demand accountability “to a due process, and it should refer as far as possible to specific rules, results, or behaviours that are objectively set and agreed upon with the participation of those involved or affected by a particular situation”.¹⁷⁵

3.4 Advantages of the rights-based approach to development

An RBAD has numerous advantages that embed vital aspects to improve development programming. It provides a conceptual and normative framework which is clear and which gives direction for more effective development programming.¹⁷⁶ By providing a clear conceptual and normative framework, an RBAD makes it easier to clearly define the obligations that rest upon duty-bearers.¹⁷⁷ On the one hand, Darrow and Tomas argue that the RBAD brings a normative and instrumental approach to development. The normative-based approach ensures that human rights form a compulsory part of an operational frame of reference through legal and moral obligation.¹⁷⁸ Normative standards indicate that human rights are ends in their own right and that they must be given distinct and clear consideration in development processes.¹⁷⁹ In terms of the

172 McInerney-Lankford 2009:75.

173 Nabarro D 2016. Transforming our world: How sustainable development will help us achieve zero hunger. *International Food Policy Research Institute, book chapters 22-27, 23-27*; Filmer-Wilson 2005:217.

174 Osmani 2000:123.

175 Darrow & Tomas 2005:519, states that ‘[a]ccountability should be demanded and accorded by reference to a due process. It should refer as far as possible to specific rules, results, or behaviours that are objectively set and agreed upon with the participation of those involved or affected by a particular situation’.

176 Gready P 2009. Reasons to be cautious about evidence and evaluation: Rights-based approaches to development and the emerging culture of evaluation. *Journal of Human Rights Practice* 1(3):380-401, 387; Abramovich 2006:34.

177 Abramovich 2006:34.

178 Darrow & Tomas 2005:492

179 Darrow & Tomas 2005:492; Banik 2010:37; Sano 2000:748-750.

specific impact on development, Darrow and Tomas identify five distinctive features of an RBA:

(1) A solid normative basis for values and policy choices that otherwise are more readily negotiable; (2) a predictable framework for action, with the advantage of objectivity, determinacy, and the definition of appropriate legal limits; (3) a quintessentially empowering strategy for the achievement of human-centred development goals; (4) a ready legal means to secure redress for violations; and (5) a secure basis for accountability, not only for the state party concerned but also for a significantly wider range of actors in international development cooperation.¹⁸⁰

On the other hand, the instrumental approach stems from a conviction that an RBAD produces more effective human rights ideas in development programming to reach the marginalised and to improve their living conditions.¹⁸¹

The 1990s were full of excessive inequalities on economic and on political fronts. Many people remained excluded in development processes. An RBAD is particularly suitable to ensure that the weakest and most excluded citizens have access to essential services such as adequate housing, health care, water, sanitation, and education. The introduction of an RBAD has been a positive step towards the elimination of inequalities through its foundational principles of equality and non-discrimination, empowerment, participation, and accountability.¹⁸² These human rights principles deal specifically with inequalities in resource allocation and in the distribution of wealth, which plays a significant role in poverty eradication.¹⁸³ In an RBAD, gaps can be identified and addressed where poor and marginalised groups

180 Darrow & Tomas 2005:485.

181 Darrow & Tomas 2005:493.

182 Banik 2010:35.

183 Schmidt-Traub G 2009. The Millennium Development Goals and human rights-based approaches: moving towards a shared approach. *The International Journal of Human Rights* 13(1):72-85, 79; Dorsey E, Gómez M, Thiele B & Nelson P 2010. Falling short of our goals: Transforming the Millennium Development Goals into Millennium Development Rights. *Netherlands Quarterly of Human Rights* 28(4):516-522, 516; Hickey S & Mitlin D 2009. *Rights-based approaches to development: Exploring the potential and pitfalls*. Sterling: Kumarian Press, 12.

have been overlooked.¹⁸⁴ Employing such an approach prioritises these gaps and addresses the needs of the vulnerable and the excluded.¹⁸⁵

In an RBAD, goals are required to be met in a fair, equitable, and sustainable manner.¹⁸⁶ To achieve this, governments and other development bodies are required to monitor and report on the duration of their achievements and to empower people to hold duty-bearers accountable where progress is not upheld.¹⁸⁷ An RBAD enables development processes to be monitored through the lens of human rights.¹⁸⁸ This ensures that grievances of the disadvantaged sectors, which are caused by political actors who are advancing their political agendas, are minimised.¹⁸⁹ For example, the application of an RBAD by a local Ugandan newspaper aimed at minimising corruption by providing information to schools and parents in order to evaluate public funds expenditure of local educational officers. This application reduced the capture of public funds and increased student enrolment and learning.¹⁹⁰

The human rights agenda is not a narrow non-linear framework; it provides a holistic integrated approach to address the multi-dimensional strata of development challenges. It is cognizant of local affairs. It takes account of the local environment and of society, as well as of the social, political, economic and cultural practices that can influence development.¹⁹¹ This is why using such an approach requires local

184 Kuruvilla et al 2012. The Millennium Development Goals and human rights: Realizing shared commitments. *Human Rights Quarterly* 34(1):141-177, 164; Flynn-Schneider A 2014. Inter-Governmental Organizations. Human Rights Brief 21(1). Available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1906&context=hrbrief>, 1. (accessed 05 September 2020). See also Cecchini S & Notti F 2011. Millennium Development Goals and human rights: Faraway, so Close?. *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centred Development* 12(1):121-133,123.

185 Kuruvilla et al 2012:153; UN Office of the High Commissioner for Human Rights 2006(a). Frequently asked questions on a human rights-based approach to development cooperation. Geneva: United Nations Publications. Available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>, 16 (accessed 05 September 2020); Cecchini & Notti 2011:123; Dorsey et al 2010:518.

186 Kuruvilla et al 2012:171; Dorsey et al 2010:518; Gready 2009:397.

187 OHCHR 2006(a):18.

188 Oppong RF 2006. Trade and human rights: A perspective for agents of trade policy using a rights-based approach to development. *African Human Rights Law Journal* 6(1):123-145, 131.

189 Fukuda-Parr 2013:171; Darrow & Tomas 2005:487; Hickey & Mitlin 2009:220-222.

190 Gauri & Gløppen 2012:11.

191 OHCHR 2006(a):17; Ely Yamin A 2008. Will we take suffering seriously? Reflections on what applying a human rights framework to health means and why we should care. *Health and Human Rights* 10(1):45-63, 47.

participation which brings a full understating of all the social dynamics required to achieve development goals.

Similarly, Darrow and Tomas assert that the human rights framework appreciates and adapts to different local realities, subjective perceptions, resource constraints, and cultural and social factors¹⁹² An RBAD is primarily concerned with the appropriateness, affordability, accessibility, and acceptability of development outcomes in the local setting.¹⁹³ The idea of this approach is to advance national efforts to guarantee the satisfaction of human rights for all; to change financial, social and political frameworks underlying these efforts; and to fortify international responsibility to provide a satisfactory level of support to national programmes.¹⁹⁴

In addition, the consideration of recommendations from international human rights mechanisms can be utilised to distinguish national areas of concern.¹⁹⁵ This will guarantee that existing human rights infringements are not incidentally sustained. Reports from treaty monitoring bodies can also be utilised to provide particular direction to development challenges, to oppressive or discriminatory practices and to on-going human rights infringements.¹⁹⁶ By recognising and tending to local needs and challenges the chances of community members taking ownership of development processes are enhanced. This will, in turn, guarantee the sustainability of programmes and advances made.¹⁹⁷

In human rights law, governments are the primary duty-bearers for the full realisation of human rights.¹⁹⁸ Therefore, the achievement of development goals through an RBA requires governments to respect, protect, promote, and fulfil human rights throughout the cycle of development programming. At international level, an RBA creates global responsibility for the development of all. Furthermore, it extends accountability measures to international actors such as international donors, inter-governmental organisations, and international NGOs.¹⁹⁹

192 Darrow & Tomas 2005:521.

193 Darrow & Tomas 2005:525-526.

194 Kuruvilla et al 2012:154; OHCHR 2006(a):17.

195 Cecchini & Notti 2001:123.

196 OHCHR 2006(a):18.

197 Filmer-Wilson 2005:219; Cecchini & Notti 2011:123; Darrow & Tomas 2005:506.

198 Gauri & Gloppen 2012:5.

199 Gready 2008:735-741.

3.5 Limitations and critiques of a rights-based approach to development

The RBAD has received mixed reactions over the years. Critics argue that the status of human rights is unclear and vague.²⁰⁰ They believe that human rights are rhetoric and that they lack practical implementation. Others assert that an RBA to public policy may be too rigid and that it therefore limits the discretion of those who make development policies and strategies.

The lack of resources has also made it difficult for developing countries to adopt an RBAD.²⁰¹ The shortcomings and challenges of an RBAD, particularly those experienced by essential institutions such as donor agencies and NGOs, have been noted by many organisations. One of the challenges identified by organisations is that the RBAD lacks a specific operational methodology for development practice. This is because the interpretation of legal standards presented by international law in national development policies is a burdensome process, which is hampered by a lack of knowledge and capacity.²⁰²

Moreover, political and institutional aspects such as structural inequalities, the competence of national and legal mechanisms of redress, the lack of political will, and respect for international human rights instruments play a significant role in the failure to implement the RBA. Also, social and cultural aspects such as a general awareness of human rights in society, past experience of communities in participatory decision-making, and the strength of local civil society organisations significantly influence the ease and degree of implementation.²⁰³

The general understanding of human rights has also proved to be a stumbling block for the progressive implementation of the RBAD. For example, a lack of knowledge about human rights by government officials and the general population, as well as a lack of independent local NGOs that can provide human rights education, renders working from an RBA perspective challenging.²⁰⁴

Similarly, the application of human rights principles such as participation in the development arena remains a significant challenge. A community could lack the

200 Sano 2000:744.

201 Gauri & Gloppen 2012:11.

202 Filmer-Wilson 2005:221.

203 Gauri & Gloppen 2012:494-500; Filmer-Wilson 2005:225.

204 Filmer-Wilson 2005:225.

necessary skills to voice their views and needs, and to contribute to decision-making. For example, UNICEF in Botswana discovered that active participation in the development process was impossible due to the lack of community capacity. A lack of experience in decision-making forms part of the poor and most marginalised groups.²⁰⁵ This is because they lack the confidence to participate in decisions and to voice their opinions.²⁰⁶

Moreover, the hypocrisy of bilateral donors and of some NGOs to call for the accountability of others, while they are failing to implement clear measures to keep themselves accountable, is a significant challenge faced in the implementation of an RBAD.²⁰⁷ Furthermore, governing bodies and development practitioners' lack of support to changes in their existing practice to accommodate an RBA in their policies, also makes implementation difficult. For example, in Uganda, Cooperative for Assistance and Relief Everywhere discovered that some key donors were not supportive of its transition to a rights approach. The donors were aware that the adoption of the human rights approach would promote the principles of non-discrimination, equality, broad-based participation, and empowerment.²⁰⁸ As this had the potential to challenge prevailing power imbalances directly, development organisations were concerned that local resistance to changing the status quo could result in advocates of rights being put at risk in their work.²⁰⁹ Filmer-Wilson agrees that "in these precarious conditions, finding ways to implement programmes while not compromising human rights principles, or compounding existing power imbalances is challenging".²¹⁰

In addition, a lack of conceptual clarity has proven to be a critical issue in adopting an RBAD. According to Darrow and Tomas, conceptual clarity is necessary in order to pinpoint more explicitly the unique opportunities and challenges conveyed by a rights-based approach.²¹¹ Loose language, shallow marketing, and over-complication would only serve to cover what might be new and distinctive about a rights-based approach.

205 Appleyard S 2002. *Rights-Based Approach to Development*. What the policy documents of the UN development co-operation and NGO agencies say, UN Office of the High Commissioner for Human Rights, Asia-Pacific Office; Bangkok, 29.

206 Filmer-Wilson 2005:225-226.

207 Gready 2008:741.

208 Filmer-Wilson 2005:226-227.

209 Filmer-Wilson 2005:226-227

210 Filmer-Wilson 2005:227.

211 Darrow & Tomas 2005:482-483.

Conceptual clarity could also facilitate a higher level of consistency in practice among different development agencies and actors, thereby increasing prospects for collaborative action. Furthermore, the need for clarity is now stronger than ever. This is because critics believe that an RBA is based on conceptual rhetoric with unproven practical effects and with mixed motives underlying their implementation.²¹²

Although the RBAD has its shortcomings, emerging experience reveals that the practical value of human rights concepts and standards in development practice is now being better understood.²¹³ For example, UN agencies, policy- and programme-makers such as NGOs and bilateral development agencies, have been speaking and operationalising various rights-based programming methods in recent years. This has the advantage of better understanding the human rights conceptual framework by: putting rights-based approaches in practice, enhancing human development, and empowering the poor and the marginalised.

3.6 Conclusion

This chapter has tracked and examined the relationship between human rights and development, as well as the emergence of an RBAD that has gained momentum among international development practitioners. However, the application of this approach has not been clearly understood or fully practised nationally. The acceptance of an RBA has allowed for the incorporation of human rights, norms, and standards in development. The underlying RBAD principles of participation, empowerment, inequality, non-discrimination, and accountability have proven to be essential in advancing development programming. This influences how the government, international, national, and local NGOs formulate, implement, and monitor development policies and strategies that seek to advance human development and well-being.

This chapter highlighted the need for development to be understood through the lenses of human rights in order to improve the living conditions of the poor and marginalised. The next chapter will examine the quality of life of people living in

212 Darrow & Tomas 2005:483.

213 Darrow & Tomas 2005:489.

informal settlements and how their living conditions have affected their human development and well-being, as well as the realisation of their socio-economic rights.

CHAPTER 4: EXPLORING THE QUALITY OF LIFE OF PEOPLE LIVING IN INFORMAL SETTLEMENTS

4.1 Introduction

Access to adequate housing is universally and nationally recognised. As shown in Chapter 2, this right is recognised in section 26 of the South African Constitution. However, basic housing for all remains a concern in South Africa as many people are still living in informal settlements.²¹⁴ Despite the South African government's commitment to deliver housing in order to remedy apartheid inequalities, informal settlements have increased significantly across the country. As a result, the government was unable to keep up with the housing demands. Following the housing backlog, the government declared its commitment in 2004 to eradicate informal settlements by 2014.²¹⁵ However, Statistics South Africa (StatsSA) reported in 2016 that 71% of South African households live in informal settlements compared to 64% in 2001.²¹⁶ This means that there has been a rapid growth of informal settlements in South Africa.

This chapter contributes to answering the following sub-questions: a) What are the challenges experienced by people living in informal settlements that are unique to them and b) What are the factors that have an impact on the realisation of rights? Chapter 2 has examined the duties of the government in relation to the rights to adequate housing, health care, food, and social services. This chapter examines the successes or failures of the government in delivering basic services to fulfil its human rights and obligations by addressing the problem of informal settlement across the country. It is submitted that the government has not fulfilled its duties and that the poor living conditions of informal dwellers undermine their development, their well-being, and their thriving potential.

To this end, this chapter provides a comprehensive account of the state of informal settlements in South Africa. Section 4.2 examines the background and description of informal settlements and their underlying causes. Section 4.3 identifies five primary

214 Bond P & Tait A 1997. The failure of housing policy in post-apartheid South Africa. *In Urban Forum*. Springer Netherlands, 8(1): 19-41, 18–21.

215 Del Mistro R, and A Hensher D 2009. Upgrading informal settlements in South Africa: Policy, rhetoric and what residents really value. *Housing Studies*, 24(3):333-354, 335.

216 Statistics South Africa (StatsSA), 2016. General household survey: *Electronic citation*. Available at <http://www.statssa.gov.za/?p=6429> (accessed 1 April 2020); See also HDA 2012:8.

challenges inherent to informal settlements. Section 4.4 explores government responses to the challenges of informal settlements by analysing the South African Housing Act 107 of 1997²¹⁷, the Breaking New Ground policy (BNG) and the Upgrading of Informal Settlement Programme (UISP).

4.2 Background and description of informal settlements

4.2.1 Description of an informal settlement

The plight of South African citizens in informal settlements is a historical concern. Informal settlements are understood as the legacy of the apartheid regime and a symptom of post-apartheid South Africa's lack of progress.²¹⁸ They are further believed to be a result of the housing backlog that was caused by the violent removal of people in 1948 by the apartheid government to attain racial segregation.²¹⁹ Unfortunately, more than 20 years after democracy has been achieved, informal settlements are still a prominent sight in the South African landscape. Post-apartheid challenges such as population growth, unemployment, poverty, and corruption are amongst the contributing factors to the growing number of informal settlements in South Africa.²²⁰ Richards projects that the inadequate housing plight is likely to be on the development agenda for some time because informal settlements represent a significant development challenge.²²¹ In post-apartheid South Africa, informal settlements should be understood in the context of a disjuncture between the promises of a better life for all as enshrined in the Constitution and the everyday realities of poor service delivery, unemployment, and poverty that residents face.²²²

Informal settlements are described in many ways; their descriptions depend on the context in which they are referred to. However, all of them share a common feature in the sense that they are temporal structures that are built from materials such as boxes,

217 Housing Act 107 of 1997. *Statute of South Africa*.

218 Huchzermeyer M 2003. From "contravention of laws" to "lack of rights": redefining the problem of informal settlements in South Africa. *Habitat International*, 28(3):333-347,335.

219 Hunter M & Posel D 2012. Here to work: the socio-economic characteristics of informal dwellers in post-apartheid South Africa. *Environment and Urbanisation*, 24(1):285-304, 288.

220 Bonner P, Nieftagodien N & Mathabatha S 2012. *Ekurhuleni—the making of an urban region*, Wits University Press, Johannesburg, 176.

221 Richards R, O'Leary B & Mutsonziwa K 2007. Measuring quality of life in informal settlements in South Africa. *Social indicators research*, 81(2):375-388, 375.

222 Dawson H 2014. Youth politics: Waiting and envy in a South African informal settlement. *Journal of Southern African Studies*, 40 (4): 861-882, 869.

wooden sticks, stiffs, and zinc.²²³ Huchzermeyer describes informal settlements as shanty-towns, shack lands, squatter camps, and slums consisting of temporal structures, which are referred to in local terms as *mekuku* and *mjondolo*.²²⁴ Also, Marutlulle maintains that informal settlements are associated with living conditions in shacks, squatter camps and slums that lack essential services such as adequate housing, proper sanitation, portable water supply, and proper living space.²²⁵ To Mason and Fraser, informal settlements are

[d]ense settlements comprising communities housed in self-constructed shelters under conditions of informal or traditional land tenure They are a common feature of developing countries and are typically the product of an urgent need for shelter by the urban poor. As such they are characterised by a dense proliferation of small, makeshift shelters built from diverse materials (such as plastic, tin sheeting and wooden planks), by the degradation of the local ecosystem (for example, erosion and poor water quality and sanitation) and by severe social problems.²²⁶

Although informal settlements are characterised by illegality, informality, inappropriate locations, and restricted public and private sector investments, they are essential for the labour market.²²⁷ Informal settlements play a significant economic role in South Africa by serving as a source of cheap labour to South Africa's urban economy. However, despite the enormous contribution of the dwellers in informal settlements to the economic growth of the cities and of the country, they remain deprived of the essentials for a sustainable livelihood. Without prospects of any radical change in the prevailing socio-economic circumstances of the poor in South Africa, informal settlements remain the only hope for the millions of vulnerable poor people by

-
- 223 Bosworth B 2016. South Africa-key to putting informal settlements on the Habitat III agenda. Available at <https://www.urbanafrica.net/news/south-africa-key-to-putting-informal-settlements-on-the-habitat-iii-agenda/> (accessed 22 April 2020).
- 224 Huchzermeyer M 2008. 'Settlement informality: The importance of understanding change, formality, land and the informal economy'. Groupement de Recherche Internationale (GDRI). Workshop on Informality, Wits University. Johannesburg. Available at <http://wiredspace.wits.ac.za/handle/10539/11780> (accessed 11 April 2020).
- 225 Marutlulle NK 2017. Causes of informal settlements in Ekurhuleni Metropolitan Municipality: An exploration. *Africa's Public Service Delivery and Performance Review*, 5(1):1-11, 2-3.
- 226 Mason OS & Fraser CS 1998. Image sources for informal settlement management. *The Photogrammetric Record*, 16(92), 313 – 330, 313.
- 227 Nash K 2009. Between citizenship and human rights. *Sociology*, 43(6): 1067-1083, 1067.

representing their only shelter solution.²²⁸ To Mncwango, informal settlements are essential because they provide the poor with direct and cheap accommodation.²²⁹

4.2.2 Motivation for informal settlements

The growing numbers of informal settlements are not only the result of a housing backlog, they also derive from the financial challenges caused by a lack of employment opportunities.²³⁰ Nathan maintains that unemployment is one of the primary causes of informal settlements.²³¹ The Housing Development Agency (HDA) stresses that higher levels of unemployment are noticeable in informal settlements. While people are seeking employment in the cities, informal settlements are their only hope of accommodation.²³² The 2016 StatsSA report projected that the number of people seeking employment would increase from 4.184 million in 2009 to 6.7 million in 2019. At present, the projected unemployment rate is reported at 42%.²³³ Moreover, because of a lack of experience, skills, and training, those who are fortunate to have found employment, are limited to low-paying jobs such as domestic and temporary contract construction work.²³⁴ The negative consequences of unemployment are often experienced at a personal level in lack of income and in being unable to afford the basics for survival such as food, clothing, shelter, etc. This could result in family stress and in depression or criminal behaviour which consequently leads to higher levels of poverty.²³⁵

-
- 228 Tshikotshi V 2009. *The challenges of eradicating informal settlements in South Africa by 2014. The case of Seraleng sustainable human settlement, Rustenburg local municipality, North West Province*. Johannesburg: Doctoral dissertation, Faculty of Engineering and Built Environment of University of the Witwatersrand, 33.
- 229 Mncwango ST 2005. *The Need for Civil Society Participation in the Policy-Making Process on Informal Settlements*. Doctoral dissertation, University of the Witwatersrand.
- 230 Marutlulle 2017:8.
- 231 Nathan O 2013. Building revolutionary working-class counter-power: Municipalities, service delivery and protest, *Zabalaza*, 19 March. Available at <https://zabalaza.net/2019/07/19/moving-from-crisis-in-south-africas-municipalities-to-building-counter-power/> (accessed 13 April 2020).
- 232 The HDA 2013. South Africa: Informal settlements Status, 24. Available at http://www.thehda.co.za/uploads/files/HDA_South_Africa_Report_Ir.pdf (accessed 11 April 2020).
- 233 Statistics South Africa 2016. Media release 20 April 2016. Available at <http://www.statssa.gov.za/?p=6429> (Accessed 1 April 2020); Head T 2020. SA 'expanded unemployment rate' hits 42%, breaking unwanted records. Available at <https://www.thesouthafrican.com/news/finance/what-is-south-africa-unemployment-rate-after-lockdown-2020/> (accessed 16 October 2020).
- 234 Hunter 2012:294.
- 235 Richards et al 2007:383.

In South Africa, many informal settlements are characterised by extreme poverty – the leading social plight faced by the government.²³⁶ Poverty is a cause of informal settlements. It is a vicious cycle; the poorer the informal dwellers are, the less access they have to basic services, including education and proper health care. As a result, the poor and marginalised will increasingly fall behind.²³⁷ Poverty in informal settlements is much more than a mere lack of income or unemployment. It is predominantly aggravated by a decline in health and in nutritional standards; and by overcrowded housing, higher school dropouts and increased stress on the physical and social environments of low-income earners.²³⁸

Although Cloete maintains that public servants should display a sense of responsibility when delivering official duties to the general public, corruption has become widespread in service delivery to those in need of essential services to improve their living conditions.²³⁹ According to Posel, informal dwellers contend that the predicament in addressing their basic needs is primarily caused by corruption among government officials.²⁴⁰ To Cloete and Mokgoro corruption is like cancer; when it arrives in the public sector, it immediately disseminates into all other parts.²⁴¹ Corruption holds back development due to a lack of accountability, shady tender deals in the public and private sector, and outright theft of government funds and properties.²⁴² In October 2019, the Minister of Cooperative Government and Traditional Affairs, Dr Nkosazana Dlamini-Zuma, admitted that local municipalities were full of corruption and maladministration.²⁴³ As a result, many communities,

-
- 236 Steenekamp T 2012. *The South African economy*. Oxford University Press, Cape Town, 194.
- 237 Jasperbalba 'Cause of Informal Settlements'. Available at <https://jubalba.wordpress.com/cause-of-informal-settlements/#content-wrapper> (accessed 16 October 2020).
- 238 Tshikotshi 2009:97. See also Baumann T, Huchzermeyer M, Rolnick J, Roux T & Wimpey R 2004. Background Paper 1: Conceptual implications of emerging policy shifts. Prepared for the Department of Housing, Pretoria.
- 239 Cloete JJN 1997. *South African Municipal government and administration*. Van Schaik, Pretoria, 69.
- 240 Posel et al 2012:137
- 241 Cloete F & Mokgoro J 1995. Policies for public service transformation, Juta and Company Limited, Cape Town, 137.
- 242 Nathan 2013:
- 243 Smit S 2019. Municipal corruption remains rampant. 17 October. *Mail & Guardian*. Available at <https://mg.co.za/article/2019-10-17-municipal-corruption-remains-rampant/> (accessed 13 September 2020); Tshidi M 2019. 'District development model could lessen temptation for corruption in local government'. 12 October. *News24*. Available at <https://www.news24.com/news24/southafrica/news/district-development-model-could-lesser-temptation-for-corruption-in-local-govt-dlamini-zuma-20191012> (accessed 13 September 2020). See also Burger J 2010. 'The reason behind service delivery protests in South Africa.

including informal settlements, are suffering the consequences of a lack of service delivery and effective measures taken to eradicate corruption.²⁴⁴

Moreover, the South African government, similar to many authorities, has failed to ensure that the rapid increase of informal settlements is accompanied by investments in service delivery to eradicate informality in human settlement. As a result of the lack of investment in service delivery, the number of households living in informal settlements without suitable infrastructure will increase as the poor are compelled to live in low-to-zero serviced areas with limited productive opportunities.²⁴⁵

4.3 The primary challenges of informal settlements

The core function of the government includes, among others, the provisioning of sufficient, affordable and quality basic services and amenities such as access to adequate housing, water, electricity, sanitation, and health care which determine the health and well-being of people.²⁴⁶ This section provides an overview of the primary challenges that informal settlements face in these areas.

4.3.1 Access to adequate housing

Informal dwellers are faced with countless socio-economic challenges in South Africa, which relate to living conditions and to problems associated with suitable housing.²⁴⁷ Despite the progressive constitutional provisions outlined in Chapter 2, the majority of South African citizens continue to face significant housing deficiencies. It is argued that the housing backlogs and proliferation of informal settlements are a result of poor planning, lack of coordination, insufficient capacity, failure to adequately monitor the implementation of government policies, corruption, and a lack of political will to realise socio-economic rights. The housing shortage poses a host of core issues relevant to

Tshwane, Pretoria, South Africa': *Institute for security studies*. Available: May 31, 2011, from URL. <https://www.polity.org.za/article/the-reasons-behind-service-delivery-protests-in-south-africa-2009-08-05#:~:text=Many%20reasons%20for%20these%20protests,toilets%2C%20especially%20in%20informal%20settlements>. (accessed 17 March 2020).

244 Jeffery A 2010. *Chasing the rainbow – South Africa's move from Mandela to Zuma*. South African Institute of Race Relations. Art Publishers, Cape Town, 354.

245 Marx C 2003. Supporting Informal Settlements. In Khan F & Thring P (eds). *Housing Policy and Practice in Post-Apartheid South Africa*: Heinemann Publishers, Sandown.

246 Avis WR 2016. *Urban Governance* (Topic Guide). Birmingham, United Kingdom: Governance and Social Development Resource Centre, University of Birmingham.

247 Richards *et al* 2007:386; Tshoose C 2015. A closer look at the right to have access to adequate housing for inhabitants of informal settlements post Grootboom. *Public law*. 30. 94-111, 94.

the government's constitutional mandate to provide access to housing for the destitute living in informal settlements in South Africa.²⁴⁸

The lack of access to adequate housing has caused many poor and low-income families in South Africa to live in informal settlements. As indicated in the South African National Housing Code, informal dwellings are identified by factors such as poverty, vulnerability, and social stress resulting from poor living conditions, as well as from social and economic exclusion.²⁴⁹

The provisioning of appropriate housing ensures that the quality of life, which guarantees the intrinsic dignity and value of everyone, is enhanced.²⁵⁰ Inadequate housing is detrimental to human development and well-being. The latest data shows that about 3.3 million people live in informal settlements in South Africa.²⁵¹ This shows the governments' failure to deliver social housing as mandated by the Constitution.²⁵²

4.3.2 Access to Water

Non-exclusion from access to water and sanitation is regarded as a pre-requisite for the realisation of several human rights such as the rights to life, dignity, health, food, and an adequate standard of living.²⁵³ Section 27(1)(b) of the Constitution of South Africa provides that "[e]veryone has the right to have access to sufficient food and

248 Tshoose 2015:101.

249 Department of Human Settlements 2009. Upgrading of Informal Settlement Programme, Part 3 of the National Housing Code, 16. Available at http://www.dhs.gov.za/sites/default/files/documents/national_housing_2009/4_Incremental_Interventions/5%20Volume%204%20Upgrading%20Informal%20Settlement.pdf. (accessed 13 September 2020); SERI 2018. 'Informal Settlements and Human Rights in South Africa. Submission to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living'. Available at <https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/SERI.pdf>, 5. (accessed 30 March 2020). See also Ehebrect D 2015. *The challenge of informal settlement upgrading: Breaking new ground in Hangberg, Cape Town?* (Vol. 7). Universitätsverlag Potsdam, 30-31.

250 SAHRC 'Access to adequate housing'. Available at <https://www.sahrc.org.za/index.php/focus-areas/access-to-justice-adequate-housing/access-to-adequate-housing> (accessed 16 October 2020)

251 Beukes S 2018. Promise of right to housing remains elusive in democratic South Africa. Available at <https://theconversation.com/promise-of-right-to-housing-remains-elusive-in-democratic-south-africa-105706#:~:text=South%20Africa's%20Constitution%20protects%20everyone's%20right%20to%20access%20adequate%20housing.&text=Tens%20of%20thousands%20of%20South,emergency%20housing%20for%20displaced%20people>. (accessed 16 October 2020).

252 Sec 26 of the Constitution.

253 UNESCO's contribution to OHCHR's study on the scope and content of the human rights obligations related to equitable access to safe drinking water and sanitation. April 2007. Available at <http://www2.ohchr.org/english/issues/water/contributions/IntOrg/UNESCO.pdf>. (accessed 30 March 2020).

water”.²⁵⁴ In order to give effect to this right, Parliament passed the Water Services Act 108 of 1997. The Act recognises that “[t]he right of access to basic water supply and basic sanitation services is necessary to ensure sufficient water and an environment that is not harmful to health or well-being of people and animals”.²⁵⁵

This means that every South African citizen is entitled to safe and clean water. Clean water is a necessity for good health and well-being. However, this remains a significant concern. Many informal settlements rely on one communal tap where people have to queue for hours to collect water. Meanwhile, in other informal settlements, the hand pump is the only source of water.²⁵⁶ The SERI reports that in the Marikana informal settlement located in Phillipi outside Cape Town, only 50 communal stand pipes supply water to at least 60,000 residents.²⁵⁷ Owing to this, the need and the demand for water has increased.

Moreover, communal taps installed by the municipality are usually placed along the roads – often at inconvenient locations at the peripheries of informal settlements. Consequently, collecting water from communal taps poses a challenge, especially to the elderly and to persons with disabilities.²⁵⁸ Furthermore, the dependence of women and girls on communal taps is incredibly difficult in informal settlements as they endure the burden of collecting water while being at an increased risk of violence or sexual assault.²⁵⁹ McIlwaine maintains that access to basic amenities such as water in safe areas (for example in yards) protects women and children from potential violence and from associated crimes.²⁶⁰ In some parts of the country, informal dwellers access water from *Jojo* tanks whereas some municipalities periodically supply water from

254 Sec 27(1)(b), of the Constitution, states that ‘[e]veryone has the right to have access to sufficient food and water’.

255 SAHRC 2018. Response to questionnaire: Informal settlements and human rights. *Submission to the UN Special Rapporteur on the Right to Adequate Housing*. Available at <https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/SouthAfricanHumanRightsCommission.pdf>, 1. (accessed 30 March 2020); Republic of South Africa 1997. Water Services Act. Act No. 108 of 1997. *Government Gazette*, 18522.

256 SERI 2018:8-9.

257 Socio-Economic Rights Institute of South Africa (SERI) 2019. Our place to belong: Marikana informal settlement, in *Informal Settlements in South Africa: Norms Practices and Agency*. Available at <http://mile.org.za/QuickLinks/News/Sanitation%20Workshop24%20to%2025%20October%202019/Marikana%20Informal%20Settlement.pdf>, 13. (accessed 30 March 2020).

258 SERI 2018:8.

259 SERI 2018:12.

260 McIlwaine C 2013. Urbanization and gender-based violence: Exploring the paradoxes in the global south. *Environment & Urbanization*, 25(1):65-79, 66-68.

water tank trucks. In the Eastern Cape, informal dwellers and some parts of rural areas have to rely on dirty dams and rivers for their water supply.²⁶¹

4.3.3 Access to adequate sanitation

Clean water is not only required for drinking but also for sanitation purposes. In addition to staying healthy from disease, clean water is important for improved well-being. This requires ecological cleanliness for the prevention of health issues and diseases. Ecological cleanliness is an essential tool for the realisation of the right to water and sanitation. For example, polluted water has adverse effects on the health of people (including diarrheal diseases like cholera).²⁶² Inadequate sanitation also has a significant impact on the natural environment and on the preservation of critical natural assets such as water resources.²⁶³ StatsSA reported in 2017 that flushing toilets connected to a public sewerage system and pit toilets with a ventilation pipe had increased nationwide; access to sanitation had improved from 61,7% in 2002 to 82,2%.²⁶⁴ Despite this improved access to sanitation, many households continue to be without any proper sanitation facilities while many continue using bucket toilets, particularly in the Eastern Cape and Limpopo provinces.²⁶⁵

Informal settlements lack proper infrastructure for waste disposal and sewage systems. Consequently, there is a growing sanitation plight in these areas.²⁶⁶ According to StatsSA, 68% of households living in informal settlements are forced to share toilet amenities. Also, about 6.8% of households in informal settlements depend on the bucket system compared to 0.1% of the populace living in formal housing.²⁶⁷

261 South African Human Rights Commission (SAHRC) 2014. Report on the right to access sufficient water and decent sanitation in South Africa: Monitoring the implementation of the Commission's Recommendations from its 2014 Report on Access to Water and Sanitation. *Braamfontein, South Africa*. Available, 2, 20-3.

262 Aid and international development forum '5 Reasons why everyone needs clean drinking water'. Available at <http://www.aidforum.org/topics/health-and-wash/5-reasons-why-everyone-needs-clean-drinking-water/> (accessed 16 October 2020).

263 StatsSA 2018. General Household Survey 2017 (Statistical Release P0318). Pretoria: Stats SA. Available at <http://www.statssa.gov.za/publications/P0318/P03182018.pdf>, 40. (accessed 01 April 2020).

264 StatsSA 2017:41.

265 SAHRC 2018:3.

266 SERI 2018:9.

267 StatsSA 2016. General Household Survey (GHS) Series volume VIII: Water and sanitation in-depth analysis of the General Household Survey 2002–2015 and community survey 2016 data. Available at <https://www.gov.za/speeches/statistics-south-africa-ghs-series-viii-water-and-sanitation-2002-2016-report-23-nov-2016>. (accessed 30 March 2020).

In response to the sanitation plight, many municipalities, especially those in big cities around South Africa, have introduced short-term chemical toilets. However, these do not solve the long-term sanitation plight faced by informal dwellers. Municipalities have struggled to maintain the services required to keep the chemical toilets functional. In most cases, the municipalities out-source these functions to service providers. Yet, they are unable to hold the service providers effectively accountable.²⁶⁸

In an effort to attain privacy and cleanliness, informal dwellers resort to locking the toilet closets to their shacks in order to limit the number of people using them.²⁶⁹ However, this method reduces the number of available toilets for usage and it places additional strain on the toilets that are not locked. Lack of access to sufficient sanitation facilities has an adverse effect on women and girls because they are exposed to many infectious diseases at the public toilets. In addition, this lack of access adversely affects people with disabilities because the public facilities are generally not designed to accommodate them.²⁷⁰ Since access to sanitation is recognised as a human right in South Africa, basic infrastructure, including water and sanitation facilities, should be provided free of charge to all informal settlements in order to enhance their well-being.²⁷¹

4.3.4 Electricity

Similar to water and sanitation, informal settlements have existed without access to electricity for many years. Access to electricity is one of the issues that animate the daily experience of people living in informal settlements in South Africa.²⁷² They are dependent on the consumption of paraffin at an estimated cost of R14 per litre, which

268 HDA 2013. Gauteng: Informal Settlements Status, HDA Research Report. Available at http://thehda.co.za/pdf/uploads/multimedia/HDA_Gauteng_Report_lr.pdf, 42. (accessed 30 March 2020).

269 SERI 2018:10.

270 SAHRC 2014:13.

271 Muanda C, Goldin J & Haldenwang R 2020. Factors and impacts of informal settlements residents' sanitation practices on access and sustainability of sanitation services in the policy context of Free Basic Sanitation. *Journal of Water, Sanitation and Hygiene for Development*, 10(2):238-248, 238.

272 Mujere J 2020. Unemployment, service delivery and practices of waiting in South Africa's informal settlements, *Critical African Studies*, 12(1):65-78, 74. Available at <https://www.tandfonline.com/doi/full/10.1080/21681392.2019.1697312?scroll=top&needAccess=true> (accessed 13 September 2020).

often lasts for one day only. As an alternative means of survival, they use wood fires, gas stoves, and candles for heating and for other energy needs.²⁷³

As a result of insufficient electricity, SERI maintains that in places such as the Slovo Park informal settlement in Johannesburg, residents have traditionally created unsafe illegal connections to tap electricity from neighbouring buildings. This often results in electrocutions, shack fires, and in deaths.²⁷⁴ This self-provisioning method is locally referred to as *izinyoka*.²⁷⁵ Informal dwellers perceive *izinyoka* as their only response to the challenges of service provisions.²⁷⁶ Bayat refers to this notion as “quiet encroachment” which means “non-collective but prolonged direct actions of dispersed individuals and families to acquire the necessities of their lives in a quiet and unassuming illegal manner”.²⁷⁷ This form of self-provisioning has posed numerous threats to the well-being of informal dwellers. For example, it has claimed the lives of many innocent children who are electrocuted as a result of poorly insulated live wires that serve individual households.²⁷⁸

4.3.5 Health and environment

The environment is an essential factor for health, well-being, and human development. People need a conducive environment for survival and for sustaining livelihood. It is noted that “[c]lean air, water, plants, and food supplies are essential for our personal health and wellbeing. The relationship between the environment and humanity is one of interdependence”.²⁷⁹ Owing to the lack of an adequate living environment, informal dwellers are exposed to health threats that contribute negatively to their human development and well-being. Health does not only translate into feeling good and

273 SERI 2019. The Promised Land Ratanang informal settlement: informal settlement in South Africa norms, practices and agency. Available at <http://mile.org.za/QuickLinks/News/Sanitation%20Workshop24%20to%2025%20October%202019/Ratanang%20Informal%20Settlement.pdf>, 33. (accessed 30 March 2020).

274 SERI 2018:10 as cited from the City of Johannesburg, More informal settlements get electricity: Press Statement. Available at https://www.joburg.org.za/media_/Newsroom. (accessed 01 April 2020).

275 Mujere 2020:74.

276 Mujere 2020:75.

277 Bayat A 2010. *Life as politics: How ordinary people change the Middle East*. Amsterdam: Amsterdam University Press, 45.

278 Huchzermeyer 2003:340-341.

279 The University of Minnesota 2013. *Why is Global Environmental Health Important?* Centre for Spiritually and Healing. May Memorial Building, 18.

being strong, but it also means “freedom from avoidable disease, access to energy, safe water and clean air”.²⁸⁰

However, informal dwellers are exposed to numerous health complications such as diarrhoea and respiratory illnesses.²⁸¹ Related to health risks, Lotter maintains that poor socio-economic conditions, for example a lack of access to basic services, render people vulnerable to diseases such as tuberculosis (TB), human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). These life-threatening diseases are critical health challenges that confront the residents of informal settlements.²⁸² In 2012, the Human Sciences Research Council conducted a study and found that HIV infection rates in people aged two years and older were twice as high in informal settlements than in formal settlements; young women were the most infected.²⁸³ HIV and AIDS in South Africa has been identified as a critical factor in the country’s low life expectancy.²⁸⁴

An adequate living environment is vital for shaping and determining the health and well-being of people. The lack of necessary infrastructure leaves informal settlements exposed and vulnerable to natural disasters and to devastating fires that destroy many houses. This is because informal dwellings are made of cheap and readily available, but often highly flammable materials such as plastic, cardboard, and untreated wood. This makes these dwellings highly permeable to the elements and susceptible to destruction by fire.²⁸⁵

The abovementioned factors combined with high levels of poverty, increased population density, and a lack of access to emergency services (for example to public

280 United Nations Environmental Programme 2007. *Forth Global Environment Outlook; Environment for Development Assessment Report*, 25.

281 Richard et al 2007:10 Chambers R 1995. Poverty and livelihoods: Whose reality counts? *Environment and urbanisation*, 7(1):173-204, 176-177.

282 Lotter HPP 2011. *Political philosophy now: Poverty, ethics and justice*. University of Wales, UK. Press, 54-63.

283 Meth P 2017. Informal housing, gender, crime and violence: The role of design in urban South Africa. *The British Journal of Criminology*, 57(2):402-421. 411; Gibbs A, Reddy T, Dunkle K & Jewkes R 2020. HIV-Prevalence in South Africa by settlement type: A repeat population-based cross-sectional analysis of men and women. *Plos one*, 15(3): 1-20, 2.

284 SERI 2018:11.

285 SERI2018:12.

clinics and hospitals), expose vulnerable informal dwellers to a multitude of elements that undermine their well-being and development.²⁸⁶

4.4 Constitutional Court Jurisprudence: Lessons from the *Grootboom*, *Treatment Action Campaign* and *Khosa* cases

4.4.1 *The Grootboom case: access to adequate housing*

The significance of considering human rights in development processes can also be drawn from the *Grootboom* case.²⁸⁷ This case, which was brought to the Constitutional Court by Mrs Irene Grootboom and other applicants, focused on the right of access to adequate housing.²⁸⁸ As a consequence of the adverse living conditions in which they were living, 390 adults and 510 children were forced to move from their informal settlement onto privately-owned land. They were then forcibly removed from the privately-owned land and their shacks (homes) were destroyed.²⁸⁹ This happened against the backdrop of the government's housing programme that ignored the predicaments of the most vulnerable sections of the South African society.²⁹⁰ The applicants first approached the High Court to challenge the government's failure to take into consideration their housing plight. They sought an order from the court for the government to provide them with temporary shelter or housing until they were able to find permanent accommodation.²⁹¹

The applicants based their arguments on the provisions of the South African Constitution of 1996,²⁹² specifically those in section 26(1) "the right to access to

286 Community Law Centre, Black Sash, Peoples Health Movement South Africa, National Welfare Social Services and Development Forum. 15 September 2010, Mobilising and advocating for the fulfilment of human rights commitments: Seminar on understanding the ICESCR and MDGs. Available at <http://www.blacksash.org.za/index.php/15-campaigns/archived-campaigns>. (accessed 20 March 2020).

287 *Government of the Republic of South Africa & Others v Grootboom & Others* 2000 (1) SA 46; (Hereinafter referred to as '*Grootboom*').

288 Sec 26(1) of the Constitution of the Republic of South Africa 1996, states that '[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right'.

289 *Grootboom*: para 2; Sachs A 2003. 'The judicial enforcement of socio-economic rights': The *Grootboom* case. *Current Legal Problems*, 56(1), 579, 579. Available at <https://search.proquest.com/openview/851a42aaee05f98e0497c69778f2d7d3/1?pq-origsite=gscholar&cbl=2032116> (Accessed 1 July 2020).

290 De Vos P 2001. *Grootboom*, the right of access to housing and substantive equality as contextual fairness. *South African Journal on Human Rights*, 17(2): 258-276, 258-260.

291 See the judgment of Davis with Comrie J concurring, in *Grootboom v Oostenberg Municipality and Others* 2000 (3) BCLR 277 (C); *Grootboom*: para 4.

292 The Constitution of the Republic of South Africa.

adequate housing” and on the right of children to shelter as contained in section 28(1)(c).²⁹³ The Western Cape High Court found that the children’s right to shelter was only violated and not the right of access to adequate housing. On appeal, the Constitutional Court found that the government’s housing programme did not comply with the obligation to take reasonable steps as stipulated in section 26(2).²⁹⁴ The Court held that

[s]ocio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only. Section 7(2) of the Constitution requires the state ‘to respect, protect, promote and fulfil the rights in the Bills of Rights and the courts are constitutionally bound to ensure that they are protected and fulfilled.’²⁹⁵

The Constitutional Court declared that the government had breached its responsibility in failing to make provision in the housing policy for basic shelter to the most disadvantaged.²⁹⁶ The Court made it clear that the right of access to adequate housing included the right of access to land for those who could not afford to pay for it.²⁹⁷ Moreover, it observed that section 26(1) required government planning that was flexible enough to adapt to changing social conditions.²⁹⁸ Even within its limited resources, the government’s failure to make provision for the minimal shelter needs of people in certain areas was not reasonable and did not comply with the government’s constitutional obligations.²⁹⁹

The decision in the *Grootboom* case confirms the significance of the contextual and normative framework of human rights to transform a society where people can be able

293 Sec 26(1) of the Constitution; Sec 28(1)(c) of the Constitution states that ‘[e]very child has the right to basic nutrition, shelter, basic health care services and social services’.

294 Khoza B 2007. *Socio-economic rights in South Africa: A resource book*. University of Western Cape, 31; Sec 26(2) of the Constitution.

295 *Grootboom*: para 20.

296 Darrow & Tomas 2005:523; Sec 26(1) of the Constitution state that the South African Constitution guarantees the right to have access to adequate housing. The subsequent paragraph dealing with the state’s obligation in that regard requires the state to take ‘reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right’ (sec 26(2) of the Constitution).

297 See Seleane M 2003. ‘The right to education’: Lessons from *Grootboom*. *Law, Democracy & Development*, 7(1):137-169, 137.

298 According to the Constitutional Court, the use of the term ‘access to’ in sec 26(1) ‘recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling. Access to land for housing is, therefore included in the right of access to adequate housing in sec 26’. (*Grootboom*: para 35–36); Pillay A 2007. ‘South Africa: Access to land and housing’. *International Journal of Constitutional Law*, 5(3):544-556, 551.

299 Darrow & Tomas 2005:524.

to live in dignity and free from poverty, disease, and hunger. The judgement confirms that the full transformative power of rights can only be realised when they are interpreted in the specific development context (social or economic) prevalent in society in order to better the living conditions of the poor and the marginalised.³⁰⁰

4.4.2 The Treatment Action Campaign case: access to health care

In July 2002, the Constitutional Court again acknowledged the importance of human rights standards that are at the heart of human development. The Court in *Minister for Health v Treatment Action Campaign*³⁰¹ demonstrated vividly how the constitutionally guaranteed right of access to healthcare could, within the appropriate limits of its justifiability, have a constructive impact on development policy debates and could save large numbers of people.³⁰² The *Treatment Action Campaign* case confronted the inadequate nature of government measures in preventing mother-to-child transmission of HIV on two grounds. The applicants offered the following arguments:

(1) The government unreasonably prohibited administering the antiretroviral drug, Nevirapine, at public hospitals and clinics, except for a limited number of pilot sites; (2) The Government had not produced and implemented a comprehensive national programme for the prevention of MTCT of HIV.³⁰³

In response, the High Court and the Constitutional Court applied the reasonableness test developed in the *Grootboom* case. The court decided that the government's programme did not comply with the right of access to health care services and the duty to take reasonable measures as required in section 27(2) of the Constitution.³⁰⁴ The Court additionally developed a new element of the reasonableness test. It held that "[t]he Government must be transparent and allow for the participation of several stakeholders in the implementation of the programme".³⁰⁵ The Court further observed that any national programme for the realisation of socio-economic rights must be balanced and flexible. If not, it would profoundly affect the ability to enjoy the human rights to which people are entitled.³⁰⁶

300 De Vos 2001:268.

301 *Minister of Health & Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1075 (CC) (herein after referred to as '*Treatment Action Campaign & Others*').

302 The South African Constitution guarantees everyone the right of access to health care services (including reproductive health care, sufficient food and water, and social security, including, if persons are unable to support themselves and their dependents, appropriate social assistance) (Sec 27(1) of the Constitution).

303 *Treatment Action Campaign & Others*: para 58; Khoza 2007:32.

304 Sec 27(2) of the Constitution; Khoza 2007:32.

305 *Treatment Action Campaign & Others*: para 100.

306 *Treatment Action Campaign & Others*: para 68-78; Darrow & Tomas 2005:527.

4.4.3 The Khosa case: access to social assistance

In the 2004 case of *Khosa & Others v Minister of Social Development & Others; Mahlaule & Another v Minister of Social Development & Others* (hereafter referred to as the 'Khosa' case),³⁰⁷ the Constitutional Court decided that a group of permanent residents were a vulnerable group and that excluding them from social security was not consistent with section 27(1)(c) of the Constitution of South Africa.

The group of permanent residents challenged the constitutionality of some provisions of the Social Assistance Act 59 of 1992 and the Welfare Laws Amendment Act 106 of 1997.³⁰⁸ They argued that these provisions restricted access to social assistance to South African citizens only and to the exclusion of permanent residents, older people, and children who would otherwise have qualified for social grants if there were no requirement of citizenship. It also excluded primary caregivers from accessing the Child Support Grant for children in their care, especially where these children were South African citizens.³⁰⁹

The Constitutional Court held that permanent residents were a vulnerable group worthy of constitutional protection.³¹⁰ The laws that excluded them from access to the benefit of social assistance treated them as inferior to citizens. The costs of including permanent residents in the social security scheme would be small. In addition, excluding permanent residents from access to a social security scheme was not consistent with section 27 of the Constitution.³¹¹ The Court further found that excluding children from access to these grants constituted unfair discrimination that was based on their parents' nationality and violated their right to social security in section 28(1)(c).³¹²

The *Khosa* case confirmed that the exclusion of permanent residents from South Africa's welfare scheme was not reasonable and that it did not comply with the constitutional provision of the right to social security. Their exclusion was

307 *Khosa and others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development and Others* 2004 (6) BCLR 569 (CC) (hereinafter referred to as 'Khosa & others').

308 *Khosa & others*: para 1.

309 *Khosa & others*: para 2-4.

310 *Khosa & others*: para 74.

311 *Khosa & others*: para 85.

312 *Khosa & others*: para 73.

discriminatory, unfair, and it infringed on the right to equality.³¹³ This decision obliged the government to assist both permanent and temporary residents to give effect to the right to social security.

4.5 Government responses to address the informal settlements challenge

The Housing Act 107 of 1997, the BNG, the UISP policy and the National Housing Code of 2009³¹⁴, which provide for the facilitation of a sustainable housing development process, describe what constitutes adequate housing.³¹⁵

4.5.1 The South African Housing Act 107 of 1997

Following the apartheid regime, South Africa adopted laws that sought to bridge the gap between the rich and the poor by establishing a legislative framework that intended to deal with the inequalities of the past. One of the most prominent legislative frameworks was in respect of housing; it comprised a complex network of laws, policies, macro-economic programmes and strategies to resolve the housing problem.³¹⁶ The Housing Act 107 of 1997 was enacted to regulate the housing processes in South Africa.³¹⁷ Section 2(1) of the Act obliges government to prioritise the needs of the poor regarding housing development. It further requires engagement with individuals and communities affected by housing developments.³¹⁸

The general principles of the Act provide that the administrative procedures of housing development ought to be based on the duties to respect, protect, promote, and fulfil the rights contained in the Bill of Rights and to “observe and adhere to the principles of co-operative government and intergovernmental relations referred to in section 41(l) of the Constitution”.³¹⁹

313 Sec 9(1) of the Constitution; *Khosa & others*: para 39.

314 Department of Human Settlements, 2009. The National Housing Code.

315 SAHRC 2018:4.

316 Tshikotshi 2009:47.

317 Tissington 2011. A resource guide to housing in South Africa 1994-2010: Legislation, Policy, Programmes and Practice, Socio-Economic Rights Institute of South Africa (SERI) Resource Guide. Available at http://seri-sa.org/images/stories/SERI_Housing_Resource_Guide_March2020.pdf, 27. (accessed 30 March 2020).

318 SERI 2018:19; The Republic of South Africa 1997. Housing Act 107. *Government Gazette, Pretoria*.

319 Sec 2(1) of the Housing Act.

Concerning informal settlements, section 9(1)(a)(i) and (iii) recognises the rights to housing and access to basic service provisions for informal dwellers. The Act provides that:

(1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to (a) ensure that (i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis; [and] ... (iii) services in respect of water, sanitation, electricity, roads, storm-water drainage and transport are provided in an economically efficient manner.³²⁰

Although the Housing Act is the foundational housing framework, it does not contain the main principles, policy choices, and implementation rules for housing development. For this reason, the Housing Act has been criticised for failing to provide measures about whether housing delivery should be carried out based on project-linked grants or whether individual ownership should be given priority over collective ownership or rental alternatives.³²¹ Furthermore, the housing Act failed to establish long-term sustainability in the delivery of low-cost housing. Subsidised housing delivery has not always resulted in poverty alleviation. In addition, the Act has failed to link housing development to economic development and job creation; it only used housing as a multiplier impact on the economy.³²²

4.5.2 Breaking New Grounds and Upgrading the Informal Settlement Programme

4.5.2.1 Breaking New Grounds

South Africa has been struggling to bridge the gap caused by past race-based disparities and poor delivery of basic services.³²³ In September 2004, following the adoption of the 1997 Housing Act, the Department of Housing (DoH) approved and released the new Comprehensive Plan for Sustainable Development of Human Settlements (commonly known as BNG) that recognises and aims to address housing challenges created by the Housing Act 107 of 1997. The policy was developed based on the changes and growing urban housing demand in the context of lack of job

320 Sec 9(1) of the Housing Act.

321 Tshikotshi 2009:47.

322 Tshikotshi 2009:50.

323 Rust K 2008. Housing finance in sub-Saharan Africa: Reflections from South Africa. *Development*, 28, 30. In Rust K. Housing Finance in Sub-Saharan Africa: Reflections from South Africa. Paper Presented at the Second African Ministerial Conference on Housing and Urban Development (AMCHUD II), Abuja, Nigeria.

opportunities and slow housing delivery.³²⁴ The BNG was established to create a non-racial, diverse society and to provide a choice of housing from subsidised government housing to affordable bonded houses with a supply of available rental accommodation for those in need.³²⁵ The DoH maintains that the plan seeks to

[a]ddress the challenges by emphasising the role of housing delivery in poverty alleviation, linking this to employment creation and to access to the subsidised property as a form of wealth creation and empowerment; housing delivery is to leverage economic growth, combat crime, and improve social cohesion and quality of life.³²⁶

Also, according to the DoH, the BNG is dedicated to respond to demand, rather than allocating the same product equitably to all households. In order to achieve its mandate, the BNG provides several instruments and institutional changes. The municipalities conceded to have an essential role through “overall responsibility for housing programmes in their areas of jurisdiction, [and] through greater devolution of responsibility and resources”³²⁷ Furthermore, the BNG advocates for a significantly close working relationship between national, provincial, and local government institutions to accomplish productivity and efficacy in housing delivery. The instrument offers prospects for the issues of land access, land acquisition and funding.³²⁸ It calls for the transfer of land owned by the government and parastatal institutions to municipalities at no costs, a new strategy to acquire privately-owned land, and a new funding mechanism to finance the land acquisition.³²⁹ In other words, the BNG instrument focuses on previously neglected sectors and emphasises flexibility and responsiveness to local conditions.³³⁰ This requires not only the strengthening of the

324 Huchzermeyer M 2006. The new instrument for upgrading informal settlements in South Africa: Contributions and Constraints. *Informal settlements: A perpetual challenge*, 41-61, 46.

325 Department of Housing 2004a. *Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements*. (As approved by Cabinet and presented to MINMEC on 2 September 2004) Pretoria: Department of Housing.

326 Department of housing 2004b:7.

327 Department of Housing 2004b:21; Department of Housing, 1994. White Paper: A New Housing Policy and Strategy for South Africa.

328 Department of Housing 2004b:21.

329 Pithouse R 2009. A Progressive Policy without Progressive Politics: Lessons from the Failure to Implement 'Breaking New Ground'. In: *Town and Regional Planning*, 9. See also Pithouse R 2009. A progressive policy without progressive politics: Lessons from the failure to implement 'Breaking New Ground'. *Stads-en Streeksbeplanning= Town and Regional Planning*, (54):1-14, 5-7.

330 Department of Housing 2004:16.

rental housing programme, but it also highlights a new approach to deal with informal settlements.³³¹

4.5.2.2 Upgrading of Informal Settlement Programme

With respect to informal settlements, the BNG lays the foundation for several programmes designed to accommodate all government levels intent on addressing the challenges of human settlements. In response to growing informal settlements, the BNG gave birth to the UISP in October 2004. It was formulated based on section 1 of the Housing Act,³³² which provides for the development and maintenance of sustainable and dignified residential environments allowing access to socio-economic benefits for everyone.³³³ The programme was established to further respond to concerns about housing rights violations raised in several court cases since 2000. It has been accepted by human rights organisations such as the Centre on Housing Rights and Evictions.³³⁴

The key objectives of the UISP are: to secure tenure rights of residents in informal settlements; to promote secure and healthy settlement environments through the provision of improved infrastructure; to empower communities; and to promote economic and social integration as well as social capital building in participative processes.³³⁵ This means that the UISP opens up channels for local municipalities to lodge funding applications from the provincial government, to improve informal settlements by providing informal dwellers with infrastructure, tenure security, and access to basic services in an inclusive manner.³³⁶ The programme was guided by the principle of fostering holistic development approaches to address the issue of informal

331 Ehebrect D 2014. *The challenge of informal settlement upgrading Breaking New Ground in Hangberg*, Cape Town. Available at <http://verlag.ub.uni-potsdam.de>, 76. (accessed 1 April 2020).

332 Housing Act 107 of 1997.

333 Department of Housing 2004b:12.

334 Aigbavboa & Thwala 2010:236.

335 Department of Human Settlements 2009b. *The National Housing Code-Incremental Interventions: Upgrading Informal Settlement (Part 3, Volume 4)*. Pretoria: Department of Human Settlements, 13.

336 Tissington 2010:86. 'Funding in terms of the programme is provided in three phases: Phase 1 includes funding for land surveying, registration, community participation, development facilitation, dispute resolution, geotechnical investigation, pre-planning for land acquisition and the provision of interim municipal engineering services; and phases 2 and 3 provide funding for detailed town planning, contour surveying, land survey examination, civil engineering and project management'.

settlements.³³⁷ It operates on the basis that land is publicly owned or can be acquired through negotiation with private owners, or through expropriation where necessary and appropriate. It also requires that the particular settlement is located in an area of an approved Integrated Development Plan.³³⁸ For approval, the programme requires an investigation by municipalities into the feasibility of in-place upgrading and it assumes that relocation is essential in some cases, but only as a final resort.³³⁹

Since the adoption of the programme, government action has centred on an approach meant to eradicate informal settlements through either removals or through profoundly technocratic redesigned and recycled programmes.³⁴⁰ These approaches disregard the connection between financial security and the development of settlements. As a result, this does not address the development imbalances in South Africa and it does not recognise and protect the investments which informal dwellers place in their homes.³⁴¹

In 2004, the Minister of Housing recognised the requirement for government mediation to improve conditions in informal settlements by means of UISP. However, since the initiation of this programme, nothing much has been accomplished to eradicate and improve living conditions in the growing number of informal settlements.³⁴² A critical approach to eradicate informal settlements marked by a lack of service delivery, declining living conditions, environmental sustainability, and poverty has to be formulated to address the underlying informal settlements problems in South Africa.³⁴³

4.5 Conclusion

Basic service delivery is dependent on the availability of resources essential for the functioning of people and their well-being. Such services are categorised by certain

337 The programme has several underlying principles and, among others, it strives for a holistic development approach: '[It has] [...] an area and extensive community focus, fostering the holistic development of the settlement with minimum disruption of existing fragile community networks and support structures. To the greatest extent possible, settlements should be upgraded in a holistic, integrated and locally-appropriate manner. Engagement between community members and their local authorities is of the utmost importance to ensure locally appropriate solutions'. (Ehebrecht 2014:77).

338 Ehebrecht 2014:78.

339 Aigbavboa & Thwala 2010:236.

340 Department of Housing 2004a:12-22.

341 Hardoy JE, Mitlin D & Satterthwaite D 2001. Environmental problems in an urbanising world: finding solutions for cities in Africa. *Asia and Latin America, Earthscan, London*.

342 Huchzermeyer 2004:43.

343 Skortt NK & Hammett D 2013. Housing and health in an informal settlement upgrade in Cape Town, South Africa. *Journal of housing and the built environment*, 28(4):615-627, 616.

indicators, for example adequate housing, water, sanitation, access to health care, and electricity. These are the basic conditions for human development and survival. The discussion in this chapter has revealed that the lack of access to these indicators leave informal dwellers exposed and vulnerable to poverty, health complication, and crime that affects their human development and well-being. The prevalent challenge in addressing the lack of access to basic amenities and unequal opportunities is an inevitable phenomenon. The lack of good governance in the government's approach in dealing with the problem of informal settlements has caused the failure of many viable initiatives in seeking to redress the problem. The vision to establish the BNG and the UISP under the National Department of Human Settlements has had significant promise, but the programmes have not lived up to expectations.

As long as there is no model of accountability to hold the government responsible for maladministration, corruption, and inaccessibility to basic services, the living conditions of people who live in informal settlements will remain a recurrent challenge for many decades in South Africa.

The underlying socio-economic causes of informal settlements ultimately need to be recognised and addressed more effectively. An RBAD (as discussed in chapter 3) is a necessary step to supplement the existing mechanisms in order to deal with development issues in South Africa, including informal settlements and access to basic services. Such an approach could help to bridge the gap that currently exists between the government and some communities whose everyday experience is one of neglect.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Summary of the findings

The study has demonstrated that informal settlements have not only been increasing, but that they are also characterised by a lack of basic amenities such as adequate housing, health care, water, sanitation, and electricity. These are requisite basic needs for human dignity and survival as well as for the enjoyment of well-being, flourishing, and human development. Considering the government's legally binding obligation to fulfil human rights, the challenges related to the provision of basic services constitute a violation of the socio-economic rights which are enshrined in the South African Constitution and which are the focus of this thesis.

Informal dwellers experience several human rights violations. However, these are often overlooked; this leaves the residents vulnerable, impoverished and marginalised. Research on the violation of informal dwellers' rights, specifically on socio-economic rights is limited. This study has explored these violations in order to bridge the gap that other researchers have not covered.

Chapter 2 has dwelled on the contents of the rights to adequate housing, health care, food, and social security as provided for in international human rights treaties such as the UDHR, the ICESCR and the ICCPR, the African Charter, and the Constitution of South Africa. The discussion has revealed that every human person possesses a set of rights that must be respected, protected, promoted, and equally fulfilled. The study illustrates that the South African government has a duty under international human rights law and under the South African Constitution to fulfil human rights. It furthermore illustrates that the government is the primary duty-bearer and that it is therefore obliged to translate human rights into practice.

It has been demonstrated that access to adequate housing, health care, food, and social security are some of the most significant fundamental human rights that have the potential to restore human dignity and, consequently, well-being. The government of South Africa is accordingly obliged as duty-bearer to respect, protect, promote, and fulfil the socio-economic rights enshrined in the Constitution. The government is duty-bound to the people of South Africa to take reasonable measures and to make use of the available resources to translate each of the socio-economic rights contained in the

Constitution into practical reality. Unfortunately, there is still a long way to go before all human rights are fulfilled on an equal basis in South Africa.

Chapter 3 has examined how integrating human rights standards into development programming could contribute to human development. This inquiry has revealed that human rights and development are indeed complementary. They are ultimately aimed at the same purpose of securing human well-being and of improving living standards that are attainable by following an RBAD. The relevance of an RBAD is justified in the fact that human rights and development are compatible. On the one hand, respect for human rights contributes to development; on the other hand, development enhances the realisation of human rights.

The improvement of human well-being by promoting development and the realisation of human rights is the ultimate goal of an RBAD. Four human rights principles inherent to the rights-based approach have been identified, namely: (a) equality and non-discrimination; (b) accountability; (c) participation; and (d) empowerment. This study has illustrated that the RBAD can be the most adequate approach to redress the socio-economic challenges experienced by impoverished South Africans who live in informal settlements. It is not only concerned with achieving human well-being but also with the processes, institutions, and policies through which it is achievable.

Chapter 4 has offered an exploration of the quality of life of people living in informal settlements in South Africa. This examination has demonstrated that informal settlements are a growing phenomenon and that they will remain a problem for posterity, if not properly addressed. It was explained that the proliferation of informal settlements results from numerous factors, including unemployment, poverty, bad governance, corruption, and misappropriation of funds that were reserved for the development of impoverished communities. Most residents of informal settlements are vulnerable, poor, marginalised, and excluded from access to the essentials for daily survival. They live in inadequate housing without proper healthcare, water, sanitation, and electricity. The study draws attention to the fact that informal settlements and the challenges which they pose are a legacy of the apartheid past. However, this does not offer an excuse for the increasing number of informal settlements that continue to sprout in present day South Africa due to high levels of unemployment, poverty, bad governance, and corruption.

As a result of shocking numbers of people who live in informal settlements in South Africa, Chapter 4 has further established that government initiatives such as the BNG policy and the UISP have not been adequate to address the need to eradicate and improve the living conditions of people living in informal settlements.

5.2 Recommendations

The underlying socio-economic issues that are prevalent in informal settlements ultimately need to be recognised and more effectively addressed by following an RBAD. This approach is suited to dealing with socio-economic development concerns, including the limited access to basic services in South Africa. The RBAD could assist in bridging the inequality gap and in improving the standards of living of people in informal settlements whose current experiences are those of neglect and marginalisation.

A RBAD could bring legal basis on South African development arena, the distinctive feature of a RBAD is its legal foundation, internationally, regionally, and at national level.³⁴⁴ At national level, adopting this approach could allow, the Human Rights Commission, the Commission for Gender Equality, the Public Protector, the Auditor-General and the courts to ensure that a RBAD is implemented and respected.³⁴⁵ This is important because the South African Constitution empowers the Human Rights Commission to demand from all organs of the State ‘information on the measures taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment’.³⁴⁶ Established under Section 182 of South African Constitution, the Public Protector has the power to ‘investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice’.³⁴⁷ In addition, Section 188(1) of the Constitution empowers the Auditor-General to ‘audit and report on the accounts, financial statements and financial management of all the undertaken financial transition from

344 Simon M 1999. What can we do with a rights-based approach to development?. *Briefing Paper*, 3, 2. Available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2614.pdf> (accessed 12 January 2021).

345 Kamga 2018:211.

346 Sec 184(3) of the South African Constitution.

347 Sec 182 of South African Constitution.

national, provincial and local government.³⁴⁸ This could offer a basis for comprehensive economic, social, cultural and political processes aimed at the continuous improvement of the well-being of the community as a whole and of all persons, through which human rights and fundamental freedoms can be realised. As discussed in Chapter 4 the *Grootboom* and *Treatment Action Campaign* cases demonstrate the need and importance of a RBAD. Adopting a RBAD could supplement existing mechanisms for the eradication of informal settlements by improving service delivery. This would, in turn, enhance the living conditions and the development of poor and marginalised informal dwellers. The next section considers the principles of an RBAD and it offers recommendations on how each principle could enhance the human development and well-being of informal dwellers.

5.2.1 Participation

Although the Constitution promotes community participation in development, many citizens, including informal dwellers, remain unaware of their right to participate in the development processes that affect their lives. This is because when the government initiates development projects such as the UISP, they are usually implemented with limited engagement in the communities concerned. It is uncertain whether government officials understand the importance of community involvement and participation in the development processes.³⁴⁹

This study recommends the pursuit of the RBAD because it endorses the involvement of all parties in development programming. For example, the government should, as primary duty-bearer, include informal dwellers in the decision-making processes for any development initiative that concerns them. Informed and active participation are fundamental aspects that are lacking in addressing the needs of informal dwellers. The capacity of informal dwellers to influence development is central to the progression of their human development and well-being. Local government officials should be in constant engagement with them in the entire development processes intended to improve living conditions in informal settlements. Including them in

348 Sec 188(1) of the South African Constitution.

349 Tissington 2011:9.

decision-making about development will open up different perspectives and thus create access to accurate information about all stakeholders.³⁵⁰

Economic, social, cultural, and legal challenges that relate to meaningful participation need to be identified and addressed.³⁵¹ This would assist in addressing the norms and standards that govern the sociological attitudes and behaviours, traditional values, practices, and customs present in informal settlements.³⁵² Visible as well as hidden power structures that are based on inequality and on unfair discrimination should also be identified and redressed.³⁵³

In addition, development projects should take into account the diverse social and economic conditions that need to be improved in informal settlements.³⁵⁴ The abilities of participants should be developed to enable them to claim participatory space and to eliminate unequal structures and practices.³⁵⁵ When proposing a development project to be implemented in informal settlements, government officials as well as non-governmental and private sector organisations should create a conducive environment for all. They should not select participants single-handedly.³⁵⁶ Traditional framings of participation should be explored in order to create innovative ways of including the voices of all concerned. Meaningful participation in development processes concerning the lives of informal dwellers will enhance their human development and, consequently, their standards of living.

-
- 350 Kercher J & Mahler C 2015. Sustainable Development Goals: an opportunity for the realisation of human rights in and by Germany. Available at https://www.ssoar.info/ssoar/bitstream/handle/document/43813/ssoar-2015-kercher_et_al-Sustainable_Development_Goals_an.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2015-kercher_et_al-Sustainable_Development_Goals_an.pdf, 2. (accessed 30 September 2020).
- 351 Cazabat C 2016. Integrating Civil Participation into Sustainable Development Practice. *European Journal of Sustainable Development* 5(4):25-32, 30.
- 352 Ako MA, Anyidoho NA & Crawford G 2013. NGOs, Rights-based Approaches and the Potential for Progressive Development in Local Contexts: Constraints and Challenges in northern Ghana. *Journal of Human Rights Practice* 5(1):46-74, 66-67.
- 353 Katsui H & Kumpuvuori J 2008. Human Rights Based Approach to Disability in Development in Uganda: A Way to Fill the Gap between Political and Social Spaces?, *Scandinavian Journal of Disability Research* 10(4):227-236, 233.
- 354 Darrow & Tomas 2005:517.
- 355 Veneklasen L, Miller V, Clark C & Reilly M 2004. *Rights-based Approaches and Beyond: Challenges of Linking Rights and Participation*. A joint initiative of the Participation Group at Institute for Development Studies and Just Associates (IDS Working Paper 235). Available at <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/4084/Wp235.pdf>, 6. (accessed 1 October 2020).
- 356 Thomas T & Narayanan P 2015. *Participation pays: Pathways for post-2015*. Warwickshire: Practical Action Publishing Ltd, 164.

5.2.2 Equality and non-discrimination

Huchzermeyer and Karam maintain that informal settlements are a dishonourable characteristic of poverty and of inherited inequalities.³⁵⁷ This is because the livelihoods of informal dwellers are affected by the uneven distribution of resources which increases job opportunities needed for healthy and sustainable development. In order to eradicate informal settlements in South Africa, the challenge of inequality and discrimination needs to be confronted and to be redressed effectively. Strategies applied by government officials to achieve development programming for all and specifically for informal dwellers, should commit to the human rights principles of equality and non-discrimination as contained in international human rights law.³⁵⁸ This is essential to ensure fair and balanced development programming which will create equal opportunities, improved living conditions, human development, and the well-being of informal dwellers. The government is required to commit to non-discrimination and to adopt, to some extent, affirmative measures in order to guarantee the inclusion of population groups or sectors, particularly those living in informal settlements who have traditionally been discriminated against.³⁵⁹

Equality must be achieved at all levels, including participation in decision-making and programming regarding development. This would require identifying existing power inequalities and social, economic, cultural, and political barriers to equal engagement in informal settlements. Human rights holders, including informal dwellers, should be equal beneficiaries of development programming outcomes. In the case where development needs have to be prioritised, human rights standards need to be firmly observed. These priorities need to reflect the “value judgements of the society at large”³⁶⁰ contained in the transformative promise in the preamble to the South African Constitution to heal the divisions of the past and to improve the quality of life of all citizens.

357 Huchzermeyer M & Karam A 2006. *Informal Settlements: A Perpetual Challenge?* UCT Press. Cape Town, vii.

358 Alston P 2004. A human rights perspective on the Millennium Development Goals. Background paper for the UN Millennium Project Task Force on Poverty and Economic Development. UN Millennium Project, New York, para130.

359 Abramovich 2006:43; Gasper 2004:1-2.

360 Osmani 2000:292.

5.2.3 Empowerment

As a consequence of the dearth in the provision of basic services, the human development and well-being of informal dwellers continues to be at risk; they are disempowered and demotivated as a result of marginalisation. Addressing the needs of informal dwellers depends on increasing the technical support that they receive to be able to properly explore opportunities for development. This means that residents should gain an understanding of the development process through education. Government is required to invest in the capacity building and empowerment of its people to hold national, regional, and local governments as well as other duty-bearers accountable, for example through litigation as shown in chapter 4.³⁶¹ Empowerment is a process of increasing interpersonal or political power so that individuals, families, and communities can take action to improve their situations. It guarantees the freedom of people to enhance their choices and opportunities.³⁶² Applying this principle will restore dignity and respect for the inherent worth of informal dwellers and, consequently, improve their human development and well-being. In order to measure the success of capacity-building efforts, development actors and government officials should determine the extent to which informal dwellers can influence top-down decisions. It is essential to promote an awareness and an understanding of obligations related to relevant human rights as well as available redress mechanisms among all stakeholders.³⁶³ Moreover, all stakeholders should be capacitated to either fulfil human rights obligations or to claim entitlements³⁶⁴ Promoting community monitoring mechanisms has the benefit of raising an awareness of human rights entitlements and their corresponding obligations, as well as identifying relevant duty-bearers and processes to hold them accountable.³⁶⁵

361 Gready & Ensor 2005:13.

362 Uvin 2007:601.

363 Theis 2004. Theis J 2004. Promoting rights-based approaches: Experiences and ideas from Asia and the Pacific. Bangkok: Save the Children Sweden, 63.

364 Imran Jalaal P 2005. Using rights-based programming principles to develop capacities to claim rights: The Regional Rights Resource Team (RRRT) UNDP project in the Pacific island countries. In Banerjee 2005(a):51-76, 58.

365 Kindornay S & Twigg S 2015. *Establishing a Workable Follow-up and Review Process for the Sustainable Development Goals*. London: Overseas Development Institute. Available at <http://www.oneworld.net/sites/default/files/resources/2016-06/SDG%20Review%20Process-%20Overseas%20Development%20Institute.pdf>, 11. (accessed 2 October 2020).

5.2.4 Accountability

As discussed in Chapter 3, the RBAD presents development as a matter of rights and duties rather than charity. It strengthens the level of accountability in the development process by linking claim holders and duty-bearers.³⁶⁶ The achievement of better living conditions for informal dwellers requires strong accountability measures and mechanisms. To ensure effective accountability, development programming has to be linked with the legal standards of human rights. The precise content of human rights standards can be found in treaties and domestic laws as discussed in Chapter 2 and, most importantly, their interpretation and enforcement by the courts.

Human rights principles should “guide the formulation of policies, laws, strategies, and other appropriate measures in the administrative, budgetary, judicial, educational, political, social, and other fields” that have an impact on development programming.³⁶⁷ The government of South Africa should be committed to transparent processes at local and national levels in its quest to eradicate informal settlements as mandated by the obligations imposed by the socio-economic rights provisions of the Constitution.³⁶⁸ The South African Human Rights Commission should be the first line of defence and should therefore be explicitly mandated to monitor and report on government progress in achieving development programming in informal settlements.

5.3 Conclusion

The overall objective of this study is to address the violation of the rights to adequate housing, health care, food, and social security of people living in informal settlements in South Africa. Over the years numerous efforts aimed at eradicating informal settlements have failed. To effectively address the practical challenges, the pursuit of an RBAD is recommended because it has the potential to achieve sustainable development and genuine transformation. In addition, it could effectively address the range of socio-economic challenges that impoverished South Africans who live in informal settlements are confronted with.

This study has examined the government’s violations of the rights to adequate housing, health care, food, and social security of people living in informal settlements.

366 Cornwall & Nyamu-Musembi 2004:1426-1428; Darrow & Tomas 2005:511; Alston 2005:805.

367 Darrow & Tomas 2005:498.

368 Kindornay & Twigg 2015:10-11.

It is guided by the central question of how an RBAD could contribute to the fulfilment of the rights to adequate housing, health care, food, and social services for informal dwellers in South Africa. The rights in question are enshrined in sections 26(1) and 27(1)(a)(b)(c) of the Constitution. It has explored how, and to what extent, these rights are realised or not realised by analysing primary challenges and how these have an impact on the overall human well-being and development of poor South Africans who experience informal settlements as their only places of survival.

LIST OF REFERENCES

1. TEXTBOOKS AND ELECTRONIC BOOKS

AVIS WR

2016. *Urban Governance* (Topic Guide). Birmingham, United Kingdom:Governance and Social Development Resource Centre, University of Birmingham.

ALSTON P AND GOODMAN R

2013. *International human rights*. Oxford:Oxford University Press.

APPLEYARD S

2002. *Rights-Based Approach to Development: What the policy documents of the UN development co-operation and NGO agencies say*. Bangkok:UN Office of the High Commissioner for Human Rights, Asia-Pacific Office.

BONNER P, NIEFTAGODIEN N AND MATHABATHA S

2012. *Ekurhuleni—the making of an urban region*. Johannesburg:Wits University Press.

CAWTHRA G

1993. *Policing South Africa: the South African police & the transition from apartheid*. David Philip Publishers, University of Michigan.

CURRIE I AND DE WAAL J

2013. *The Bill of Rights handbook*. Cape Town:Juta and Company Ltd.

DE VOS P ET AL

2015. *South African Constitutional Law in Context*. Oxford University Press:Oxford.

DEPARTMENT OF FINANCE

1996. *Growth, employment and redistribution: A macroeconomic strategy*. Pretoria:Republic of South Africa.

EIDE A, KRAUSE C AND ROSAS A

1995. *Economic Social and Cultural Rights A Textbook*. Netherlands:Kluwer Academic Publishers.

EHEBRECHT D

2015. *The challenge of informal settlement upgrading: Breaking new ground in Hangberg*. Vol 7. Cape Town?: Potsdam:Universitätsverlag Potsdam.

HICKEY S AND MITLIN D

2009. *Rights-based approaches to development: Exploring the potential and pitfalls*. Sterling: Kumarian Press.

HUMAN RIGHTS COUNCIL OF AUSTRALIA (EDS)

1995. *The Rights Way to Development: A Human Rights Approach to Development Assistance: Policy and Practice*.

IMRAN JALAAL P

2005. Using rights-based programming principles to develop capacities to claim rights: The Regional Rights Resource Team (RRRT) UNDP project in the Pacific island countries. In Banerjee 2005(a):51-76.

KAMGA SD

2018. *The right to development in the African human rights system*. Routledge. 210

KHOZA S

2007. *Socio-economic rights in South Africa: A resource book*. Community Law Centre, University of the Western Cape.

LANGFORD M, COUSINS B, DUGARD J AND MADLINGOZI T

2013. *Socio-economic rights in South Africa: Symbols or substance?*. Cambridge:Cambridge University Press.

MARKS SP

2003. *The Human Rights Framework for Development: Seven Approaches*. Reflections on the Right to Development. India:SAGE Publications.

2013. *Realizing the right to development*. Essays in commemoration of 25 Years of the United Nations Declaration on the Right to Development.

MCINERNEY-LANKFORD S AND SANO HO

2010. *Human rights indicators in development: an introduction*. Washington D.C.:The World Bank.

MIDGLEY J

2014. *Social development: Theory & practice*. London:Sage Publications.

NABARRO D

2016. Transforming our world: How sustainable development will help us achieve zero hunger. *International Food Policy Research Institute book chapters 22-27*.

PAYNE A AND PHILLIPS N

2010. *Development*. Cambridge:Polity Press.

PLAGERSON S AND ULRIKSEN MS

2017. The right to social security in South Africa. In *Socio-economic Rights: progressive realisation (57-516)*. Foundation for Human Rights.

RIST G

2008. *The history of development: From Western origins to global faith*. London & New York:Zed Books.

SCHAAF R

2013. *Development organizations*. Abingdon:Routledge.

SEABROOK J

2009. *The no-nonsense guide to world poverty*. Oxford:New Internationalist.

SMITH RK AND VAN DER ANKER C

2005. *The essentials of human rights*. London:Hodder Arnold.

SMITH RKM

2007. *Textbook on International Human Rights*. Oxford:Oxford University Press.

STEENEKAMP T

2012. *The South African economy*. Cape Town:Oxford University Press.

THOMAS T AND NARAYANAN P

2015. *Participation pays: Pathways for post-2015*. Warwickshire:Practical Action Publishing Ltd.

UVIN P

2004. *Human rights and development*. Vol 37. Bloomfield, CT: Kumarian Press.

2. JOURNAL ARTICLES

ADATO M, CARTER MR AND MAY J

2006. Exploring poverty traps and social exclusion in South Africa using qualitative and quantitative data. *The Journal of Development Studies*, 42(2):.226-247.

AKO MA, ANYIDOHO NA AND CRAWFORD G

2013. NGOs, Rights-based Approaches and the Potential for Progressive Development in Local Contexts: Constraints and Challenges in northern Ghana. *Journal of Human Rights Practice* 5(1):46-74.

ABRAMOVICH V

2006. The Rights-based Approach in Development: Policies and Strategies. *CEPAL Review* 88:33.

ALSTON P

2005. Ships passing in the night: The current State of the human rights and development debate seen through the lens of the Millennium Development Goals. *Human Rights Quarterly* 27(3):755-829.

BANIK D

2010. Support for Human Rights-based Development: Reflections on the Malawian Experience. *The International Journal of Human Rights* 14(1):34-50.

BOND P AND TAIT A

1997. The failure of housing policy in post-apartheid South Africa. *Urban Forum* 8(1):19-41.

BROWN-LUTHANGO M, REYES E AND GUBEVU M

2017. Informal settlement upgrading and safety: experiences from Cape Town, South Africa. *Journal of Housing and the Built Environment* 32(3):471-493.

CAZABAT C

2016. Integrating Civil Participation into Sustainable Development Practice. *European Journal of Sustainable Development* 5(4):25-32.

CECCHINI S AND NOTTI F

2011. Millennium Development Goals and human rights: Faraway, so Close?. *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centred Development* 12(1):121-133.

CHENWI L

2008. Putting flesh on the skeleton: South African judicial enforcement of the right to adequate housing of those subject to evictions. *Human Rights Law Review* 8(1):105-137,113.

CORNWALL A AND NYAMU-MUSEMBI C

2004. Putting the "Rights-Based Approach" to development into perspective. *Third World Quarterly* 25(8):1415-1437.

DARROW M AND TOMAS A

2005. Power, capture, and conflict: a call for human rights accountability in development cooperation. *Human Rights Quarterly* 27(2):471-538.

DEL MISTRO R AND A HENSHER D

2009. Upgrading informal settlements in South Africa: Policy, rhetoric and what residents really value. *Housing Studies* 24(3):333-354.

DE MAN A

2019. The Sustainable Development Goals and the rights-based approach to development: Compatible or missing the point?. *African Human Rights Law Journal*, 19(1):445-469.

DE VOS P

2001. Grootboom, the right of access to housing and substantive equality as contextual fairness. *South African Journal on Human Rights* 17(2):258-276.

DENZIN NK

2005. The discipline and practice of qualitative research. In Denzin NK and Lincoln YS. *Handbook of qualitative research*, 1-42.

DORSEY E, GÓMEZ M, THIELE B AND NELSON P

2010. Falling short of our goals: Transforming the Millennium Development Goals into Millennium Development Rights. *Netherlands Quarterly of Human Rights* 28(4):516-522.

DAWSON H

2014. Youth politics: Waiting and envy in a South African informal settlement. *Journal of Southern African Studies* 40(4):861-882.

DU PLESSIS P AND CONLEY L

2007. Children and poverty in South Africa: The right to social security. *Educational Research and Reviews* 2(4):049-059.

DUGARD J, CLARK M AND STUART T

2016. The right to housing in South Africa. *Socio-Economic Rights: Progressive Realisation* 155-262.

DUROJAYE E AND CHILEMBA E

2018. Accountability and the right to food: A comparative study of India and South Africa. *Food Security SA Working Paper Series* 3 (1-37). DST-NRF South Africa: Centre of Excellence in Food Security.

EIDE A

1998. The Historical Significance of the Universal Declaration. *International Social Science Journal* 158:475-497.

ELY YAMIN A

2008. Will we take suffering seriously? Reflections on what applying a human rights framework to health means and why we should care. *Health and Human Rights* 10(1):45-63.

FILMER-WILSON E

2005. The Human Rights-based Approach to Development: The Right to Water. *Netherlands Quarterly of Human Rights* 23(2):213-241.

GAURI V AND GLOPPEN S

2012. Human Rights-based Approaches to Development: Concepts, Evidence and Policy. *Polity* 44(4):485-503.

GLENDON MA

1998. Knowing the Universal Declaration of Human Rights. *Notre Dame Law Review* 73(5):1153-1190.

<https://dash.harvard.edu/bitstream/handle/1/12991698/Knowing%20the%20Universal%20Declaration%20of%20Human%20Rights.pdf?sequence=1>.

Accessed on 26/02/2020.

GREADY P

2009. Reasons to be cautious about evidence and evaluation: Rights-based approaches to development and the emerging culture of evaluation. *Journal of Human Rights Practice* 1(3):380-401.

HUCHZERMEYER M

2003. From “contravention of law” to “lack of rights”: Redefining the problem of informal settlements in South Africa. *Habitat International* 28(3):333-347.

JACKSON P

2007. A Prehistory of the Millennium Development Goals: Four Decades of Struggle for Development in the United Nations. *United Nations Chronicle* XLIV(4):7-9.

KALANTRY S, GETGEN JE AND KOH SA

2010. Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR. *Human Rights Quarterly* 32(15):254-279.

KATSUI H AND KUMPUVUORI J

2008. Human Rights Based Approach to Disability in Development in Uganda: A Way to Fill the Gap between Political and Social Spaces? *Scandinavian Journal of Disability Research* 10(4):227-236.

KENDE M S

2003. The South African Constitutional Court's embrace of socio-economic rights: A comparative perspective. *Chapman Law Review* (6):137-160.

KILLANDER M

2008. International human rights in context - Law, politics, morals. In: Alston P and R Goodman: recent publications. *African Human Rights Law Journal* 8(2), 617-619.

KINDORNAY S, RON J AND CARPENTER C

2012. Rights-based approaches to development: Implications for NGOs. *Human Rights Quarterly* 34(2):472-506.
<<http://muse.jhu.edu/journals/hrq/summary/v034/34.2.kindornay.html>>.

Accessed on 22/05/2020.

KURUVILLA ET AL

2012. The Millennium Development Goals and human rights: Realizing shared commitments. *Human Rights Quarterly* 34(1):141-177.

LANDMAN T

2004. Measuring human rights: Principle, practice, and policy. *Human Rights Quarterly* (26):908-931.

LIEBENBERG S

2002. South Africa's evolving jurisprudence on socio-economic rights: an effective tool in challenging poverty?. *Law, Democracy & Development*, 6(2):159-191.

MCINERNEY-LANKFORD S

2009. Human rights and development: a comment on challenges and opportunities from a legal perspective. *Journal of Human Rights Practice* 1(1): 51-82.

MUBANGIZI JC

2004. Protection of human rights in South Africa: public awareness and perceptions. *Journal for Juridical Science* 29(1):62-87.

2005. Know your rights: Exploring the connections between human rights and poverty reduction with specific reference to South Africa. *South African Journal on Human Rights* 21(1): 32-46.

NASH K

2009. Between citizenship and human rights. *Sociology* 43(6):1067-1083.

NGANG CC

2014. Judicial enforcement of socio-economic rights in South Africa and the separation of powers objection: The obligation to take other measures. *African Human Rights Law Journal* 14(2):655-680.

OLIVIER M AND VAN RENSBURG LJ

2009. Protection and enforcement of the right to social security. *Law, Democracy & Development* 4(1):87-99.

OLIVIER M

2002. Constitutional perspectives on the enforcement of socio-economic rights: Recent South African experiences. *Victoria University of Wellington Law Review* (33):117-152.

OPPONG RF

2006. Trade and human rights: A perspective for agents of trade policy using a rights-based approach to development. *African Human Rights Law Journal* 6(1):123-145.

OSMANI SR

2000. Human Rights to Food, Health, and Education. *Journal of Human Development* 1(2):273-298,292.

PILLAY A

2007. South Africa: Access to land and housing. *International Journal of Constitutional Law* 5(3):544-556.

ROSENBERG A

1995. Equality, Sufficiency, and Opportunity in the Just Society. *Social Philosophy and Policy*, 12(2), 54-71.

SANO HO

2000. Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development. *Human Rights Quarterly* 22:734–752.

SELEOANE M

2003. The right to education: Lessons from Grootboom. *Law, Democracy & Development* 7(1):137-169.

SENGUPTA A

2001. Right to development as a human right. *Economic and Political Weekly* Vol. 36(27):2527-2536.

SCHMIDT-TRAUB G

2009. The Millennium Development Goals and human rights-based approaches: moving towards a shared approach. *The International Journal of Human Rights* 13(1):72-85.

SCHIFF DN

1976. Socio-legal theory: social structure and law. *The modern Law review*, 39(3):287-310. Available at

<https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1976.tb01458.x#:~:text=According%20to%20a%20socio%2Dlegal,or%20change%20of%20the%20situation.> (accessed 20 October 2020).

SHAI I

2019. The right to development, transformative constitutionalism and radical transformation in South Africa: Post-colonial and de-colonial reflections. *African Human Rights Law Journal*, 19(1):494-509, 507.

UVIN P

2007. From the Right to Development to the Rights-based Approach: How “Human Rights” Entered Development. *Development in Practice* 17(4-5):597-606.

VAN RENSBURG LJ AND LAMARCHE L

2005. The right to social security and assistance. In *Brand D & Heyns C (eds.), Socio-Economic Rights in South Africa*, Pretoria: Pulp, 151-194.

WELCH AR

2005. Obligation of State and Non-state Actors Regarding the Human Right to Water Under the South African Cohabitation. *Sustainable Development Law & Policy*, 58-64.

WILLIAMS LA

2013. The right to housing in South Africa: an evolving jurisprudence. *Columbia Human Rights Law Review* 45:817-845.

3. CONTRIBUTIONS IN COMPILATION WORKS

FUKUDA-PARR S

2013. Human rights and politics and development. In M Goodhart 2013. *Human rights: Politics and practice*. 2nd ed. Oxford: Oxford University Press.

MARX C

2003. Supporting Informal Settlements. In: Khan F and Thring P (eds). *Housing Policy and Practice in Post-Apartheid South Africa*: Heinemann Publishers, Sandown.

LIEBENBERG S

2001. The protection of economic, social and cultural rights in domestic legal systems. In: Eide A, Krause C and Rosas A (eds.) 1995. *Economic, social and cultural rights: A textbook, Netherlands: Kluwer Academic Publishers*.

4. DISSERTATIONS AND PAPERS

EBI EAO

2016. *Enforcing the right of access to healthcare services in South Africa*. PhD dissertation. Pretoria: University of South Africa.

ISMAIL MIE

2005. *The integration of housing rights into the informal settlement intervention process: An international review*. PhD dissertation. Johannesburg: University of the Witwatersrand.

MOYO BH

2016. *Advocating for the right to food in South Africa-an analysis of judicial activism, public interest litigation and collective action in South Africa as a strategy to secure the right to food*. PhD dissertation. University of the Witwatersrand, Johannesburg. Available at <http://wiredspace.wits.ac.za/handle/10539/21891>. Accessed on 25 October 2019.

5. WORKING PAPERS, REPORTS AND STATEMENTS

ALSTON P

2004. *A human rights perspective on the Millennium Development Goals*. Background paper for the UN Millennium Project Task Force on Poverty and Economic Development. New York: UN Millennium Project.

DE SCHUTTER O

2012. *From charity to entitlement: Implementing the right to food in Southern and Eastern Africa* (Vol. 5). Briefing Note No, 6. Special Rapporteur on the right to food – OHCHR.

TRILSCH M

2009. What's the Use of Socio-Economic Rights in a Constitution. *Taking a Look at the South African Experience*.

THEIS J

2004. *Promoting rights-based approaches: Experiences and ideas from Asia and the Pacific*. Bangkok: Save the Children Sweden.

MACLAREN D, MOYO B AND JEFFERY J

2015. *The right to food in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to food*. Studies in Poverty and Inequality Institute Working Paper. Johannesburg: South Africa.

MANAGEMENT STUDY GUIDE

2013. *Desk research—methodology and techniques*.

<<https://www.managementstudyguide.com/desk-research.htm>>. Accessed on 18/10/2019.

MANDELA NR

1991. Address on the occasion of the ANC's Bill of Rights Conference, in a Bill of Rights for a Democratic South Africa: papers and report of a conference convened by the ANC's constitutional committee. Cape Town: Centre for Development Studies, University of the Western Cape.

MCINTYRE, D, THIEDE M, NKOSI M, MUTYAMBIZI V, CASTILLO-RIQUELME M, GILSON L, ERASMUS E, AND GOUDGE J

2007. SHIELD work package 1 report: a critical analysis of the current South African Health System'. Available at

<<http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=EC8CF46176281B7F550C45B988D5B882?doi=10.1.1.192.5891&rep=rep1&type=pdf>>.

Accessed on 01/10/2020.

NARULA S

2006. *The Right to Food: Holding Global Actors Accountable under International Law*. Centre for Human Rights and Global Justice, Working Paper No 7, 12.

<http://www.chrgj.org/publications/docs/wp/WPS_NYU_CHRGJ_Narula_Final.pdf>. Accessed on 17/04/2020.

NATIONAL PLANNING COMMISSION

2012. National Development Plan 2030: Our future-make it work.

SIMON M

1999. What can we do with a rights-based approach to development?. *Briefing Paper*, 3. Available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2614.pdf> Accessed 12/01/2021.

UNITED NATIONS

Commission on Human Rights. Report on the thirty-third session (7 February-11 March 1977) (E/5927-E/CN.4/1257), para 40. <[https://undocs.org/pdf?symbol=en/E/5927\(SUPP\)](https://undocs.org/pdf?symbol=en/E/5927(SUPP))>. Accessed on 03/09/2020.

Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19.

<<https://www.refworld.org/docid/47b17b5b39c.html>>. Accessed on 01/10/2020.

2002. *Strengthening of the United Nations: An Agenda for Further Change*. Report of the Secretary-General. <<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan005675.pdf>>. Accessed on 20/08/2020.

2004. *Economic, social and cultural rights: Annual report 2004 - implementation of activities and use of funds*. <<https://www.refworld.org/docid/47fdfaefd.html>>. Accessed on 01/10/2020.

High Commissioner for Human Rights (UNOHCHR) Economic, social and cultural rights: annual report 2004 implementation of activities and use of funds.

UN RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT (UNRISD)

2016. The human rights-based approach to social protection “Issue Brief 2”. Geneva.

<[https://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument](https://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument)>. Accessed on 02/09/2020.

UNDP

2000. *Human development report 2000: Human rights and human development*. Oxford: Oxford University Press.

VENEKLASSEN L, MILLER V, CLARK C AND REILLY M

2004. *Rights-based Approaches and Beyond: Challenges of Linking Rights and Participation*. A joint initiative of the Participation Group at Institute for Development Studies and Just Associates (IDS Working Paper 235). <<https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/4084/Wp235.pdf>>. Accessed on 01/10/2020.

6. DECLARATIONS, CONVENTIONS AND TREATIES

AFRICAN COMMISSION

1986. *African Charter on Human and People's Rights* (adopted in 1981 and entered into force on 21 October 1986).

UNITED NATIONS

1945. *United Nations Charter* (signed on 26 June 1945 and entered into force on 24 October 1945).

UNITED NATIONS GENERAL ASSEMBLY

1948. *Universal Declaration of Human Rights* (adopted on 10 December 1948).

1961. *United Nations Development Decade: A Programme for International Economic Co-operation* (adopted on 19 December 1961).

1965. *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted on 21 December 1965 and entered into force on 4 January 1969).

1966(a). *International Covenant on Civil and Political Rights* (adopted on 16 December 1966 and entered into force on 23 March 1976).

1966(b). *International Covenant on Economic, Social and Cultural Rights* (adopted on 16 December 1966 and entered into force 3 January 1976).

1974(b). *Programme of Action on the Establishment of a New International Economic Order* (adopted on 1 May 1974).

1979. *Convention on the Elimination of All Forms of Discrimination against Women* (adopted on 18 December 1979 and entered into force on 3 September 1981).

1986. *Declaration on the Right to Development* (adopted on 4 December 1986).

1989. *Convention on the Rights of the Child* (adopted on 20 November 1989 and entered into force on 2 September 1990).

2015. *Transforming our World: The 2030 Agenda for Sustainable Development* (adopted on 25 September 2015).

WORLD CONFERENCE ON HUMAN RIGHTS

1993. *Vienna Declaration and Programme of Action* (adopted on 25 June 1993).

7. ELECTRONIC RESOURCES

BOSWORTH B

2016. *South Africa-key to putting informal settlements on the Habitat III agenda*.
<<https://www.urbanafrica.net/news/south-africa-key-to-putting-informal-settlements-on-the-habitat-iii-agenda/>>. Accessed on 22/04/2020.

BEUKES S

2018. *Promise of right to housing remains elusive in democratic South Africa*.
<<https://theconversation.com/promise-of-right-to-housing-remains-elusive-in-democratic-south-africa-105706#:~:text=South%20Africa's%20Constitution%20protects%20everyone's%20right%20to%20access%20adequate%20housing.&text=Tens%20of%20thousands%20of%20South,emergency%20housing%20for%20displaced%20people>>. Accessed on 16/10/2020.

BURGER J

2010. *The reason behind service delivery protests in South Africa*. Tshwane, Pretoria, South Africa: Institute for security studies. Available, from URL.
<<https://www.polity.org.za/article/the-reasons-behind-service-delivery-protests-in-south-africa-2009-08-05#:~:text=Many%20reasons%20for%20these%20protests,toilets%2C%20especially%20in%20informal%20settlements>>. Accessed on 17/03/2020.

CHOWDHURY AR AND BHUIYAN JH

2012. *An introduction to international human rights law*.
<<https://therights.files.wordpress.com/2012/07/an-introduction-to-international.pdf>>. Accessed on 30/10/2020.

FLYNN-SCHNEIDER A

2014. Inter-Governmental Organizations. Human Rights Brief 21(1).
<<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1906&context=hrbrief>>. Accessed on 05/09/2020.

FUKUDA-PARR S

2009. *Human rights and politics in development. Human Rights: Politics and Practice.*

<<http://sakikofukudaparr.net/wp-content/uploads/2016/06/Human-Rights-and-Politics-in-Development.pdf>>. Accessed on 26/09/2020.

GREADY P AND ENSOR J

2005. *Reinventing development?: translating rights-based approaches from theory into practice.* Zed Books.

<[https://books.google.co.za/books?hl=en&lr=&id=2yslu55T3NcC&oi=fnd&pg=PA1&dq=Gready+%26+Ensor+\(2005\)&ots=u5K-IF95NI&sig=aw3AYnGUGGy7RYUev-g0r0VPILQ#v=onepage&q=Declaration%20on%20the%20right%20to%20development%20&f=false](https://books.google.co.za/books?hl=en&lr=&id=2yslu55T3NcC&oi=fnd&pg=PA1&dq=Gready+%26+Ensor+(2005)&ots=u5K-IF95NI&sig=aw3AYnGUGGy7RYUev-g0r0VPILQ#v=onepage&q=Declaration%20on%20the%20right%20to%20development%20&f=false)>. Accessed on 02/09/2020.

JASPERBALBA

Cause of Informal Settlements.

<<https://jubalba.wordpress.com/cause-of-informal-settlements/#content-wrapper>>. Accessed on 16/10/2020.

KERCHER J AND MAHLER C

2015. *Sustainable Development Goals: an opportunity for the realisation of human rights in and by Germany.*

<https://www.ssoar.info/ssoar/bitstream/handle/document/43813/ssoar-2015-kercher_et_alSustainable_Development_Goals_an.pdf?sequence=1&isAllowed=y&Inkname=ssoar-2015-kercher_et_al-Sustainable_Development_Goals_an.pdf>. Accessed on 30/09/2020.

KINDORNAY S AND TWIGG S

2015. *Establishing a Workable Follow-up and Review Process for the Sustainable Development Goals.* London: Overseas Development Institute.

<<http://www.oneworld.net/sites/default/files/resources/2016-06/SDG%20Review%20Process-%20Overseas%20Development%20Institute.pdf>>. Accessed on 02/10/2020.

MOYO K

2016. *Realising the right to health in South Africa. Socio-economic rights - Progressive realisation.* <<https://www.fhr.org.za/files/7215/1247/1732/Health.pdf>>. Accessed on 30/10/2020.

OBERLEITNER G

2006. International human rights Lexicon. *The Modern Law Review*, 69(6):1035-1037. <<https://www.jstor.org/stable/4123375>>. Accessed on 11/08/2020.

PIOVESAN F AND FACHIN MG

2018. Gender Equality, the Right to Development, and the 2030 Agenda for Sustainable Development. In E-learning module on *Operationalizing the Right to Development in implementing the Sustainable Development Goals*. Geneva, Ciudad Colon and Kuala Lumpur: OHCHR, UPEACE and UNU-IIGH. <https://www.ohchr.org/Documents/Issues/Development/SR/AddisAbaba/Rtd_GenderEquality_2030Agenda.pdf>. Accessed on 02/06/2020.

PRESIDENTIAL INFRASTRUCTURE COORDINATING COMMISSION

2012. A summary of the South African national infrastructure plan. *Presidential Infrastructure Coordinating Commission, South Africa.* <<http://www.gov.za/issues/nationalinfrastructure-plan>>. Accessed on 26/02/2020.

SACHS A

2003. The judicial enforcement of socio-economic rights: The Grootboom case. *Current Legal Problems*, 56(1), 579. <<https://search.proquest.com/openview/851a42aaee05f98e0497c69778f2d7d3/1?pg-origsite=gscholar&cbl=2032116>>. Accessed on 01/07/2020.

SOCIO-ECONOMIC RIGHTS INSTITUTE OF SOUTH AFRICA

2018. *Informal settlements and human rights in South Africa*. Submission to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. <<https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/SERI.pdf>>. Accessed on 30/03/2020.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

2016. *The Right to Adequate Housing Factsheet*.
<<https://www.sahrc.org.za/home/21/files/Fact%20Sheet%20on%20the%20Right%20to%20adequate%20housing.pdf>>. Accessed on 03/03/2020.

2018. *Access to health care: final Access to Health Care Educational Booklet*.
<<https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf>>. Accessed on 03/03/2020.

STATISTICS SOUTH AFRICA

2016. General household survey. *Electronic citation*.
<<http://www.statssa.gov.za/?p=9922>>. Accessed on 26/09/2020.

2019. Five facts about poverty in South Africa.
<<http://www.statssa.gov.za/?p=12075>>. Accessed on 26/09/2020.

UNITED NATIONS

2003. The human rights–based approach to development cooperation: towards a Common Understanding among UN Agencies. 3-5 May. Interagency Workshop on a human rights–based approach.
<https://unsdg.un.org/sites/default/files/The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>. Accessed on 02/09/2020.

Office of the High Commissioner for Human Rights 2006(a). Frequently asked questions on a human rights-based approach to development cooperation. Geneva: United Nations Publications. Available at
<<http://www.ohchr.org/Documents/Publications/FAQen.pdf>>. Accessed on 05/09/2020.

Office of the High Commissioner for Human Rights. 'International Human Rights Law'. <<https://www2.ohchr.org/English/law/>>. Accessed on 16/06/2020.

Office of the High Commissioner for Human Rights.
<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx#:~:text=All%20human%20rights%20are%20indivisible,economic%2C%20social%20and%20cultural%20rights>. Accessed on 19/10/2020.

2015. Transforming our world: the 2030 Agenda for Sustainable Development. *Division for Sustainable Development Goals*: New York, NY, USA. Available at
<<https://sustainabledevelopment.un.org/content/documents/21252030%20Ag>

[enda%20for%20Sustainable%20Development%20web.pdf](#)>. Accessed on 02/09/2020.

Working Methods of Treaty Bodies, Geneva, 17 to 18 April 2007. Available at <<https://digitallibrary.un.org/record/601794?ln=en#record-files-collapse-header>>. Accessed on 02/09/2020.

8. NEWSPAPER ARTICLES

ROYSTON L AND EBRAHIM T

2019. Urban land reform: Start with informal settlements. *Daily Maverick*. <<https://www.dailymaverick.co.za/article/2019-07-04-urban-land-reform-start-withinformalsettlements/#:~:text=Urban%20informal%20settlements%20are%20the,live%20in%20urban%20informal%20settlements>>. Accessed on 26/09/2020.

SEXWALE T

2013. Informal settlements a problem. *IOL*. <<https://www.iol.co.za/news/politics/informal-settlements-a-problem-sexwale-1488954>>. Accessed on 18/10/2019.

TSHIDI M

2019. 'District development model could lessen temptation for corruption in local government'. *News24*. <<https://www.news24.com/news24/southafrica/news/district-development-model-could-lessen-temptation-for-corruption-in-local-govt-dlamini-zuma-20191012>>. Accessed on 13/09/2020.

9. CASES

Government of the Republic of South Africa v Grootboom 2000 (1) SA 46 (CC).

Khosa and others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development and Others 2004 (6) BCLR 569 (CC).

Minister of Health and Others v Treatment Action Campaign and Others (No 1) (CCT9/02) [2002] ZACC.

Ngalo v South African Social Security Agency (2740/11) [2013] ZAECMHC 4 [2013].

Port Elizabeth Municipality v Various Occupiers 2004 (12) BCLR 1268.

Social Justice Coalition & Others vs Minister of Police 2019 4 SA 82 (WCC).

Soobramoney v Minister of Health, KwaZulu- Natal 1998 (1) SA 765 (CC).

10. LEGISLATION

Constitution of the Republic of South Africa, 1996

Housing Act 107 of 1997. *Statute of South Africa*.

Republic of South Africa 1997. Water Services Act. Act No. 108 of 1997. *Government Gazette*, 18522.

Department of Human Settlements, 2009. The National Housing Code.

South Africa 1994. 'White paper on reconstruction and development: government's strategy for fundamental transformation'. *Johannesburg*.

Department of Housing, 1994. White Paper: A New Housing Policy and Strategy for South Africa.