

**EXAMINING THE REALISATION OF THE RIGHT TO HOUSING IN SOUTH  
AFRICA**

By

**NTSAKO FRED MUKANSI**

Mini-Dissertation submitted in partial fulfilment of the degree of

**MASTER OF LAW**

in

**DEVELOPMENT AND MANAGEMENT LAW**

In the

**FACULTY OF LAW**

of the

**UNIVERSITY OF LIMPOPO**

(Turfloop Campus)


**SUPERVISOR: PROF M MHANGO**

**2025**



## **DECLARATION OF N TSAKO FRED MUKANSI**

I solemnly declare that this dissertation, submitted in fulfilment of the requirements for the degree of Development and Management: Public and Environmental Law at the University of Limpopo, is an original work that has not been previously submitted for any academic qualification at this institution or any other. I affirm that the research design, execution, and content are entirely my own, and that all sources and materials utilized have been properly cited and acknowledged.

A handwritten signature in black ink, appearing to read 'Ntsako Fred Mukansi', is written over a solid horizontal line.

Ntsako Fred Mukansi

Date: 11 March 2025

## **DECLARATION OF SUPERVISOR**

I hereby confirm that I have supervised this Dissertation by Mr. Ntsako Fred Mukansi titled 'Examining the realisation of the right to Housing in South African' for the degree of Masters of Development and Management Law in the Department of Public and Environmental Law, University of Limpopo (Turfloop Campus).

---

Prof M. Mhango

Supervisor

Date: 11 March 2025

## **ACKNOWLEDGEMENTS**

I would like to express my deepest gratitude to my supervisor, Prof M Mhango, for his exceptional guidance, unwavering support, and expertise throughout this research journey. His patience, insight, and encouragement were invaluable, and I am forever grateful for the opportunity to have worked under his supervision.

I also extend my heartfelt appreciation to my family, friends, and loved ones, who endured countless hours of my absence, stress, and obsession with this research. Your love, encouragement, and sacrifices kept me going, even when the journey seemed insurmountable. Thank you for being my rock, my safe haven, and my constant source of strength.

## SUMMARY

This research explores the Government of South Africa's contribution to developing Socio-economic rights with the right to housing as a focal point, a cornerstone of the country's democratic dispensation. Through a qualitative approach, this study investigates the extent to which government initiatives, policies, and programs have addressed the socio-economic needs of vulnerable populations, including the poor, women, children, and marginalized communities.

The findings reveal a mixed bag of progress and challenges, highlighting the need for more targeted, collaborative, and sustainable efforts to realise Socio-economic rights. Despite notable achievements in areas such as social security, healthcare, and education, significant gaps remain in addressing poverty, inequality, and unemployment.

This research offers recommendations for a more inclusive, responsive, and accountable government approach, including strengthening policy frameworks and coordination, enhancing community participation and engagement, increasing funding and resource allocation, improving service delivery and access, and addressing systemic inequalities and discrimination

Ultimately, this research aims to contribute to a more just and equitable society for everyone, where socioeconomic rights are realised, and human dignity is upheld.

**Key Terms:** Socio-economic rights, Housing, Government, South Africa.

## LIST OF ABBREVIATIONS

CC	Constitutional Court
DHS	Department of Human Settlements
ESTA	Extension of Security of Tenure Act
ICESCR	International Covenant on Economic, Social and Cultural Rights.
MEC	Member of the Executive Council
PAJA	Promotion of Administrative Justice Act
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PHP	Peoples Housing Programme
PIE	Prevention of Illegal Eviction From and Unlawful Occupation of Land Act
RDP	Reconstruction and Development Programme
SAHRC	South African Human Rights Commission
SERs	Socio-Economic Rights
TAC	Treatment Action Campaign
UDHR	Universal Declaration of Human Rights

# TABLE OF CONTENTS

<b>DECLARATION OF NTSAKO FRED MUKANSI</b> .....	<b>i</b>
<b>DECLARATION OF SUPERVISOR</b> .....	<b>ii</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>iii</b>
<b>SUMMARY</b> .....	<b>iv</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>v</b>
<b>CHAPTER ONE: INTRODUCTION</b> .....	<b>1</b>
1.1 Introduction .....	1
1.1.1 Housing in Apartheid .....	2
1.1.2 Housing in the democratic era of South Africa.....	3
1.1.3 Housing as a Socio-economic Right.....	5
1.2 Problem Statement .....	7
1.3. The Purpose of the Study .....	8
1.3.1 The Aim of the Study .....	8
1.3.2 Objectives of the Study.....	9
1.4 Significance of the Study .....	9
1.5 Literature Review .....	10
1.6 Research gap.....	13
1.7 Research Questions .....	13
1.8 Hypothesis .....	14
1.9 Research Methodology .....	14
1.10 Ethical Considerations .....	15
1.11 Chapter Breakdown .....	15
<b>CHAPTER TWO: POLICY REVIEW, LEGISLATIVE, AND INTERNATIONAL LAW</b> .....	<b>17</b>
2. 1 Introduction .....	17

2. 2 Pre-democratic Legislation .....	17
2. 3 Post-democratic Legislative Framework .....	20
2. 3. 1 The Housing Act No 107 of 1997 .....	23
2. 3. 2 The Extension of Security of Tenure Act, .....	25
2. 3. 3 The PIE Act.....	27
<u>2.4. The link between the ESTA, the PIE Act and the realisation of the right to housing .....</u>	<u>29</u>
2.5. Policies, National Plans and Initiatives employed by the Government to ensure the Right to Housing. ....	30
2. 5. 1 People’s Housing Process (PHP).....	32
2. 5. 2 Breaking New Ground (BNG) .....	33
2. 5. 3 The RDP. ....	34
2. 5. 4 National Upgrading Support Programme (NUSP) of 2009 .....	35
2.6. International Law .....	36
2.6.1 The International Covenant on Economic, Social, and Cultural Rights.....	37
<b>CHAPTER 3: COURTS AND LITIGATION THAT PROMOTE HOUSING AS A SOCIO-ECONOMIC RIGHT .....</b>	<b>39</b>
3. 1 Introduction .....	39
3. 2 Judicial Enforcement of the Right to Housing .....	39
3. 3 Case Law.....	40
3. 3. 1. <i>Government of the Republic of South Africa v Grootboom (2000)</i> .....	40
3. 3. 2 The National Housing Code.....	41
3. 3. 3 <i>Port Elizabeth Municipality v Various Occupiers (2004)</i> .....	42
3. 3. 4 <i>Occupiers of 51 Olivia Road v City of Johannesburg.</i> ....	44
3. 3. 5. <i>Abahlali baseMjondolo v eThekweni Municipality (2009)</i> .....	46
3. 4. Conclusion .....	47
<b>CHAPTER 4: CONTENT ANALYSIS AND PRESENTATION OF DATA.....</b>	<b>49</b>
4. 2 Legislative and Policy Framework .....	49

4. 2 Government Contributions to SERs .....	52
4. 2. 1 Housing .....	52
4. 2.2 Water and Sanitation .....	53
4. 3 Merits and Demerits.....	55
4. 3. 1 Merits.....	55
4. 3. 2. Demerits .....	57
4. 3 Legal Mechanisms for Accountability .....	59
4. 4 Conclusion .....	60
<b>CHAPTER 5: SUMMARY OF OUTCOMES, RECOMMENDATIONS AND RESEARCH CONCLUSION.....</b>	<b>62</b>
5. 1 Introduction .....	62
5.3 Recommendations.....	63
5.3.1 Strengthen Implementation Mechanisms .....	63
5.3.2 Enhance Monitoring and Evaluation.....	64
5.3.3 Combat Corruption .....	64
5.3.4 Targeted Equity Programs .....	64
5.3.5 Sustainable Development Practices .....	64
5.3.6 Strengthen Legal Frameworks.....	64
5.4 Research Gap.....	65
5.5 Research Conclusion.....	65
<b>BIBLIOGRAPHY .....</b>	<b>66</b>

## CHAPTER ONE: INTRODUCTION

### 1.1 Introduction

As a basic right that every person who dwells within the Republic of South Africa, housing is recognized as a basic human right that aims to offer people not only a place to live but also dignity. Because of this, it is expected of all governments to guarantee the right to housing to their population.<sup>1</sup> Nonetheless, a lot of nations, notably South Africa, have seriously infringed this principle. This is an extremely high percentage, roughly a sixth of the world's population. Since the apartheid era, when millions of non-white people were forcibly removed from their land and forced to settle in small, segregated areas on the outskirts of cities, most of which were informal settlements brought on by rapid urbanization, housing in South Africa has been a significant social, economic, and political challenge.<sup>2</sup> The democratic Constitution, aimed to resolve the injustices of the previous unfair form of governance, including its laws and practices.<sup>3</sup> Classism emerged in the country as a result of the distinct social classes that apartheid created, and as a result, it is cliché to also mention the stark economic divide that exists amongst people from various ethnic backgrounds.<sup>4</sup> As a result, the South African Constitution recognizes Socio-economic rights (SERs) as essential human rights, and it is the duty of the government to ensure that these rights are respected.<sup>5</sup>

---

<sup>1</sup> Hohmann, J *The Right to Housing: Law, Concepts, Possibilities* (Bloomsbury Publishing 2013) 24.

<sup>2</sup> Gunter, A & Manuel, K 'Urban Housing in South Africa: The Role of Housing in Development and Transformation' In *Urban Geography in South Africa: Perspectives and Theory* (Springer 2020). 209223.

<sup>3</sup> The Preamble to the Constitution of the Republic of South Africa, 1996(hereinafter referred to as the Constitution).

<sup>4</sup> Munchick, C *Making (Sense Of) History after Apartheid: Neoliberal Education in the 'New' South Africa* Bachelor Thesis (Vassar College 2017) 22.

<sup>5</sup> Majiedt, JS "'Dreams and Aspirations Deferred?": The Constitutional Court's Approach to the Fulfilment of Socio-Economic Rights in the Constitution' (2022) 26(1) *Law, Democracy & Development* 3-5.

### 1.1.1 Housing in Apartheid

Prior to the National Party coming into governance in 1948, the Natives (Urban Areas) Act, which embodied the so-called "Stallard principle," was the primary legislative manifestation of this seeming distortion of the "normal" structures of a contemporary capitalist social order in the area of housing policy.<sup>6</sup> The main features of this law remained at the centre of attempts to achieve total segregation in the 1930s and "grand apartheid" after the National Party government took power in 1948 for more than 60 years, until attempts to impose "influx control" on African urbanization were abandoned in 1986.<sup>7</sup> The Stallard principle dictated that African urban dwellers could only be denied the right to municipal enfranchisement if their right to permanent residence in those places, which is connected to their right to freehold tenure of urban land, was revoked.<sup>8</sup> As a result, "the native" was only allowed to enter "white" cities and towns "to minister to the wants of the white man and should withdraw therefrom to return to the so-called reserves when he ceases so to minister."<sup>9</sup> The Group Areas Act made this worse, in line with this statute from the era of Apartheid, urban areas were to be segregated into racially divided zones.<sup>10</sup> Whereas the Natives Land Act allocated less than ten percent of South Africa as Black "reserves", which also criminalised the purchase or renting of land outside of these areas.<sup>11</sup>

In the 1950s and 60s, the legislation also limited the lengths of tenure under which Black people could live on farms owned by White people.<sup>12</sup> This allowed White people

---

<sup>6</sup> The Natives (Urban Areas) Act 21 of 1923.

<sup>7</sup> Wilkinson, P 'Housing Policy in South Africa' (1998) 22(3) *Habitat International* 217.

<sup>8</sup> Note 7.

<sup>9</sup> Transvaal Provincial Administration Report of the Local Government Commission, 1922.

<sup>10</sup> The Group Areas Act 41 of 1950.

<sup>11</sup> Natives Land Act 27 of 1913.

<sup>12</sup> Van Staden, M 'Land Loss and Labour Control: The Intersection of Land Dispossession and Labour Law in South African History' (2024) *Industrial Law Journal* 20.

to acquire land ownership while Black people were forced to relocate to segregated areas where they were unable to obtain good housing.<sup>13</sup> The long-term effects of segregation on South Africa's housing market are still visible today, as the country's predominantly white suburbs are vast and have excellent infrastructure, while the country's predominantly black townships, in contrast, their development is constantly plagued by a variety of social problems like crime, poor and inadequate infrastructure and a lack of basic services, to name a few.<sup>14</sup> However, when considering the eviction of Black individuals, it is important to recognize that the authority to issue an ejection order under section 46(2)(b) of the 1966 Group Areas Act was broad and as a result, such decisions would significantly impact the lives of those affected, often in profound and detrimental ways.<sup>15</sup> Therefore, such an order was to be issued only after a thorough investigation has been conducted.

### **1.1.2 Housing in the democratic era of South Africa**

According to the country's Constitution, one of the main obligations of the South African government to its citizens throughout the current democratic regime is the provision of access to adequate housing.<sup>16</sup> Because of this, the research aims to present an overview and in-depth examination of the South African housing rights as they relate to the country's laws and Constitution, as well as the degree to which these guarantees have been carried out in practice. In an effort to lay the foundations for a democratic and open society in which government will be based on the will of the people and every citizen will be equally protected by the law, the South African Constitution recognizes and lists the rights of all South African citizens, regardless of

---

<sup>13</sup> Van Staden, M 'Colonialism and Apartheid Stripped Black SA's of Land and Labour rights' (2024) [2024-10 - Colonialism and apartheid stripped black SA's of land and labour rights - Wits University](#) accessed 21 November 2024.

<sup>14</sup> Fieuw, W & Mitlin, D 'What the Experiences of South Africa's Mass Housing Programme Teach Us about the Contribution of Civil Society to Policy and Programme Reform' (2018) 30(1) *Environment and Urbanization* 219, 222-225.

<sup>15</sup> Group Areas Act 36 of 1966.

<sup>16</sup> Section 26 of the Constitution.

their status.<sup>17</sup> Everyone has a right to have access to adequate housing or a reasonable standard of shelter, and for improved conditions of life, as stated in section 26(1) of the Constitution. This therefore means that the government of South Africa is under an obligation to ensure that the villager of South Africa live in decency, with no disarray of people's right.<sup>18</sup>

Section 26 of the Constitution continues to outline several legislative measures that require the government to take strategic actions to further ensure the realisation of the right to housing in South Africa. These provisions include reducing laws that violate citizens' rights to decent housing and quality of life, developing frameworks and policies to realise the provision of housing for persons who are sheltered in South Africa, and developing strategies to ensure that resources are available to meet the needs of everyone who are in need of decent housing.<sup>19</sup> The government is required by section 26(2) of the Constitution to see to it that legislative and other measures are taken as soon as possible to safeguard the residents of undeveloped and under upgraded townships, communal land, and traditional land from being forcibly removed from their homes or subjected to other forms of intimidation.<sup>20</sup>

This is to ensure that should an individual be prepared to relinquish their claim to the title or rights of the dwelling, no one can be permitted to exploit this willingness to release control. Therefore, any legal process that removes someone from their residence in one of the aforementioned locations must be accountable to the courts and cannot be implemented until the court has heard the case and determined that

---

<sup>17</sup> Bilchitz, D, Glaser, D, Konstant, A, Du Toit, L, Moshikaro, K & Werbeloff, M *Assessing the Performance of the South African Constitution* (Stromsburg: International IDEA 2016) 19-26.

<sup>18</sup> Heywood, M 'Seize Power! The Role of the Constitution in Uniting a Struggle for Social Justice in South Africa' In Satgar, V (Ed.) *Capitalism's Crises: Class Struggles in South Africa and the World* (Wits University Press 2015) 245-276.

<sup>19</sup> Badewa, AS & Dinbabo, MF 'South Africa's Political Commitment to the Promotion and Protection of the Rights of Vulnerable Groups' In *Democracy and Political Governance in South Africa: The African Peer Review Mechanism* (Springer 2022) 99-112.

<sup>20</sup> Bennett, T & Murray, C 'Traditional Leaders' In Woolman, S, Roux, T, Klaaren, J, Stein A & Chaskalson, M (eds) *Constitutional Law of South Africa* (2nd ed Juta & Co 2005) Chapter 26.

the removal was appropriate.<sup>21</sup> According to the Constitution, the government must implement policies that forbid undocumented occupants from acquiring any property.<sup>22</sup> A plain reading of section 26(2) of the Constitution implies that the government is tasked through the legislature to put in place measures that ensure that the right to housing by persons or groups of persons that are unable to afford such within the realms of the residence determined by them or according to their needs is acknowledged.<sup>23</sup>

There is no denying that the Constitution is the highest law of the land, and under section 2, the supremacy clause, any laws that violate its provisions are declared unenforceable. This implies that any actions taken by the government under the guise of upholding a law must be evaluated in light of section 26 of the Constitution. This implies that the government cannot clear out or destroy any informal settlements without first following the appropriate legal procedures that complies with the eviction laws and regulations by a court of law in a just and equitable manner.<sup>24</sup> The purpose of the legal enforcement mechanisms used to uphold the housing right throughout the republic is to guarantee that there is sufficient, timely, and effective housing supply in the country, as well as appropriate administration of housing provision and use.<sup>25</sup>

### **1.1.3 Housing as a Socio-economic Right**

---

<sup>21</sup> Note 20.

<sup>22</sup> Alfaro-Velcamp, T & Shaw, M 'Please Go Home and Build Africa': Criminalising Immigrants in South Africa' (2016) 42(5) *Journal of Southern African Studies* 989.

<sup>23</sup> Thabo, MT & Odeku, KO 'Separation of Powers, Checks and Balances and Judicial Exercise of Self-Restraint: An Analysis of Case Law' (2021) 42(3) *Obiter* 553-554.

<sup>24</sup> Clark, M & Tissington, K 'Courts as a Site of Struggle for Informal Settlement Upgrading In South Africa' In Cirolia, LS, Gorgens, T, van Donk, M, Smit, W & Drimie, S (Eds) *Upgrading Informal Settlements In South Africa: A Partnership Approach* (UCT Press 2016) 376-391.

<sup>25</sup> Mudzielwana, T & Odeku, KO 'Reinvigorating the Right of Access to Adequate Housing and the Institutions Responsible for the Enforcement of This Right in South Africa' (2023) 12(3) *Perspectives of Law & Public Administration* 400-402.

On February 4th of 1997, the South African Constitution came into full force. Since then, it has been praised globally as one of the most progressive main sources of law that keeps pace with the demands of the twenty-first century, and it has enabled the nation to take a leading role in the advancement of human rights in Africa and around the world.<sup>26</sup> Because of the Bill of Rights in chapter 2, the Constitution is often recognized internationally as one of the greatest instruments for promoting and defending human rights overall. Parliament has enacted several laws that comply with the provisions of the Constitution since its inception, none more so than the Housing Act.<sup>27</sup> The Housing Act is the legislative action taken by the legislature in accordance with section 26(2) of the country's Constitution, which states that everyone has the right to have access to adequate housing and that the state should take legislative measures to achieve the right.<sup>28</sup> The South African Human Rights Commission (SAHRC) regards the Housing Act as a legislation enacted to give effect to this provision of access to adequate housing.<sup>29</sup> The nation faces a severe and complex housing crisis as a result of more than 50 years of apartheid, which the current black leadership has pledged to remedy.<sup>30</sup> The challenges facing the South African government in resolving the housing issue are examined in this paper, along with the question of whether the nation's legal and socioeconomic structures offer a sufficient foundation to acknowledge the right to housing.

Furthermore, private property frequently poses a barrier to the development of housing alternatives on commercially viable urban land, particularly with regard to the upgrading of informal settlements.<sup>31</sup> Land ownership is one of the biggest obstacles the government must overcome. The government has a history of being reluctant to offer assistance that could help illegal informal settlement occupants of private land

---

<sup>26</sup> Mavedzenge, J 'How South Africa Shapes a World-Leading Constitution' 27 October 2024 [How South Africa shaped a world-leading constitution – The Mail & Guardian](#) accessed 11 November 2024.

<sup>27</sup> Housing Act 107 of 1997.

<sup>28</sup> Sobantu, M, Zulu, N & Maphosa, N 'Housing as A Basic Human Right: A Reflection on South Africa' (2019) 31(1) *Southern African Journal of Social Work and Social Development* 6-7.

<sup>29</sup> South African Human Rights Commission: The Right to Adequate Housing Fact sheet.

<sup>30</sup> Sonneborn, L *The End of Apartheid in South Africa* (Infobase Publishing 2010) 41-45.

<sup>31</sup> Fieuw, WVP *Informal Settlement Upgrading in Cape Town's Hangberg Local Government, Urban Governance and the 'Right to the City'* Masters Dissertation (Stellenbosch University 2011) 52.

extend their tenure.<sup>32</sup> By passing the current Housing Act, the Nelson Mandela transitional administration had a hand in the extremely delicate land issue. Given the South African government's efforts aimed at addressing the housing predicament are bolstered by the constitutional provisions that also recognize the right of the people to housing. Based on above and on the opinion of several scholars, social justice with regards to the right to housing is indeed a social right, thus with tenure being one of the key ingredients to the progressive realisation of the right to housing, the efforts and commitment of the government to ensure realisation of the right to housing should not be overlooked.

In addition to the sentiments expressed above, it is opined that a substantial fraction of the population has been moved from the substandard housing conditions of the apartheid era to an improved housing environment by the government of South Africa, for which it deserves praise.<sup>33</sup> After taking the initial step, things will get more difficult, and the government will be forced to become involved in the housing campaigns in each state and act as a facilitator. In order to enact the right laws and working together with families, the government, in particular, needs to investigate the problems limiting the market and act as an external catalyst. South Africa is expected to lead the world in striking a balance between the function of the government and the rights of the people. The government has indeed played a huge role in the housing crisis, and there is no sign that this role will get any smaller or less significant. On the other hand, if the government continues to support tenants and the desperate individuals living in makeshift housing, and if there is constant dialogue among all those involved in the housing crisis, then eventually, everyone in South Africa will have access to decent housing.

## **1.2 Problem Statement**

---

<sup>32</sup> Satterthwaite, D 'Upgrading Informal Settlements' (2012) 7 *International Encyclopaedia of Housing and Home* 207-209.

<sup>33</sup> Marutlulle, NK 'A Critical Analysis Of Housing Inadequacy In South Africa And Its Ramifications' (2021) 9(1) *Africa's Public Service Delivery & Performance Review* 1-2.

Despite South Africa's constitutional commitment to the right to adequate housing, the country continues to face a significant housing crisis rooted in profound historical and socio-economic issues. The housing backlog, which represents the disparity between the demand for sufficient housing and its actual supply, stems from the legacy of apartheid that enforced racial segregation and spatial inequality, leaving black South Africans, being the majority of the population, with restricted access to land and quality housing. This deep rooted legacy endures, as many disadvantaged and marginalized communities remain stuck in underdeveloped communities that lack essential infrastructure and basic services. Furthermore, rapid urbanization and population growth have intensified the demand for housing, increasing the pressure on already scarce resources. Consequently, millions of South Africans are forced to live in overcrowded informal settlements and deteriorating public housing, often devoid of access to clean water, electricity, and proper sanitation, prolonging the cycles of poverty and inequality.

The housing backlog is exacerbated by a range of financial, administrative, and technical challenges that impede effective housing delivery. Limited financial resources and competing demands within the national budget restrict the government's capacity to finance large-scale housing initiatives. Additionally, governance inefficiencies, inclusive of corruption, mismanagement, and delays in land acquisition, have significantly hampered the advancement of housing programs, further intensifying the housing problem, leading to delays and subpar housing developments. These systemic challenges above underscore the urgent necessity for a comprehensive approach to tackle the housing crisis, one that aligns with constitutional mandates while implementing innovative, sustainable, and inclusive solutions towards addressing the housing challenges that a majority of the South African population are facing.

### **1.3. The Purpose of the Study**

#### **1.3.1 The Aim of the Study**

The aim of the study is to critically analyse the historical, socioeconomic and administrative factors that have contribute to the South Africa's ongoing housing crisis. The study further aims to examine the lasting impact of the apartheid administration on the housing crisis, inefficiencies in governance, and resource limitations. Furthermore, the study intends to propose innovative, sustainable, and inclusive strategies to tackle the housing crisis, in line with the country's constitutional commitment to ensuring adequate housing for all citizens.

### **1.3.2 Objectives of the Study**

- To evaluate the South African government's efforts in advancing the right to have access to adequate housing since the end of apartheid in 1994.
- To examine the diverse approaches and interventions implemented by the South African government to promote socio-economic rights, particularly right to have access to adequate housing.
- To determine the extent to which government initiatives, policies, and programs have addressed the right to have access to adequate housing of vulnerable populations in South Africa.

### **1.4 Significance of the Study**

The findings of this study will contribute to narrowing the knowledge gap regarding the challenges and opportunities in realizing housing rights in post-apartheid South Africa. This means that it will enhance the level of understanding for policymakers, academics, and civil society organizations, particularly those interested in housing provision and socio-economic rights. It will also aid individuals in comprehending the complexities of housing policies, interventions, and legal frameworks in South Africa. Furthermore, the study will broaden the evolving academic, public, and policy discourse on housing rights, social justice, and sustainable development, while emphasizing the importance of government accountability and citizen engagement in addressing housing inequalities.

## 1.5 Literature Review

The right to access adequate housing, as enshrined in the South African Constitution and international human rights declarations, encompasses more than just shelter, it includes elements such as security of tenure, access to basic services, affordability, safety, and proximity to economic opportunities.<sup>34</sup> While the ANC-led government has made significant strides since 1994, delivering over 1.5 million state-subsidized homes and improving water and sanitation for poor households, the impact on remote communities remains limited.<sup>35</sup>

Mbiada, in his study, established a connection between political accountability and human rights, highlighting mechanisms of political accountability that could be leveraged to promote the fulfilment of the right to housing.<sup>36</sup> Political accountability encompasses a number of mechanisms such as the judiciary and the ombudsman. While the courts have played a crucial role in ensuring access to adequate housing in South Africa, they are not the sole means of enforcement. Other mechanisms of political accountability, including the establishment of the South African Human Rights Commission (SAHRC), the Parliamentary Oversight Committee, the office of the Public Protector and the office of the Auditor-General, can also significantly contribute to realizing the right to housing.<sup>37</sup>

---

<sup>34</sup> Rapeleng, T *An Evaluation of the Right to "Access to Adequate Housing" In Joe Morolong Local Municipality, South Africa* Masters Dissertation (University of the Free State 2013) 41.

<sup>35</sup> Mashiane, K & Odeku, KO 'A Critical Legal Perspective on the Context and Content of the Right to Access to Adequate Housing in South Africa' (2020) 10 *Juridical Tribune/Tribuna Juridica* 99-100.

<sup>36</sup> Mbiada, CJT *Strengthening the Role of Political Account Ability in the Realisation of the Right to Housing in South Africa* Doctoral Dissertation (North-west University 2014) 26-35.

<sup>37</sup> Mbiada, CJT 'The Public Protector as a Mechanism of Political Accountability: The Extent of Its Contribution to the Realisation of the Right to Access Adequate Housing in South Africa' (2017) 20(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 2-4.

Another study highlights the persistent challenges South Africa faces in addressing its housing crisis, emphasizing the growing gap in affordable housing.<sup>38</sup> Despite some policy efforts, such as the Upgrading of Informal Settlements Programme (UISP), government initiatives have fallen short, especially in informal settlement upgrading and affordable public rental options.<sup>39</sup> The focus on mass greenfield developments on city outskirts is criticized for its potential to create isolated "ghost towns" far from economic centres, contributing to unemployment and poverty.<sup>40</sup> The High Court's ruling in *Fischer* supports expropriation of private land in cases where property rights impede the Constitutional right to housing, marking a significant shift in urban housing policy.<sup>41</sup> However, it is further argued that without greater private sector involvement, access to affordable housing remains limited, deepening inequality and excluding vulnerable communities from formal housing markets in South African metros.<sup>42</sup>

Radebe investigates the role of the South African Constitutional Court in giving substantive meaning to the right of access to adequate housing, as outlined in section 26(1) and (2) of the Constitution.<sup>43</sup> In his exploration of the concept of transformative constitutionalism particularly regarding the right to housing, Radebe critiques the Court's approach to enforcing positive duties under section 26, arguing that while the Court has made progress in protecting housing rights procedurally through remedies like mediation, judicial oversight, and meaningful engagement, it has adopted a

---

<sup>38</sup> Oluwaseyi Olatundun, E *The Impact of Internal Migration on Housing Shortage and Affordability: The Case of Cape Town, South Africa* Masters Dissertation (University of the Western Cape 2024) 40.

<sup>39</sup> Bafo, PS *Challenges in the implementation of the upgrading of informal settlements programme (UISP): an evaluation of two Gauteng Metropolitan Municipalities* Masters Dissertation (University of the Witwatersrand 2016) 47.

<sup>40</sup> Molefe, S *The Impact of Economic Growth on Residential Segregation: A Lephalale Case Study* Masters Dissertation (University of the Witwatersrand 2018) 72-74.

<sup>41</sup> *Fischer v Persons Listed on Annexure X and Others* (9443/14; 11705/15; 14422/14) [2017] ZAWCHC 99.

<sup>42</sup> Selebalo, H & Webster, D 'Monitoring the Right of Access to Adequate Housing in South Africa' (2017) *Studies in Poverty and Inequality Institute (SPII)* 33-38.

<sup>43</sup> Radebe, SB *The Protection of the Right of Access to Adequate Housing by the South African Constitutional Court* Masters Dissertation (Stellenbosch University 2013).

weaker standard of review for positive obligations.<sup>44</sup> His study draws on international and comparative law to propose how the Court could enhance its interpretation of the right to adequate housing by adopting a more substantive and values-based approach, in line with the interpretative methodology prescribed in section 39(1) of the Constitution.<sup>45</sup> From the study by Radebe, it is hereby observed that the involvement of the judiciary as an accountability mechanism stems from the need to enforce the positive duties of the government in guaranteeing the right to adequate housing. Additionally, the study opines that despite the intervention of the judiciary as an accountability mechanism, the aspect of resource constraint is at the pinnacle of hampering the efforts to realise this constitutional right and its consequential obligation on the part of the government.

While the constitutional right to housing did not drive government prioritization of housing policy since such efforts predated the Constitution, it has minimally influenced strategic policy shifts, particularly in catering to vulnerable groups.<sup>46</sup> Despite the landmark case of the *Government of the Republic of South Africa and Others v Grootboom and Others*, there is little evidence of significant policy changes resulting from it. However, the right to housing has had a more tangible effect on civil society, channelling activism through the justice system through court cases, which may inspire broader campaigns.<sup>47</sup> The most notable achievement of rights-based activism is the introduction of the Emergency Housing Programme, though its limited scope and underfunding hinder it from representing a transformative change in housing provision or socio-economic development.<sup>48</sup> Therefore, while civil society advocacy has evolved, the Constitutional Court has had a minimal impact on housing realities.<sup>49</sup>

---

<sup>44</sup> Note 44, 21-31.

<sup>45</sup> Note 44, 57-75.

<sup>46</sup> Tissington, K 'A Review of Housing Policy and Development in South Africa since 1994' (2010) *Studies in Poverty and Inequality Institute (SPII): Socio Economic Rights Institute. Typescript* 17.

<sup>47</sup> Youngs, R *Civic Activism Unleashed: New Hope Or False Dawn For Democracy?* (Oxford University Press 2019) 52-60.

<sup>48</sup> Cirolia, LR 'South Africa's Emergency Housing Programme: A Prism of Urban Contest' (2014) 31(3) *Development Southern Africa* 400-402.

<sup>49</sup> Slarks, HK 'Where Human Rights Law and Development Politics Meet: Housing Rights in South Africa' (2010) 3 *UCL Hum. Rts. Rev* 164-198. 177-181.

Kathar, in the exploration of the link between the right to access adequate housing and the right to human dignity, makes an analysis of the case of *Sarrahwitz v Maritz NO and Another*,<sup>50</sup> thus highlighting that dignified living is impossible without adequate housing, reinforcing the argument that these rights have yet to be fully realized for all citizens.<sup>51</sup> While some progress has been made, significant challenges remain in the government's delivery of housing.<sup>52</sup> As a result of the above, the study is of the opinion that the interconnectedness of the slow progress in realising the right to adequate housing and the right to dignity requires the identification of both legal and practical mechanisms that can be employed to ensure that housing challenges are adequately addressed.

## **1.6 Research gap**

The literature on the realisation of the right to housing indicates that, although considerable emphasis has been placed on judicial enforcement, political accountability, and civil society involvement in promoting the right to adequate housing, there is still a notable gap in evaluating how these frameworks result in actual housing solutions for vulnerable communities. Much of the literature critiques issues such as policy inadequacies, judicial limitations, and the scarcity of government resources, but there is insufficient attention on the practical integration of legal safeguards with sustainable housing delivery methods that tackle affordability, spatial inequality, and socio-economic exclusion. This study aims to address that gap by investigating how the constitutional right to housing can be realized more effectively beyond just legal acknowledgment. It will explore mechanisms that align legislation, policy, and implementation in order to confront the ongoing housing challenges faced in South Africa.

## **1.7 Research Questions**

---

<sup>50</sup> *Sarrahwitz v Maritz NO and Another* 2015 8 BCLR 925 (CC).

<sup>51</sup> Kathar, RH *The Interconnectedness between the Right of Access to Adequate Housing and the Right to Human Dignity in South Africa* Masters Dissertation (University of Johannesburg 2020) 3-4.

<sup>52</sup> Note 52, 22.

1. How progressive has the South African government's efforts been in advancing the right to have access to adequate housing since the end of apartheid in 1994?
2. What are the various approaches and interventions implemented by the South African government to promote the right to have access to adequate housing?
3. To what extent have government initiatives, policies, and programs successfully addressed the right to have access to adequate housing of vulnerable populations in South Africa?

## **1.8 Hypothesis**

The South African government's efforts in advancing the right to adequate housing, while demonstrating a commitment to social justice principles, have been constrained by the legacy of apartheid, persistent socio-economic inequalities, and implementation challenges, resulting in an uneven realization of housing rights, particularly for those living in informal settlements and vulnerable communities.

This hypothesis suggests that despite the South African government's commitment to housing rights, there are significant obstacles hindering their full realization. These obstacles are rooted in the country's history of apartheid, which created deep-seated inequalities that continue to shape access to housing. Additionally, the hypothesis suggests that the government's efforts, while well-intentioned, face implementation challenges that limit their effectiveness.

## **1.9 Research Methodology**

This study has adopted the qualitative research approach. Qualitative research explores real-world problems by focusing on participants' experiences and behaviours, answering "how" and "why" questions. It generates insights rather than numerical data

and can be used alone or with quantitative methods.<sup>53</sup> The primary goal of qualitative research is not to produce precise, descriptive findings but rather to enhance understanding, develop theories, and offer insights. These insights help explain and potentially predict the phenomena being studied.

The legal imperative method will be utilized for finding remedies and therefore, the analysis of concept argument based on this study will be done through textbooks, articles, case laws, and internet.

### **1.10 Ethical Considerations**

These refer to set of principles that guide research practices and designs.<sup>54</sup> In this study, the researcher will comply with the University of Limpopo's anti-plagiarism policy to ensure ethical and responsible conduct. All data sources will be properly credited and cited.

### **1.11 Chapter Breakdown**

#### **Chapter 1: Introduction**

This chapter introduces the topic of the right to housing in South Africa. It provides context by discussing housing challenges from the apartheid era to the present democratic government. The chapter also incorporates the problem statement, research problem, its significance, the aim and objectives, literature review, hypothesis, research questions, research methodology, ethical considerations and the chapter breakdown.

---

<sup>53</sup> National Library of Medicine 'Qualitative Study' (2022)

<https://www.ncbi.nlm.nih.gov/books/NBK470395/> accessed 09 October 2024.

<sup>54</sup> Scribbr 'What are Ethical Considerations in Research?' < <https://www.scribbr.com/frequently-askedquestions/what-are-ethical-considerations-in-research/> > accessed 10 October 2024

## **Chapter 2: Policy Review, Legislative, and International Law**

This chapter examines the legal and policy framework surrounding housing rights in South Africa, both before and after the democratic transition.

## **Chapter 3: Courts and Litigation That Promote Housing as a Socio-Economic Right**

The chapter highlights how these cases have shaped the legal understanding of housing rights, emphasizing the government's obligation to provide adequate housing and conduct evictions in a manner that respects residents' rights.

## **Chapter 4: Content Analysis and Presentation of Data**

This chapter analyses data to evaluate the South African government's contributions to socio-economic rights since 1994. It covers key areas like housing, healthcare, water, and sanitation. The chapter examines the legislative and policy framework, highlighting the strengths and weaknesses of government initiatives in each sector.

## **Chapter 5: Summary of Outcomes, Recommendations and Research**

### **Conclusion**

This chapter summarizes the research findings, drawing conclusions about the South African government's progress in realizing socio-economic rights. It revisits the research objectives and methodology, synthesizing the analysis presented in previous chapters.

## CHAPTER TWO: POLICY REVIEW, LEGISLATIVE, AND INTERNATIONAL LAW

### 2. 1 Introduction

The right to adequate housing is enshrined in several international agreements that obligate countries worldwide to uphold this right. To enable the realisation of this right, governments must create legislation. The goal of the laws and policies that the South African government has enacted since 1994 is to fulfil the right to decent housing.<sup>55</sup> This chapter describes the following: the legal obligations of housing rights; the state's obligations to realise the right to adequate housing; the right to adequate housing under international human rights law such as the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>56</sup> the right to adequate housing under the South African Constitution; a variety of housing policies and legislations in South Africa; and a discussion of court cases dating back to the early days of housing policies and legislation.

### 2. 2 Pre-democratic Legislation

In order to exercise one's right to housing in South Africa, one must be mindful of the legal restrictions imposed by the apartheid government, as these restrictions have left traces that persist to this day. This observation demonstrates that the unequal distribution of wealth through land, which was an outward embodiment of the system of segregation and marginalization of people of African descent, had to give way to a democratic administration.<sup>57</sup> Significant changes were unintentionally brought about by South Africa's transition from apartheid to democracy, especially in the housing sector. The current government's attempts to provide cheap homes were severely

---

<sup>55</sup> Strauss, M *A Right to the City for South Africa's Urban Poor* Doctoral Dissertation (Stellenbosch University 2017) 244.

<sup>56</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) Adopted by the General Assembly of the United Nations on 16 December 1966.

<sup>57</sup> Wilkinson, P 'Housing Policy in South Africa' (1998) 22(3) *Habitat International* 222.

hampered by the lingering effects of the apartheid housing system.<sup>58</sup> In analysis of land reform by Coles, the Natives Land Act,<sup>59</sup> was one of the legislation the apartheid government utilized to create segregated settlements through the use of housing which was one of the statutes that limited the rights to property of non-white Africans in the country.<sup>60</sup> The Natives (Urban Areas) Act regulated and monitored the presence of non-white Africans in the urban settlements.<sup>61</sup> Coles shared the same sentiment that the Group Areas Act was a tool designed to prevent black people from ever living in urban areas by virtually denying them access to available housing,<sup>62</sup> criminalised and prosecuted members of one racial group to reside on or own land in an area designated exclusively for another race.<sup>63</sup> The Act provided for the State President to set out specific rural and urban areas exclusively for ownership and occupation by members of particular racial groups: whites, coloureds, and Indians.<sup>64</sup>

Coles' findings reveal that while there were no areas explicitly set aside for black individuals, they were also barred from occupying or owning land in regions designated for other racial groups, which significantly hindered non-white individuals' ability to obtain housing in those specific areas. Extremely tough regulations were put in place to forcibly displace squatter groups across the nation in terms of the Prevention of Illegal Squatting Act.<sup>65</sup> The Natives Resettlement Act, further gave the government the authority to drive non-white Africans out of any area inside and adjacent to Johannesburg's magistrate district.<sup>66</sup> The areas black people were subjected to reside were plagued with severe housing shortages, lack of services, and deprivation of access to land for black people prevailed.<sup>67</sup> The Black Areas Land Regulations of 1969

---

<sup>58</sup> Note 58, 224.

<sup>59</sup> Act 27 1913.

<sup>60</sup> Coles, CM 'Land Reform for Post-Apartheid South Africa' (1993) 20 *Boston College of Environmental Affairs Law Review* 699-758. 716-723.

<sup>61</sup> Act 21 of 1923.

<sup>62</sup> Act 51 of 1950.

<sup>63</sup> Note 61, 714-715.

<sup>64</sup> Note 64.

<sup>65</sup> Act 52 of 1951.

<sup>66</sup> Act 19 of 1954.

<sup>67</sup> Note 61.

governed land tenure in the government-controlled areas, defining two types of tenure: quitrent, and permission to occupy.<sup>68</sup> In both forms of tenure, the Trust maintained ultimate control over the land. Quitrent tenure was designated for surveyed land, while permission to occupy titles applied to unsurveyed land, which were more prevalent due to the fact that many areas occupied by black individuals had not been officially surveyed.<sup>69</sup> Both forms of tenure carried a permanent right to occupy land, and other rights associated with ownership.<sup>70</sup> Yet numerous restrictions applied so that all rights of ownership under common law were not present.<sup>71</sup> For instance, the right to transfer land was restricted: the Chief Commissioner's approval was necessary to sell, mortgage, or lease land to a black individual, while the Minister's approval was needed for transferring, mortgaging, or leasing land to anyone who was not black.<sup>72</sup>

Based on the above, it can be deduced that the pre-democratic legislation, rooted in apartheid, systematically denied non-white people access to adequate housing and secure tenure. This legacy is implicitly acknowledged in sources that discuss the objectives of post-apartheid housing laws. For instance, the Extension of Security of Tenure Act of 1997 aims to "extend the rights of occupiers" while acknowledging the rights of landowners.<sup>73</sup> This implicitly recognizes the historical power imbalance that the Act seeks to redress. Many scholars paint a picture of a legal system in transition, grappling with the legacy of apartheid while striving to create a just and equitable housing framework.<sup>74</sup> Pre-democratic legislation, built on racial discrimination, has

---

<sup>68</sup> Black Areas Land Regulations, no R188 of 1969.

<sup>69</sup> Ramutsindela, M 'Property Rights, Land Tenure And the Racial Discourses' (2012) 77 *GeoJournal* 755-758.

<sup>70</sup> Phuhlisani, NPC 'The Role of Land Tenure and Governance in Reproducing and Transforming Spatial Inequality' (2017) *Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa* 8.

<sup>71</sup> Note 61, 720.

<sup>72</sup> Note 71, 38-42.

<sup>73</sup> Act 62 of 1997.

<sup>74</sup> Brankovic, J, Mphahlele, B, Nunu, S, Ngxukuma, A, Njana, N & Sishuba, Y *Violence, Inequality and Transformation: Apartheid Survivors on South Africa's Ongoing Transition* (DSI-NRF Centre of Excellence in Human Development 2020) 43-47.

been replaced by laws aimed at securing tenure and protecting vulnerable residents. However, the practical implementation of these laws and their interplay with common law remains a work in progress, requiring ongoing legislative and judicial attention to ensure the full realization of housing rights for all.

### **2. 3 Post-democratic Legislative Framework**

After the adoption of democracy in 1994, the South African government dealt away with the racial and discriminative system of Apartheid. However, it is still generally true that, on a national level, the vast majority of households deemed to require housing aid are African due to the country's demographics and a lengthy history of institutionalized racism.<sup>75</sup> In order to mitigate homelessness on a domestic and global scale, the South African Constitution and international human rights agreements both recognize the right to sufficient housing as a fundamental human right. Globally, article 25 of the United Nations Universal Declaration of Human Rights (UDHR) guarantees a standard of living that includes enough food, clothing, housing, medical care, and essential social services for their own and their families' health and well-being to everyone.<sup>76</sup>

Provisions pertaining to socio-economic rights would provide the newly formed democratic state with clear constitutional authority to carry out land reform and provide water access in accordance with the Water Services Act, housing and social services.<sup>77</sup> In addition to helping to derail constitutional arguments pertaining to property and related matters, these regulations will provide the post-apartheid state with the necessary constitutional protection for the necessary redistributive policies. The right to sufficient housing is recognized as a socioeconomic right under section 26 of the South African Constitution, which guarantees that everyone has access to appropriate and adequate housing. Since section 26(2) requires the state to take

---

<sup>75</sup> Conley, D *Being Black, Living In the Red: Race, Wealth, and Social Policy in America* (University of California Press 2010) 40.

<sup>76</sup> Article 25 of the Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A).

<sup>77</sup> Act 108 of 1997.

reasonable legislative and other measures to progressively realise this right, progressive realisation is guaranteed.

Even in situations where resources are limited, the state has an obligation to ensure that people can exercise their rights. When it comes to vulnerable and marginalized groups, governments have a responsibility to take pro-active steps to reduce inequality and provide preferential treatment.<sup>78</sup> This means implementing policies and programs that address the unique needs of these groups, ensuring they have equal access to resources and opportunities.<sup>79</sup> However, the state's obligation to realize socioeconomic rights, including housing, is not absolute. It is subject to available resources, as highlighted in cases such as *Soobramoney v Minister of Health (KwaZulu-Natal)*.<sup>80</sup> The Constitutional Court in *Soobramoney* ruled that while the state must take reasonable steps to realize socioeconomic rights, this obligation is limited by resource availability.<sup>81</sup> This case emphasized that when the state is constrained by scarce resources, as in the health sector, it must prioritize those measures that maximize the public benefit, balancing individual rights against broader societal needs.<sup>82</sup> Thus, what can be deduced from the above is that the realization of socioeconomic rights must be progressive and flexible to the state's capacity.

The right to adequate housing, as protected under section 26, has been reaffirmed by various legal challenges. The justiciability of this right has been a subject of significant

---

<sup>78</sup> Kuhn, H 'Reducing Inequality Within and Among Countries: Realizing SDG 10—A Developmental Perspective' In Kaltenborn, M, Krajewski, M & Kuhn, H (Eds.) *Sustainable Development Goals and Human Rights* (Springer 2020) 138-153.

<sup>79</sup> Dawson, H & McLaren, D 'Monitoring the Right of Access to Adequate Housing in South Africa: An Analysis of the Policy Effort, Resource Allocation and Expenditure and Enjoyment of the Right to Housing' (2014) SPII Working Paper 8.

<sup>80</sup> Majiedt, JS "'Dreams and Aspirations Deferred?": The Constitutional Court's Approach to the Fulfilment of Socio-Economic Rights in the Constitution' (2022) 26(1) *Law, Democracy & Development* 10.

<sup>81</sup> *Soobramoney v Minister of Health (Kwazulu-Natal)* 1997 SA (CC).

<sup>82</sup> Ferreira, N 'Feasibility Constraints and the South African Bill of Rights: Fulfilling the Constitution's Promise in Conditions of Scarce Resources' (2012) 129(2) *South African Law Journal* 285-291. <sup>84</sup> *Certification of the Constitution of the Republic of South Africa* 1996 ZACC 26.

judicial scrutiny, notably addressed in the *Certification Judgment*, in which the Constitutional Court resolved debates about the enforceability of socioeconomic rights, ruling that such rights, including the right to adequate housing, are indeed justiciable and that individuals can approach the courts to enforce them.<sup>84</sup> The Court held that these rights must be treated as legal obligations, ensuring that the state cannot neglect its responsibilities under the pretext of limited resources.<sup>83</sup> Further judicial clarity was provided in *Minister of Health v Treatment Action Campaign*, which reinforced the principle that the state must take reasonable measures to progressively fulfil socioeconomic rights.<sup>84</sup> The Court found that the government's refusal to provide antiretroviral drugs for HIV-positive mothers was unreasonable, emphasizing that the state's failure to act, when it had the means to mitigate a pressing public health crisis, violated its Constitutional obligations.<sup>85</sup> This case underscored that while resource constraints may limit the extent of immediate realization, the state must still act within its capacity to fulfil its Constitutional duties.

Justiciability of socioeconomic rights, therefore, is not a theoretical concept. The *Certification Judgment* and *Treatment Action Campaign* cases have established that these rights are legally enforceable, giving individuals and vulnerable communities the ability to approach the courts when their rights are not met.<sup>86</sup> As a result, section 26(3) ensures that the right to housing is actionable in courts, enabling judicial review of state policies and actions to ensure they align with Constitutional requirements.<sup>87</sup> However, as with all rights, there are limitations: Section 36 allows for the restriction of the right to adequate housing, but only if such restrictions are justified and fair under the democratic legal system of the country.<sup>88</sup>

---

<sup>83</sup> Note 84, par 89-94.

<sup>84</sup> *Minister of Health v Treatment Action Campaign* 2002 SA (CC).

<sup>85</sup> Note 86, par 2-4.

<sup>86</sup> Liebenberg, S *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta and Company Ltd 2010) 76.

<sup>87</sup> Okpaluba, C 'Can a Court Review the Internal Affairs and Processes of the Legislature?

Contemporary Developments in South Africa' (2015) 48(2) *Comparative and International Law Journal of Southern Africa* 195.

<sup>88</sup> Section 36 of the Constitution.

The Constitution's guarantee of socioeconomic rights, particularly the right to adequate housing, has been strengthened through judicial interpretation and legal enforcement. These cases highlight the balance between the progressive realization of rights and the limitations imposed by resource constraints, while ensuring that the state remains accountable for implementing policies that address the needs of vulnerable and marginalized groups.

### **2. 3. 1 The Housing Act No 107 of 1997**

A strong policy based on the ideas presented in the 1994 White Paper on housing is the Housing Act, which at its core, "provide for the facilitation of sustainable housing development processes" is the primary goal of the Act.<sup>89</sup> In order to give effect to section 26 of the Constitution, particularly section 26(2) for the state to take reasonable legislative steps, this Act outlines in detail the responsibilities and powers of the several branches of government as well as how they should work together.<sup>90</sup> The legislature passed the Act as a result of the democratic dispensation in order to realise the right to housing as a socio-economic right and additionally, in accordance with section 14(9) of the Act, the minister must implement a new national housing program that phases out all housing subsidies provided under the former racially discriminatory legislation within a year of the new legislation's start.<sup>91</sup> This national housing subsidy scheme must contain time limits to phase out categories of housing subsidies. The preamble states that the purpose of the Act is to facilitate a sustainable housing development process by defining the roles of national, provincial, and local governments in relation to housing development.<sup>92</sup> The preamble of the Act emphasizes even more how essential sufficient housing is to the socioeconomic health of the country. It oversees

---

<sup>89</sup> Act 107 of 1997.

<sup>90</sup> Leuta, T 'Living among the Dead: Disrupting Narratives on the Inclusion of the Homeless through a Case of Public Open Space in Johannesburg' In *Everyday Urban Practices in Africa* (Routledge 2024) 95-110.

<sup>91</sup> Pillay, K 'An Interpretation Of "Relevant Organs Of State" In Section 184 (3) Of The Constitution And Their Duty To Provide Information On Socio-Economic Rights To The South African Human Rights Commission' (1998) 2(2) *Law, Democracy & Development* 181.

<sup>92</sup> Preamble to the Housing Act.

the initial and ongoing distribution of housing units, safeguards tenants of building councils or private individuals whose housing services are transferred to the state or a local authority and develops the standards and norms that housing units adhere to when applying for subsidies or housing acts.<sup>93</sup> The Housing statute did not, however, eliminate every aspect of pre-democratic housing legislation. Furthermore, as stipulated in section 11, the Act allows for the establishment of the South African Housing Fund, which brought about by section 12B (1)(a) of the Housing Arrangements Act,<sup>94</sup> and the implementation of the state's participation in housing loans, continues regarding financing activities in terms of this Act, notwithstanding the repeal of the Act by section 20 of 107 of 1997. To aid in adequate housing, section 1(ii) of the Water Services Act, "Basic sanitation" refers to the minimum set of services that are required to ensure appropriate, sanitary, and safe collection, elimination, discarding, or cleansing of human waste, domestic waste: sewage and wastewater from homes, even unofficial ones.<sup>95</sup> Based on the above, it is therefore opined that the right to adequate housing cannot be implemented without considering the right to sanitation, thus adequate housing further encompasses a set standard for basic sanitation to ensure and guarantee these socioeconomic rights.

Despite the positive intentions of the Housing Act, significant challenges remain in fulfilling its objectives. One issue is the inherent tension in the housing policy, rooted in the original White Paper of 1994, which aimed to address both the provision of housing units and the broader process of integrating the poorest sectors into the housing framework.<sup>96</sup> However, the policy's reliance on capital subsidies for housing delivery has limited the quality and scale of housing, often falling short of the standards articulated in the Reconstruction and Development Programme (RDP),<sup>97</sup> Thus it can be inferred that this disconnect illustrates the policy's struggle to balance the delivery of tangible housing products with the progressive realization of socioeconomic rights. Furthermore, the historical negotiation process that shaped housing policy involved

---

<sup>93</sup> Section 2 of the Housing Act.

<sup>94</sup> Act 155 of 1993.

<sup>95</sup> Act 108 of 1997.

<sup>96</sup> Note 47, 31-35.

<sup>97</sup> Note 47, 54-60.

various stakeholders with competing interests, thus the private sector's emphasis on commodification often overshadowed the more people-centred approaches advocated by community organizations.<sup>98</sup> As a result, Huchzermeyer is of the opinion that these conflicting priorities have led to contradictions within the policy itself, hampering the government's ability to fully meet the housing needs of marginalized groups.<sup>99</sup>

The "progressive realization" of housing rights, a concept embedded in the South African Constitution, has also posed challenges. While the incremental improvement of initial "starter houses" was intended as a practical approach to fulfil housing rights, the limited support for long-term improvements has drawn criticism.<sup>100</sup> This approach has failed to comprehensively address the right to adequate housing, leaving many citizens in substandard living conditions, thus it is important to consider the influence of global housing norms and frameworks. International policy agendas often advocate standardized solutions that may not align with the unique dynamics of local contexts. In South Africa, these global approaches have sometimes clashed with local realities, suggesting a need for more context-specific strategies to effectively implement the Housing Act and address the diverse needs of urban populations.<sup>101</sup>

### **2. 3. 2 The Extension of Security of Tenure Act,<sup>102</sup>**

This legislation governs the rights of those who live on property they do not own, but with permission from the landowner or other responsible party (occupiers). It establishes the parameters for the exercise of these tenure rights as well as the circumstances under which a person's right to live on the land may be revoked. The

---

<sup>98</sup> Mukiga, AK *Community Activism and Social Change of the Urban Poor in the Western Cape: Advocating for Sustainable Sanitation in Cape Town's Informal Settlements* Doctoral Dissertation (University of the Western Cape 2021) 207, 213.

<sup>99</sup> Huchzermeyer, M 'Housing for the Poor? Negotiated Housing Policy in South Africa' (2001) 25(3) *Habitat International* 316-319.

<sup>100</sup> Sharpley, GG *Government Housing Rectification Programme and Practice in South Africa: A Case Study of Three Selected Eastern Cape Communities* Doctoral Dissertation (University of the Western Cape 2018) 86.

<sup>101</sup> Appelhans, N 'The Hybridisation of Public Transport in Dar es Salaam and Nairobi: Challenging Inscriptions of Innovation Policy in Bus Rapid Transit Systems' In *Everyday Urban Practices in Africa* (Routledge 2024) 57-73.

<sup>102</sup> Act 62 of 1997.

act's objectives are to protect the rights of landowners who possess secured land and to impose particular restrictions and laws on them. Additionally, the Act guarantees the general rights of occupiers, including hearings prior to the eviction of residents, protection of the dwellings against the depositing and gagging of residents' personal property, and the residents' obligation to turn over deposits to the housekeeping staff in order to preserve the guidelines for recovering said deposits.

On the other hand, the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (The PIE Act) focuses more on eviction and provides for more protections for the occupiers' people, and should be read alongside the doctrine of sharing the space.<sup>103</sup> The application of the Extension of Security of Tenure Act (ESTA) has been subject to judicial scrutiny in various cases, one of which is *Van den Berg v Skosana* in the Land Claims Court, in which the court reviewed an eviction order against an occupier, Mrs. Mmamorena Martha Skosana, who was alleged to be in unlawful occupation of a house on the plaintiff's farm.<sup>104</sup> The judgment emphasized the requirements for a valid eviction under ESTA, particularly section 9(2), which outlines conditions such as the termination of the right of residence, the occupier's failure to vacate within the notice period, and the just and equitable considerations under sections 10 or 11.<sup>105</sup> The court noted several procedural deficiencies, including vague and unsubstantiated allegations against the occupier, insufficient notice regarding alternative accommodation, and the lack of evidence to justify the termination of residence as being just and equitable.<sup>106</sup> The judgment highlighted the need for strict adherence to ESTA's procedural requirements, including the provision of a probation officer's report and compliance with notice requirements as stipulated under section 9(2)(d), thus the failure to meet these procedural obligations led the court to set aside the eviction order, illustrating the Act's emphasis on protecting occupiers' rights and ensuring fairness in eviction proceedings.<sup>107</sup>

---

<sup>103</sup> Act 19 of 1998(hereinafter referred to as the PIE Act).

<sup>104</sup> *Van Den Berg v Skosana (LCC10R/03) [2003] ZALCC 7 (18 February 2003)*.

<sup>105</sup> Note 105, par 4.

<sup>106</sup> Note 105, par 10.

<sup>107</sup> Note 105, par 11-12.

Further complicating the application of ESTA is the impact on farm workers' livelihoods when evictions take place, even when the Act is applied. The Act was introduced in the post-Apartheid era to secure land tenure and regulate evictions to protect vulnerable groups from unfair displacement.<sup>108</sup> However, research conducted on Groentein farm in the Eastern Cape Province highlights the limitations of ESTA in safeguarding the security of tenure for farm workers. The case study involving seven farm worker families revealed that eviction and resettlement, often to distant townships, result in significant losses to their traditional rural livelihoods. These losses are not fully addressed by the Act, demonstrating that while ESTA seeks to provide legal protections against eviction, it may inadvertently contribute to the erosion of farm workers' established way of life and socioeconomic stability when relocation occurs. This reflects broader issues in the implementation of ESTA, where legal provisions do not always align with the practical realities faced by affected communities.<sup>109</sup>

### **2. 3. 3 The PIE Act**

The Prevention of illegal Eviction form and Unlawful Occupation of Land (The PIE Act) is an act of Parliament that gives effect to section 26(3) of the South African Constitution. It declares that no human may be evicted from their home property or to have such property destroyed through demolition provided that an order of a competent court is made and granted after all relevant considerations were made.<sup>110</sup> The Act repealed the Prevention of Illegal Squatting Act 52 of 1951 and other obsolete laws, prohibits unlawful evictions, lays out processes for evicting unlawful squatters, and addresses matters ancillary thereto. The exercise of certain constitutional rights, such as the right to privacy, security of person, dignity, and access to housing, is

---

<sup>108</sup> Mbhense, T 'Does ESTA Still Protect Occupiers of Farm Land in South Africa?' (2014) 544 *De Rebus* 22-23.

<sup>109</sup> Roodt, MJ 'Security of Tenure and Livelihood Options in South Africa: A Case Study of a Rural Community Facing Eviction under Post-Apartheid Legislation in the Eastern Cape Province' (2007) 37(1) *Africanus* 9-14.

<sup>110</sup> Note 104.

hampered by the eviction of people from their houses and the demolition of those homes.<sup>111</sup> Eviction disproportionately impacts vulnerable individuals and groups, including women, people with disabilities, the elderly, and often children. Consequently, forced eviction reflects the unjust socio-economic conditions that lead to widespread homelessness and significant disparities in access to land and housing issues that should not exist in a democratic society.<sup>112</sup>

The first pillar of the legislation which attempts to alleviate poverty caused by housing shortage in South Africa is the Home Loan and Mortgage Disclosure Act, which was enacted in the year 2000.<sup>113</sup> According to section 13(1)p– (3) of the Act, all mortgage lenders and home loan originators must save and disclose data on the racial and gender composition of housing loan applicants for the purpose of public reporting. The law stipulates that every income level category must be documented along every geographic segment. But the foundation house owned by the realtors was exempt from this. As a result, there were significantly more people who were denied housing loans and who were given housing loans. In order to address the effects of the former South African Apartheid, which had led to an increase in unauthorized settlers, the ANC administration took action. The ANC government mandated that when law enforcement officials arrive to construct dwellings, they shall take into consideration the building's construction and the surrounding area.<sup>114</sup> High-density urban buildings required funding, and the government intended to address how to get capital for the construction of homes for the populace.<sup>115</sup> The goals of South Africa's land reform strategy, which include promoting access to land and security of tenure and assessing the Act's impact on land reform, are aligned with the PIE statute. The history of forced relocation and dispossession in South Africa has resulted in the denial of land rights, which is why eviction regulations are essential. Before this, black people who were

---

<sup>111</sup> Alexander, GS 'Property, Dignity and Human Flourishing' (2018) 104(4) *Cornell L. Rev* 1024.

<sup>112</sup> Nkwinika, RCL *The Rights Of The Evicted Versus The Evictor: A Critical Analysis Of The Prevention Of Illegal Eviction From And Unlawful Occupation Of Land Act 19 Of 1998: Moving Towards A Permanent Housing In South Africa* Masters Dissertation (University of Limpopo 2021) 31-40.

<sup>113</sup> Act 63 of 2000.

<sup>114</sup> Note 101.

<sup>115</sup> Buckley, RM, Kallergis, A & Wainer, L 'The Emergence of Large-Scale Housing Programs: Beyond A Public Finance Perspective' (2016) 54 *Habitat International* 202-204.

evicted from land they had owned or occupied for decades had no other legal options. The Act's objectives are to eliminate the Prevention of Illegal Squatting Act,<sup>116</sup> to forbid unlawful eviction, and to outline the processes for evicting unlawful squatters.

#### **2.4. The link between the ESTA, the PIE Act and the realisation of the right to housing**

The ESTA and the PIE Act are both important legislative frameworks that uphold the right to adequate housing as enshrined in section 26 of the Constitution. ESTA primarily governs interactions between landowners and lawful occupiers, especially in rural and agricultural settings, by protecting occupiers from arbitrary eviction and ensuring that due process is followed.<sup>117</sup> Conversely, PIE is geared towards urban and peri-urban areas, preventing the unlawful removal of individuals from their homes without a court order that considers all relevant factors.<sup>118</sup> Together, these two laws provide a comprehensive approach to tenure security and eviction issues, aiming to protect vulnerable populations from displacement. Nonetheless, despite these protections, the fulfilment of the right to housing is still inconsistent, as challenges in practical enforcement continue to exist.

The connection between the ESTA and the PIE Act centres on their common goal of reconciling the property rights of landowners with the constitutional rights of occupiers, which include dignity, housing, and security of tenure.<sup>119</sup> ESTA outlines the rights of lawful occupiers and regulates the circumstances under which these rights can be revoked, while PIE emphasizes that those residing in unlawful occupancy cannot be evicted without court intervention.<sup>120</sup> Both these legislations acknowledge the broader

---

<sup>116</sup> Act 52 of 1951.

<sup>117</sup> Van der Sijde, E 'Tenure Security for ESTA Occupiers: Building on the Obiter Remarks in *Baron v Claytile Limited*' (2020) 36(1) *South African Journal on Human Rights* 81.

<sup>118</sup> Kahanovitz, S 'An Urban Slice of Pie: The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act in South Africa' *Case Study Prepared for the Global Report on Human Settlements* 8.

<sup>119</sup> Pieterse, M 'Towards a Right to the City? The Slow Convergence of Rights to Housing and Land in South African Constitutional Jurisprudence' (2022) 11(1) *International Human Rights Law Review* 42-47.

<sup>120</sup> Mhlanga, L 'Eviction Orders from Private Land: A Case for Convenient Deference' (2024) 49(2) *Journal for Juridical Science* 105.

socioeconomic impact of eviction, which often exacerbates poverty, disrupts families, and reinforces inequality. Collectively, they represent an effort to overcome the legacy of land dispossession from the apartheid era by prioritizing fairness and humanitarian considerations in eviction processes, while seeking to guarantee that the right to housing is protected. Nonetheless, there remains a significant disparity between the rights enshrined in law and the actual experiences of many households, especially in rural regions, who continue to face insecurity and threats to their livelihoods despite having formal recognition of their rights.<sup>121</sup> This discrepancy prompts critical reflection on how effectively legislation can fulfil the constitutional commitment to adequate housing.

Moreover, the relationship between ESTA and PIE illustrates that achieving the right to housing in South Africa involves more than merely preventing unjust evictions; it also encompasses promoting sustainable livelihoods and establishing secure settlement patterns.<sup>122</sup> The study therefore argues that while these Acts offer procedural protections, they do not adequately address the underlying issues of land scarcity, poverty, and insufficient housing availability. For instance, agricultural workers granted protection under ESTA often find themselves relocated to townships that are distant from their jobs, disrupting the stability that the Act aims to provide. Likewise, while PIE offers essential safeguards, its effectiveness is hampered by the government's limited ability to provide alternative housing for displaced communities. Therefore, although the legislative framework is advanced in its intent, it underscores the need for comprehensive socio-economic reforms and efficient implementation strategies. Realizing the constitutional right to housing in practice can only occur through the integration of legal protections with policies focused on housing development and land reform initiatives.

## **2.5. Policies, National Plans and Initiatives employed by the Government to ensure the Right to Housing.**

---

<sup>121</sup> Thamari-Odhiambo, M 'Embracing Risky Refuge: Women, Land Laws and Livelihood Vulnerabilities in Rural Kenya' (2021) 25 *Law, Democracy and Development* 73.

<sup>122</sup> Chenwi, L 'Implementation of Housing Rights in South Africa: Approaches and Strategies' (2015) 24 *Journal of Law and Social Policy* 73-74.

The right to housing is a fundamental human right, essential for human dignity, wellbeing, and development. In South Africa, the legacy of apartheid and ongoing socio-economic challenges have resulted in a significant housing backlog, with millions of citizens lacking access to adequate, safe, and affordable housing.<sup>123</sup> Recognizing the gravity of this issue, the South African government has embarked on various initiatives aimed at ensuring the right to housing for all citizens. This paper will explore the key initiatives employed by the government to realise the right to housing in South Africa, including The Reconstruction and Development Programme (RDP), The Breaking New Ground (BNG) policy, The National Housing Subsidy Scheme, The Upgrading of Informal Settlements Programme (UISP). These initiatives aim to address the housing shortage, improve access to affordable housing, and enhance the living conditions of marginalized communities.<sup>124</sup> This paper will provide a critical analysis of the progress, challenges, and limitations of these initiatives, while also highlighting best practices and potential areas for improvement. By examining the government's efforts to uphold the right to housing, this research seeks to enhance the ongoing discussion surrounding sustainable housing solutions and social justice in South Africa.

The South African government took a significant step forward by transforming the Department of Housing into the Department of Human settlements (DHS). This change acknowledged that housing is deeply intertwined with the country's spatial, economic, and social landscape.<sup>125</sup> It is now more than merely offering a physical shelter; but rather about fostering dynamic communities that promote the well-being of all citizens. Essentially, the government has acknowledged that housing is a fundamental right, as guaranteed by the Constitution, and that it plays a vital role in shaping the social and economic landscape of the country. The new department's focus is on creating

---

<sup>123</sup> Mubangizi, JC 'Protecting Human Rights amidst Poverty and Inequality: The South African Post-Apartheid Experience on the Right of Access to Housing' (2008) 2(2) *African Journal of Legal Studies* 133-138.

<sup>124</sup> Cameron, R 'The Reconstruction and Development Programme' (1996) 8(2) *Journal of Theoretical Politics* 285-287.

<sup>125</sup> Mosala, SJ, Venter, JCM & Bain, EG 'South Africa's Economic Transformation Since 1994: What Influence Has the National Democratic Revolution (NDR) Had?' (2017) 44(3-4) *The Review of Black Political Economy* 332.

sustainable, inclusive, and equitable human settlements that address the complex needs of everyone.<sup>126</sup>

### **2. 5. 1 People's Housing Process (PHP)**

The PHP is a unique housing delivery process implemented nationwide by the government through the DHS. It empowers historically marginalized and disadvantaged communities to prevent housing waiting list stagnation and piecemeal planning by implementing a conspicuous planning approach that aims to create vibrant and sustainable communities.<sup>127</sup> Supporting homes that want to improve their current subsidies for housing by developing their households is the goal of the Enhanced People's Housing Process. This subsidy of the government aims to grant people who desire to build by themselves or to oversee the building of their own various homes. Contradictory to the Project Linked Subsidy, which assigns a contractor to build houses for several beneficiaries, the PHP bestows upon beneficiaries the liberty to be creative and design and manage the construction of their own homes of choice.<sup>128</sup> In this scheme, participants build their own homes under the guidance of a support organisation. There are more resources available to cover the support services. This program's primary flaw is that apartheid-era housing is still replicated. The concept behind this type of housing is that the recipient will gradually upgrade a basic dwelling provided by the government.

Anecdotal information suggests that the true situation is that ad hoc expansions are created with materials and construction comparable to that of informal settlements. It might be argued that this type of housing program really encourages further slum development based on current observations. Additionally, it reinforces the

---

<sup>126</sup> Ndinda, C & Adebayo, P 'Human Settlement Policies And Women's Access To The City: Implications For Inclusive Cities' In Magidimisha, HH & Chipungu, LC (Eds) *Urban Inclusivity In Southern Africa* (Springer 2021) 307-325.

<sup>127</sup> Department of Human Settlements 'People's Housing Process' [People's Housing Process | National Department of Human Settlement](#) accessed 22 November 2024.

<sup>128</sup> Note 122.

misconception that land is inexpensive and that settlement concerns like infrastructure and community amenities are secondary to the actual house.<sup>129</sup>

## **2. 5. 2 Breaking New Ground (BNG)**

The cabinet approved the "Breaking New Ground: A Comprehensive Plan for the development of Sustainable Human Settlements," that outlined the state's approach to housing for the upcoming five years. Finally approved in 2004, the BNG took 10 years to come into operation since the Department of Human Settlements released its 1994 White Paper on housing, the new document should be seen as an improvement over the 1994 housing policy rather than a major departure from it. Establishing a new precedent, the all-encompassing plan for the creation of sustainable human settlements aimed to guarantee that every South African had access to housing opportunities in addition to economic and social prospects, and that this was accomplished by the year 2014.<sup>130</sup> In addition to eliminating apartheid barriers that had treated Black people as having lower social and economic standards than White people, the policy framework was designed to ensure that homelessness is eliminated or at least significantly reduced in the nation and to improve the standard of living for all citizens, thus more than 2.5 million housing units had been made available by the government to individuals at the bottom of the social scale by 2014.<sup>131</sup>

In 2004, the DHS' vision, which was to advance the feasibility of a non-racial, blended society through the upgrading of sustainable human settlements including the quality of housing, is reinforced by the BNG. The department established the following goals in order to fulfil its vision.<sup>132</sup> In terms of giving dwellings to the formerly underprivileged segment of the South African population, the policy has not failed. But it's still true that the delivery rates are far lower than what would be needed to eradicate all informal

---

<sup>129</sup> Ramasodi, L, Van Bergen, JW 'The Peoples' Housing Process: Its Meaning And Relevance' 2005 World Congress on Housing 3-5.

<sup>130</sup> Trusler, RK *Is 'Breaking New Ground' As A Comprehensive Plan For Housing Delivery, A Realistic Solution to the Housing problem faced in South Africa?* Honours Dissertation (University of Pretoria 2012) 1.

<sup>131</sup> Department of Housing, 2008.

<sup>132</sup> Department of Housing, 2004.

settlements by 2014. The mission of housing the homeless requires constant adaptability and flexibility, all the way down to the project-specific level, while also guaranteeing consistency, which promotes equality. Breaking New Ground provides a strong foundation on which to build an efficient system framework and eliminate all informal settlements.

### **2. 5. 3 The RDP.**

The RDP launched in 1994, the program aimed to provide fully subsidised state housing for low-income households after the country gained independence.<sup>133</sup> The RDP was created as a framework for policy in South Africa with the goal of fostering the development of a new residential environment free from both spatial and racial fragmentation.<sup>134</sup> To attain this goal, significant investments in housing and infrastructure for the general public was needed, as part of their 1994 election campaign manifesto, the ANC administration developed this initiative.<sup>135</sup> However, there have been numerous flaws in the program's execution, mostly because of the suburban development that is conservatively oriented toward housing and the assembly of homes without any supporting infrastructure like the provision of clean water or basic sanitation services.<sup>136</sup> As a result of this development, the urban fabric has been fragmented, and the impoverished are now even more marginalized. The government's belief that granting title deeds equates to home ownership prevented them from providing these documents to the recipients of the RDP housing.<sup>137</sup>

The so-called "coloured" population, historically categorized as an intermediate race, has been moving from the small rural parts of the Karoo and the patchwork

---

<sup>133</sup> Wilcox, A, Mota, N, Haffner, M & Elsinga, M 'Compact Housing for Incremental Growth: The K206 RDP Project in Alexandra, Johannesburg' (2024) 9 *Urban Planning* 7736.

<sup>134</sup> Greyling, C 'The RDP Housing System in South Africa' (2009) *University of Pretoria* 1-51. 5-12.

<sup>135</sup> Note 101.

<sup>136</sup> Rodina, LA *Lived Notions of Citizenship and the Human Right to Water in Site C, Khayelitsha, Cape Town, South Africa* Masters Dissertation (University of British Columbia 2013). 16.

<sup>137</sup> Magagula, ME & Mubangizi, BC 'Government Housing Subsidy: Exploring Administration Processes in the Dispensation of Title Deeds in South Africa' (2019) 33(2) *Loyola Journal of Social Sciences* 39.

communities of the Cape Peninsula to the urban areas of Cape Town proper since apartheid was deregulated in the late 1980s. The renovation of Cape Town is part of a long-term national strategy to encourage the establishment of distribution and transportation networks between minor industrial areas and the city, offering greater employment possibilities and a quality of life that is respected nationally.<sup>138</sup> The "coloured" class became more urbanized and attracted to modern development as they attended better schools and had new goals during the apartheid era of deregulation. As the urban in-movement had intended, post-apartheid housing has expanded the prospects for thousands of former squatters to live better lives. Following the end of apartheid, housing was viewed as socially significant in the emerging South Africa. This inspired the government of South Africa in 1994 initiatives to address effectively and expand the housing sector coverage by emancipation from the apartheid communal barriers. In the year 1994, The RDP initiative was instigated by the South African government. In essence, the RDP was designed to offer both immediate and long-term support to the majority of the population. Its goals were to raise living standards and enhance the calibre of the stock of existing homes.

#### **2. 5. 4 National Upgrading Support Programme (NUSP) of 2009**

The government also created the National Upgrading Support Programme (NUSP) in 2009 to help provinces and municipalities upgrade informal settlements as a direct result of this case.<sup>139</sup> With the ultimate goal of improving every informal settlement in South Africa, the NUSP was created to assist the National DHS (NDHS) in implementing the Upgrading Informal Settlements Programme (UISP).<sup>140</sup> Building

---

<sup>138</sup> Mkhwanazi, S 'RDP Housing and the Makings of Discontent: The Case of Makhaza B, Khayelitsha' (2019) 30(4) *Urban Forum* 523.

<sup>139</sup> Bafo, PS *Challenges in the Implementation of the Upgrading of Informal Settlements Programme (UISP): An Evaluation of Two Gauteng Metropolitan Municipalities* Masters Dissertation (University of the Witwatersrand 2016) 54-57.

<sup>140</sup> Note 134, 50-52.

towns' capacity to handle the difficulties of delayed delivery of subsidized housing through gradual upgrading of informal settlements is the main goal of NUSP.<sup>141</sup>

In addition to maximizing Gross Domestic Product (GDP) and advancing national development, the South African government has two other major concerns that have affected its overall policies. These are as follows. First and foremost, South Africa's Constitution, which includes both a Bill of Rights and a Human Rights clause, is often regarded as liberal. This document purports to include a proviso that states that all levels of government—provincial, national, or local—along with the directives and organs of representation within their structures, are accountable for upholding, promoting, safeguarding, and adequately extending all Constitutional rights and benefits. These include the right to equitable administration, the right to administrative services, the right to order, and, most importantly, the right of every person to have adequate housing in any form. Second, South Africa appears to be implementing a long-term development strategy under the direction of the African National Congress (ANC) that guarantees housing delivery through a planned and modular process, ensuring that near-future upgrading programs and resettlements can be completed with fewer issues and financial assistance. Deductively, these two factors have been at the forefront of the construction boom that South Africa has seen since emerging from the apartheid regime.

## **2.6. International Law**

Numerous international human rights accords that acknowledge SERs are ratified by South Africa. Every decision taken by the government in the realisation of the right to housing must be in compliance with these treaties. Many international human rights treaties include the right to sufficient housing. Within the realm of human rights, housing rights are not viewed as a recent development; rather, they have long been

---

<sup>141</sup> Maganadisa, KP *Exploring the Effectiveness of in Situ Upgrading on Improving the Quality of Life: A Case Study of Slovo Park Informal Settlement* Masters Dissertation (University of Johannesburg 2020) 37-41.

recognized as crucial to protecting people's well-being and dignity.<sup>142</sup> The Universal Declaration of Human Rights (UDHR),<sup>143</sup> section III of the Vancouver Convention on Human Settlements (1976), and the Habitat Agenda (1996),<sup>144</sup> are a few examples of international treaties that acknowledge SERs, including housing rights. The UDHR was ratified by the UN General Assembly on December 10, 1948. Everyone has the right to a standard of living adequate for health and well-being of himself and his family, including food, clothing, housing, and medical care," in terms of article 25(1) of the 1948 United Nations Universal Declaration of Human Rights.

On December 13, 1991 at the committee on Economic, Social, and Cultural Rights' sixth session, Article 11(1) of the covenant was accepted in accordance with the Office of the High Commissioner for Human Rights. The state parties to this covenant acknowledge the right of every individual to an adequate standard of living for themselves and their families, which encompasses sufficient food, clothing, and housing, as well as the ongoing enhancement of living conditions. Adequate shelter and essential services are fundamental human rights, imposing a responsibility on the government to guarantee access for everyone. This obligation starts with providing direct support to the most disadvantaged individuals through structured programs that promote self-help and community engagement, according to section III (8) of the Vancouver Declaration on Human Settlements (1976).<sup>145</sup>

### **2.6.1 The International Covenant on Economic, Social, and Cultural Rights.<sup>146</sup>**

The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, as well as to the continuous improvement of living conditions, is stated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). In terms of sections 26 and 27 of the

---

<sup>142</sup> Oren, ML & Alterman, R 'The Right to Adequate Housing around the Globe: Analysis And Evaluation Of National Constitutions' In *Agrawal, S (Ed.) Rights and the City: Problems, Progress and Practice* (University of Alberta Press 2022) 174-199.

<sup>143</sup> Universal Declaration of Human Rights, 1948.

<sup>144</sup> The Habitat Agenda of 1996.

<sup>145</sup> Vancouver Declaration on Human Settlements of 1976.

<sup>146</sup> The International Covenant on Economic, Social and Cultural Rights Adopted by the General Assembly of the United Nations on 16 December 1966.

Constitution, the concepts of gradual realisation and resource availability were based on Article 2 of the ICESCR. Article 11 from the ICESCR states that everyone has the right to a decent quality of life, which includes an appropriate place to live. Although the South African government has made multiple public announcements that it will ratify the ICESCR, this ratification has not yet taken place.

As a result, domestic legal and policy frameworks play a major role in the enforcement of the right to housing, as they do with all SERs. All governments are required by the ICESCR to progressively realise their duties, and some general remarks have referred to these obligations. These requirements constitute discrimination. Moreover, the duties bind the executive, the judiciary, and the state and its organs.

## CHAPTER 3: COURTS AND LITIGATION THAT PROMOTE HOUSING AS A SOCIO-ECONOMIC RIGHT

### 3. 1 Introduction

As housing is recognized as a socioeconomic right in South Africa by a strong legal framework that is incorporated in section 26 of the Constitution, for the low-income urban poor, many of whom are still waiting for their opportunity to secure housing, the government's progress in tackling the housing crisis has been noticeably slower than expected. Land invasions and occupation of run-down inner-city buildings became the norm for the urban poor, particularly in Johannesburg, who had lost faith in the government's ability and political will to provide housing.<sup>147</sup> After the government removed the occupants in response to these incursions, the latter filed countersuits, accusing the former of being more preoccupied with upholding property rights than fulfilling its housing commitment.<sup>148</sup> Since they highlight the connection between the discourse on housing rights and human rights, as well as the role that the courts have played in advancing these rights, the *Grootboom*, *Olivia Road*, and *Joe Slovo* cases are all particularly pertinent to this study. It is clear from the aforementioned difficulties in advancing housing as a socioeconomic right that social justice is not necessarily the result of a progressive Constitution and a progressive suite of policies.

### 3. 2 Judicial Enforcement of the Right to Housing

Laws and constitutional clauses may be meaningless unless and until they are upheld by a robust legal system. In reaction to their history of human rights violations, South Africa underwent a constitutional revolution in 1994 when it gained independence. The South African Constitutional Court has been instrumental in developing a growing body

---

<sup>147</sup> Ballard, R, Hamann, C & Mkhize, T 'Johannesburg: Repetitions and Disruptions of Spatial Patterns' In Lemon, A, Donaldson, R & Visser, G (Eds.) *South African Urban Change Three Decades after Apartheid: Homes Still Apart?* (Springer 2021) 35-55.

<sup>148</sup> Note 142.

of legal precedent regarding the enforcement of social and economic rights in recent years, areas that would have otherwise been subject to restrictive interpretation.<sup>149</sup>

### 3. 3 Case Law

#### 3. 3. 1. *Government of the Republic of South Africa v Grootboom* (2000)<sup>150</sup>

One of the court cases that has strengthened the right to housing and advanced human rights for South African urban impoverished households is the *Grootboom* case. In addition, it establishes precedent for jurisprudence that is consistent with international housing and human rights laws. This case showed that housing is a fundamental right and that, pursuant to section 26(2)(a) of the Constitution, the state is required to provide appropriate housing. This lawsuit concerns 900 individuals in Cape Town (510 children and 390 adults) who were forcibly removed from their squatter settlements on privately owned land designated for the construction of affordable housing in 2000.<sup>151</sup> As they relocated to the Walacedene sports field in Cape Town's Oosternberg Municipality later in 2000, they were left stranded on the public sports fields, whereby the evicted individuals independently, under the guidance of one of their activists, Mrs. Irene Grootboom, filed a court order with the Cape of Good Hope High Court compelling the government to give them housing or refuge.<sup>152</sup>

As required by the Constitution, they requested an injunction compelling the government to provide adequate housing. The court held in the May 2000 ruling that the state had a duty to establish a reasonable program to address the Grootboom community's urgent housing requirements. The decision has been praised as the most significant step toward developing jurisprudence for the realisation of the

---

<sup>149</sup> Roux, T *The Politics of Principle: The First South African Constitutional Court, 1995–2005* (Vol. 6) (Cambridge University Press 2013) 262-331.

<sup>150</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

<sup>151</sup> Note 145, par 4.

<sup>152</sup> Note 146.

socioeconomic rights of the urban poor, in addition to housing.<sup>153</sup> The government developed the Emergency Housing Programme, which is detailed in chapter 12 of the 2009 National Housing Code by the DHS, in response to this decision and the court injunction.<sup>154</sup> The government's housing program was declared unlawful by the Constitutional Court since it did not provide those in need with suitable accommodation.

The court stated that towns have a significant role to play in ensuring that everyone's right to adequate housing is fulfilled, thus, it is the responsibility of municipalities to systematically provide housing access for everyone living in their jurisdiction.<sup>155</sup> As an extension of the local sphere of the government, the towns must act with the knowledge that the unauthorized habitation of land in our nation's cities is rooted in intricate socioeconomic issues and as such, they have to carry out their responsibilities with kindness and knowledge. As a result, their responsibilities go beyond creating housing projects to include showing respect for people under their control. When eviction becomes necessary, it is usually necessary to try to find a solution before requesting a court order.

### **3. 3. 2 The National Housing Code<sup>156</sup>**

The National Housing Code states that in the event of evictions or any other calamity, including fires, floods, or evictions, the government must provide alternate housing for the affected populations. Such agreements did not exist before the *Grootboom* ruling.<sup>157</sup> This case serves as a powerful reminder that those in poverty are still persons, deserving of social justice and the protection of their right to housing. Several

---

<sup>153</sup> Langford, M 'Housing Rights Litigation: *Grootboom* and Beyond' In Langford, M, Cousins, B, Dugard, J & Madlingozi, T (Eds) *Economic Rights in South Africa: Symbols or Substance?* (Cambridge University Press 2014) 187-225.

<sup>154</sup> Dickinson, GS 'The Blue Moonlight Remedy: Formulating the Voucher Scheme into a New Emergency Housing Remedy in South Africa' (2013) 130(3) *South African Law Journal* 556-561.

<sup>155</sup> Mbazira, C 'Grootboom: A Paradigm of Individual Remedies Versus Reasonable Programmes' (2011) 26(1) *Southern African Public Law* 66-68.

<sup>156</sup> National Housing Code, 2009

<sup>157</sup> Liebenberg, S 'What The Law Has To Say About Evictions' (2014) Mail&Guardian [What the law has to say about evictions – The Mail & Guardian](#) accessed on 26 November 2024.

court cases involving socioeconomic rights have applied the "reasonableness approach, first conceived in the case" theory. Section 26(2) of the Constitution, which requires the state to adopt "reasonable measures" to facilitate the realisation of the right to housing, serves as the benchmark for what constitutes "reasonableness."<sup>158</sup> In the Grootboom case, the state was judged to have been "unreasonable," which means that it had violated its own duty by neglecting to provide for the needs of women, children, and the elderly.<sup>159</sup> In accordance with section 28 of the Constitution, children must consequently get special consideration when it comes to their "right to basic nutrition, shelter, basic health care services, and social services," according to the "reasonableness approach."<sup>160</sup> The government also created the National Upgrading Support Programme (NUSP) in 2009 to help provinces and municipalities upgrade informal settlements as a direct result of this case.

### **3. 3. 3 Port Elizabeth Municipality v Various Occupiers (2004)<sup>161</sup>**

The case of *Port Elizabeth Municipality v Various Occupiers* is considered as a turning point and a historical precedent that upheld towns' duties to provide decent housing while also defending the rights of residents living in informal settlements.<sup>162</sup> In one instance, the Port Elizabeth Municipality attempted to remove residents from a number of unofficial communities within the city on the grounds of potential health, safety, and environmental risks. According to section 26 of the South African Constitution, the tenants, who were represented by the Legal Resources Centre, claimed that the evictions would violate their fundamental right to appropriate accommodation.

---

<sup>158</sup> Sobantu, M, Zulu, N & Maphosa, N 'Housing as a Basic Human Right: A Reflection on South Africa' (2019) 31(1) *Southern African Journal of Social Work and Social Development* 10-11.

<sup>159</sup> Chenwi, L 'Implementation of Housing Rights in South Africa: Approaches and Strategies.' (2015) 24(4) *Journal of Law and Society* 81.

<sup>160</sup> Note 152.

<sup>161</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

<sup>162</sup> Strydom, J & Viljoen, S 'Unlawful Occupation of Inner-City Buildings: A Constitutional Analysis of the Rights and Obligations Involved' (2014) 17(4) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1208.

According to the Constitution's section 26(3), the PIE Act must include some legislative texture to help the courts decide how to handle evictions. The availability of adequate alternative accommodation or land to the unlawful occupier is required by section 6(3)(c) of the PIE Act, which the court must consider while determining whether it is just and equitable to give an order for eviction. The court acknowledged that, by virtue of the Constitution, the residents had a right to reasonably expect to be given suitable accommodation. The court ruled that the municipality could not use evictions as a way to get out from under its Constitutional commitment to provide appropriate housing.<sup>163</sup> According to section 33 of the Bill of Rights, which grants everyone the right to administrative action that is legal, reasonable, and procedurally fair as well as the right to written justification for any administrative action taken against them under section 5 of the PAJA,<sup>164</sup> the court emphasized the significance of meaningful engagement between the municipality and occupants in order to find alternative solutions that respect the rights of all parties.

The eviction procedures conducted by the municipality were declared unlawful by the Constitutional Court due to their disregard for the tenants' rights. The court ruled that providing alternative housing and conducting evictions in a way that respects residents' rights are requirements.<sup>165</sup> The court stressed that the municipality must work with tenants to find alternative solutions regarding the vulnerability of occupiers referred to in section 4(6) of the PIE act, which are the elderly, children, disabled people, and households headed by women could constitute a relevant circumstance under section 6 to be considered. Evictions should only be considered after all other options have been exhausted.

This decision essentially established that towns have a constitutional duty to provide enough housing and that evictions, whether carried out by private landowners or an organ of state, must be carried out in a way that respects the rights of tenants.<sup>166</sup> With that being the case, it can be inferred that the ruling greatly affected the efforts to

---

<sup>163</sup> Note 155, par 32.

<sup>164</sup> Act 3 of 2000.

<sup>165</sup> Note 155, par 56-58.

<sup>166</sup> Pillay, K 'Property v Housing Rights: Balancing the Interests in Evictions Cases: Case Review' (2004) 5(5) *ESR Review: Economic and Social Rights in South Africa* 16-18.

defend the rights of residents living in informal settlements, thus the Courts are positioned to be considerate of the severe consequences of eviction. Section 46(2)(b) of the Group Areas Act 36 of 1966 gave broad authority to issue an ejection order that might, and in most cases would, have a major impact on the lives of the person or people in question.<sup>167</sup> Therefore, it is imperative to conduct thorough research before placing such an order. The nature of the area in question, the neighbours' attitudes, the policies and viewpoints of the Department of Community Development or any other interested State department, the attitude of the landlord, the likelihood that a permit is going to be issued for the persisting lawful occupation of the certain premises, the potential difficulties that the order in question may cause personally, and the status of available alternative arrangements and accommodations are just a few of the many factors that may be relevant for the competent court to exercise its discretion.

The court decided that other housing had to be offered and that evictions had to be conducted in a way that respected the tenants' rights, including their right to human dignity under section 10 of the Constitution. The ruling reaffirmed the necessity of taking into account tenants' rights throughout eviction procedures, the requirement for other housing, and the duty of towns to offer suitable housing as opposed to just evicting them. The ruling has been used to support the rights of residents in informal settlements in several instances later, such as the renowned case of *51 Olivia Road*.<sup>168</sup>

### **3. 3. 4 Occupiers of 51 Olivia Road v City of Johannesburg.**

In *Occupiers of 51 Olivia Road v City of Johannesburg*, the city of Johannesburg filed an application with the high court, seeking the eviction of almost 400 residents from two run-down inner-city buildings 51 Olivia Road in Berea and 197 Main Street.<sup>169</sup> The court denied the application, stating that no substantial prior interaction had occurred

---

<sup>167</sup> Note 88, 347.

<sup>168</sup> *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

<sup>169</sup> Note 162, par 1-2.

with the prospective evictees and more importantly, that the affected individuals would be left homeless as there were no other plans for housing.<sup>170</sup> The ruling created the meaningful interaction principle, which has significant legal precedent in the areas of housing and human rights. As a rule, meaningful engagement encourages sincere dialogue between the parties regarding the areas of contention without jeopardizing the complainants' human rights, who in a majority of instances are low-income residents.<sup>171</sup> The Constitutional Court ordered the city to take interim measures to protect the rights of the complainants before they were moved to alternate accommodations. These measures included, among other things, ensuring building safety, ensuring access to potable water and toilets, sanitation, and fire extinguishers, all of which would be paid for by the city. In addition, the city was mandated to work with the occupiers to find alternate housing.

Drawing from section 39 of the Constitution that requires the judiciary to consider international law when interpreting the Bill of Rights, the court made reference to article 11 of the UDHR, and the ICESCR. Important lessons about housing and human rights can be learned from this ruling. The importance of housing as a human right is the first evident lesson. The necessity of including the voice of the underprivileged or intended beneficiaries in home building is the second lesson. Therefore, the state bears the burden of finding a lasting housing solution for the nation. Participation and democracy are essential components of societal development. Citation from *Port Elizabeth Municipality v Various Occupiers*,<sup>172</sup> the court held that the procedural and substantive features of justice and equity are not to be always alienated. Therefore, encouraging and requiring the parties to engage in a proactive and sincere effort to discover mutually favourable solutions is one potentially courteous and effective way to achieve sustainable reconciliations of the many interests involved. Whenever possible, an arm's length battle between unyielding opponents should be replaced by civilized contact interaction or mediation by a third party. During the argument, it became clear that the city had not attempted to communicate with the squatters before the eviction

---

<sup>170</sup> Note 162, par 5-6.

<sup>171</sup> McLean, K 'Meaningful Engagement: One Step Forward or Two Back? Some Thoughts on Joe Slovo' (2010) 3(1) *Constitutional Court Review* 234-236.

<sup>172</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

proceedings being initiated. However, the city had to have known that there was a chance, indeed a high likelihood that individuals would lose their homes as a direct consequence of being evicted at its request. In these situations, the municipality's management personnel should have, at the absolute least, meaningfully interacted with the occupiers on an individual and group level. In the end, the court found that the city's eviction practices violated the Constitution and that it was required to find suitable alternative homes.

### **3. 3. 5. *Abahlali baseMjondolo v eThekweni Municipality (2009)***<sup>173</sup>

The Abahlali baseMjondolo, a shack dwellers' movement, challenged the municipality's housing policies, arguing that they failed to address the needs of the poor. When a municipality implements a slum removal program, it eliminates a slum. The number of slums under the MEC's jurisdiction, along with specifics about each slum, must also be included in the report that is written for the MEC. More significantly, the study needs to show whether it is feasible to provide alternative housing for slum dwellers and offer suggestions regarding whether a certain slum may be upgraded and improved. Every year, municipalities are expected to provide the MEC with comprehensive reports outlining their efforts toward slum removal. The court ordered the municipality to upgrade informal settlements in terms of the Building Regulations and Building Standards Act,<sup>174</sup> and provide adequate housing in terms of the Housing Act. Housing is the primary concern when it comes to the creation of transit zones, the upgrading of living conditions in slums, the supply of adequate alternative housing, and the authority to force a landowner to renovate or upgrade subpar housing. Indeed, the engine of slum clearance is every municipality. This case brought to light the necessity of modernizing informal settlements and giving the needs of the impoverished top priority in housing regulations. On the other hand, an organ of state cannot get an eviction order against an unauthorized occupant just because it seems

---

<sup>173</sup> *MEC for Human Settlements and Public Works of the Province of KwaZulu-Natal v Ethekewini Municipality and Others* (3329/2013, 9189/2013) [2015] ZAKZDHC 69; [2015] 4 All SA 190 (KZD) (20 August 2015).

<sup>174</sup> Act 103 of 1977.

fair and reasonable to do so. Additionally, it must prove to a court's satisfaction that granting an eviction order at the municipality's request is in the public interest.

Additionally, a person occupying a space with permission from the owner cannot be removed by the municipality. It can only force the owner to make improvements to make the property liveable for people. The municipality has no recourse if the property owner permits occupancy and upgrades the property in compliance with the reasonable requirements of the municipality. In this respect, it is important to note that section 16 of the Act requires municipalities to follow the PIE legislation, not to allow municipalities to evict people outside of its provisions. The municipality's policies were declared unlawful by the court because they did not give priority to the needs of the underprivileged. It is declared that KwaZulu-Natal Elimination and Prevention of Reemergence of Slums Act, section 16,<sup>175</sup> is unconstitutional and unenforceable. The municipality was obliged to modernize the slums by the court, which acknowledged the entitlement to decent housing.

### **3. 4. Conclusion**

The acknowledgement of housing as a socio-economic right in South Africa has been greatly aided by these cases. These cases highlight the state's duty to guarantee all citizens, regardless of social standing or economic standing, access to decent housing. To sum up, housing delivery plays a critical role in determining the social and economic relationships inside societies. The chapter has demonstrated the various obstacles that the government still has in bringing about social and economic goods and services to its impoverished population. Stringent principles like the reasonableness approach and meaningful involvement should serve as core guidelines in procedures of housing disputes with the poor, as the courts have established in their rulings. Thus, the conviction that discussions surrounding social development and human rights in South Africa are deeply intertwined with housing provision. To alleviate the hardships faced by the urban poor, it is essential to explore alternative methods of housing distribution that take into account socioeconomic rights and location-related issues. This study, viewed through the lens of social development,

---

<sup>175</sup> Act 6 of 2007.

promotes a delivery strategy that is founded on rights and places the urban poor at the centre of people-centred procedures. As a result, housing is a basic socioeconomic right that South Africa must continuously realise.

## CHAPTER 4: CONTENT ANALYSIS AND PRESENTATION OF DATA

### 4.1 introduction

The fourth chapter presents the information as collected and analysed to evaluate the South African government's contributions to SERs with specific focus on the right to housing since the inception of democracy in 1994. The data were gathered through a combination of primary and secondary sources, including government reports and academic publications. This analysis aims to provide a comprehensive understanding of the research objectives. The South African government's contribution to socio-economic development since the end of apartheid has been pivotal. This chapter examines the diverse approaches and interventions by the government to foster SERs, particularly focusing on housing. The post-apartheid government has achieved considerable progress in tackling historical inequalities through a combination of legislative, policy, and practical initiatives.

### 4. 2 Legislative and Policy Framework

The analysis of the legislative and policy framework in South Africa reveals a comprehensive approach by the government towards developing SERs. The cornerstone of this approach is the Bill of Rights in the Constitution, which guarantees SERs like housing, accessible healthcare, food to the masses, potable water, and social security. Sections 26 and 27 specifically mandate the state to take action towards fulfilling these rights, creating a legal obligation. This constitutional foundation translates into concrete plans through various legislative frameworks for specific rights. For instance, the Housing Act,<sup>176</sup> allocates responsibilities to different government levels for facilitating sustainable housing development, crucial for realizing the right to adequate housing as advocated by the Housing act.<sup>177</sup> The Promotion of Equality and

---

<sup>176</sup> Act 107 of 1997

<sup>177</sup> Ntema, LJ *Self-help housing in South Africa: Paradigms, Policy and Practice* Doctoral Dissertation (University of the Free State 2018) 58.

Prevention of Unfair Discrimination Act (PEPUDA Act)<sup>178</sup> tackles a significant barrier to socio-economic development by promoting equality and combating discrimination. This Act ensures everyone has a fair chance to access basic needs and improve their socio-economic status, addressing the historical inequalities that continue to shape access to opportunities. Finally, the National Minimum Wage Act establishes a minimum income standard for working individuals.<sup>179</sup> This legislation contributes to socio-economic well-being by ensuring a basic level of financial security, which can then be used to access essential goods and services as in the National Minimum Wage Act.<sup>180</sup> While South Africa's legislative framework for SERs appears comprehensive, a deeper analysis reveals the need to examine its effectiveness in achieving its intended goals towards the realisation of and achieving the right to housing.<sup>181</sup> The existence of strong policies on paper is just the first step. Here's a thorough analysis that explores the key challenges that might hinder the translation of these rights into tangible improvements for citizens.

A crucial question lies in the implementation of these policies. Do they translate effectively into actionable programs at the local level? Bureaucratic hurdles and resource constraints can be significant obstacles.<sup>182</sup> A 2022 report by the Auditor General of South Africa found that that some municipalities, particularly in rural areas like Alfred Nzo District Municipality in Eastern Cape, struggled with delays in processing housing applications due to understaffing.<sup>183</sup> Additionally, insufficient resources at the local government level can impede the successful execution of these programs. This can lead to situations where eligible beneficiaries in townships like Khayelitsha near Cape Town struggle to access the services they are entitled to by

---

<sup>178</sup> Act 4 of 2000.

<sup>179</sup> Act 9 of 2018.

<sup>180</sup> Act 9 of 2004.

<sup>181</sup> Mlambo, DN & Maserumule, MH 'Constitutional and Legislative Frameworks for the Local Sphere of Government in South Africa: Analytical and Interpretive Perspective' (2024) 16(2) *Insight on Africa* 221.

<sup>182</sup> Seekela, K 'The Challenge of Implementing Socio-economic Rights in South Africa' (2010) 11(1) *African Human Rights Law Journal* 131.

<sup>183</sup> See, Auditor-General of South Africa 'Local Government Audit Outcomes Report' (2022).

law.<sup>179</sup> Another critical aspect is equity and targeting. How effectively do these policies reach the most vulnerable populations? An argument that ensues thereof is that that historical inequalities continue to shape socio-economic access. Geographical disparities, racial segregation, and limited information access can disadvantage marginalized communities. Even if policies exist, they might not be reaching those who need them the most.<sup>184</sup> For instance, Black African households in KwaZulu-Natal were significantly less likely to benefit from social grants compared to white households, highlighting the need for targeted outreach programs in these communities.<sup>185</sup>

The final component is effective monitoring and evaluation. Are there mechanisms in place to track progress made in fulfilling SERs? The importance of measuring the effectiveness of these policies. Regular data collection and analysis, for instance, by Statistics South Africa, can reveal shortcomings and areas where adjustments are needed.<sup>186</sup> This information can then be used to refine policies and programs, ensuring they are constantly evolving to address emerging challenges and achieve better outcomes. A strong focus on monitoring and evaluation also fosters transparency and accountability. When citizens can track progress and hold the government responsible for fulfilling its obligations, it creates a system where policies are continuously assessed and improved.<sup>187</sup> This can empower communities like

---

<sup>184</sup> Wilson, WJ *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (University of Chicago Press 2012) 114.

<sup>185</sup> Mbajjorgu, DG & Odeku, KO 'Fighting Food Insecurity, Hunger, and Poverty: The Content and Context of the Socio-Economic Right of Access to Sufficient Food in South Africa' (2023) 43(3) *Obiter* 474-479.

<sup>186</sup> Masombuka, SSN & Thani, XC 'Challenges and Successes of the Government-wide Monitoring and Evaluation System: The Role of the Department of Planning, Monitoring and Evaluation in the Presidency' (2023) 31(3) *Administratio Publica* 148-151.

<sup>187</sup> O'Leary, S 'Grassroots Accountability Promises In Rights-Based Approaches to Development: The Role of Transformative Monitoring and Evaluation in NGOs' (2017) 63 *Accounting, Organizations and Society* 27-32.

those in Alexandra Township near Johannesburg to advocate for better service delivery and hold decision-makers accountable for ensuring their SERs are met.<sup>188</sup>

Overall, while South Africa's legislative framework for SERs demonstrates a strong commitment on paper, a thorough analysis reveals the need to address implementation challenges, ensure equitable targeting, and establish robust monitoring and evaluation mechanisms.<sup>189</sup> By acknowledging these potential shortcomings and working towards solutions, the government can ensure its policies translate into tangible improvements in the lives of its citizens. A multi-faceted approach that tackles bureaucratic hurdles, prioritizes marginalized communities, and fosters transparency is crucial for achieving sustainable socio-economic development in South Africa.

## **4. 2 Government Contributions to SERs**

### **4. 2. 1 Housing**

The South African government has demonstrably strived to provide adequate housing, a fundamental socio-economic right enshrined in section 26 of the Constitution. The RDP, launched in 1994, aimed to tackle the housing backlog inherited from apartheid.<sup>190</sup> Over 3 million RDP houses have been built, significantly impacting the lives of millions. For instance, Khayelitsha, a sprawling township near Cape Town, has witnessed substantial RDP housing development.<sup>191</sup> Concerns regarding poor construction quality and inadequate infrastructure in some RDP projects persist.<sup>192</sup>

---

<sup>188</sup> Mafune, IA *The Effects of Bureaucracy on the Delivery of Services within the City of Johannesburg* Masters Dissertation (University of the Witwatersrand 2014). 17-23.

<sup>189</sup> Fourie, D & Malan, C 'Public Procurement in the South African Economy: Addressing the Systemic Issues' (2020) 12(20) *Sustainability* 19-21.

<sup>190</sup> DHS Annual Report, 2023.

<sup>191</sup> Bodino, M 'Learning from Cape Town Desegregation: Khayelitsha' In *Reframing the Role of Public Open Space: The Case of Cape Town* (Cham: Springer International Publishing 2022) 93-159.

<sup>192</sup> Odeku, L 'Socio-Economic Rights In South Africa: An Analysis Of Progress And Challenges' (2022) 13(2) *Journal of African Law and Economics* 21-27.

There are concerns of houses with leaking roofs, faulty electrical wiring, and a lack of proper sanitation facilities in Khayelitsha's Makhaza B section, constructed under the RDP program.<sup>193</sup> These concerns necessitate stricter quality control measures and ongoing maintenance support for RDP housing projects.

The government must prioritize addressing the housing backlog while ensuring the quality and sustainability of RDP housing developments. Implementing stricter quality control measures during construction and establishing effective maintenance programs are crucial. Additionally, exploring alternative housing solutions, such as mixed-income communities and increased investment in public transportation infrastructure to connect RDP housing developments to economic opportunities, can contribute to a more holistic approach to housing provision.

#### **4. 2.2 Water and Sanitation**

Access to clean water and sanitation as a socio-economic right aligns with the right to adequate housing, as proper housing necessitates the availability of clean and safe water, along with adequate sanitation facilities. It is a fundamental human right enshrined in section 27 of the South African Constitution. It is not only essential for health and hygiene but also a critical factor in ensuring human dignity and well-being. Recognizing this, the South African government has made strides in expanding access to these vital services, particularly through substantial investments in water and sanitation infrastructure projects.<sup>194</sup> The government's efforts have yielded positive results. The growth in infrastructure development has resulted in a greater number of households gaining access to clean water and sanitation facilities. Programs like the Free Basic Water policy provide a crucial safety net for low-income households by

---

<sup>193</sup> Kongo, MM *Water and Sociality in Khayelitsha: An Ethnographic Study* Doctoral Dissertation (University of Cape Town 2022) 84-86.

<sup>194</sup> Department of Water and Sanitation (DWS) 2024 <https://www.dws.gov.za/> accessed 22 November 2024.

guaranteeing a minimum amount of free water.<sup>195</sup> Although national statistics may indicate advancements, the availability of water and sanitation services is still inconsistently distributed throughout the country. Rural communities often lag behind urban centres in terms of infrastructure development and service delivery.<sup>196</sup> This disparity perpetuates existing inequalities and undermines efforts to achieve socioeconomic justice. South Africa's water and sanitation infrastructure is aging and often poorly maintained. Leakages, inadequate wastewater treatment facilities, and failing sanitation systems contribute to water loss and environmental pollution<sup>197</sup>. These issues necessitate increased investment in infrastructure maintenance and rehabilitation alongside new development projects.

Climate change poses a growing threat to water security in South Africa. Droughts and erratic rainfall patterns can exacerbate water scarcity, particularly in vulnerable regions.<sup>198</sup> Sustainable water management practices, such as rainwater harvesting and improved water conservation strategies, are crucial for mitigating the impact of climate change. The 2021 court case of *Minister of Water and Sanitation v Sembcorp Siza Water*,<sup>199</sup> highlights potential issues of governance and mismanagement within the water sector. Effective governance, transparency, and accountability are essential for ensuring efficient resource allocation and preventing mismanagement that can hinder progress towards achieving universal access to water and sanitation.

---

<sup>195</sup> Ladan, MT, Okukpon, I & Maduekwe, NC 'Realising Sustainable Access to Water and Sanitation in Africa: Role of Critical Institutions' In *SDGs in Africa and the Middle East Region* (Cham: Springer International Publishing 2024) 1309-1332.

<sup>196</sup> Bakker, K 'Water Governance in Transition: Emerging Spaces, Scales and Practices in South Africa' (2012) 26(11) *Water Resources Management* 3187.

<sup>197</sup> Ruiters, P & van den Brink, E 'Water Scarcity and Governance in South Africa: Challenges and Opportunities' (2010) 26(2) *International Journal of Water Resources Development* 253

<sup>198</sup> Turpie, J, Davies-Coleman, M & Marais, C 'The Water Security Implications of Climate Change for South Africa' (2020) *Environmental Science & Policy* 115.

<sup>199</sup> *Minister of Water and Sanitation v Sembcorp Siza Water (Pty) Ltd and Another* (CCT 300/19) [2021] ZACC 21; 2021 (10) BCLR 1152 (CC); 2023 (1) SA 1 (CC) (23 July 2021).

## 4. 3 Merits and Demerits

### 4. 3. 1 Merits

The inclusion of SERs in the Constitution, coupled with precedent-setting court cases has established a robust legal framework. The national government should clearly define the targets it hopes to accomplish in regard to social and economic rights. As Justice Oregan stated in the seminal decision of *Mazibuko v City of Johannesburg*, that aligns with our Constitution's core principles, which state that the government must be transparent, responsive, and responsible.<sup>200</sup> The Minister's minimal standard tells the public what the government hopes to accomplish. By doing this, citizens may keep an eye on how well the government is performing and, in the event that the standard is not met, hold it politically responsible.<sup>201</sup> Additionally, in the event that the standards established are unreasonable, citizens may challenge the government in court to hold it responsible.

This framework empowers individuals to hold the government accountable for upholding these rights through judicial recourse.<sup>202</sup> With the Constitution establishing the right to access to adequate housing, the *Grootboom* case put more emphasis on the importance of the protection of and the realisation of this right, with the case cementing itself as a landmark decision with far-reaching implications for socioeconomic justice in South Africa.<sup>203</sup> The legal framework ensures the "justiciability" of SERs, meaning these rights can be enforced through the court system. This enables citizens to pursue legal action if they feel the government is not

---

<sup>200</sup> *Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) ; 2010 (4) SA 1 (CC) (8 October 2009).

<sup>201</sup> Mdee, A & Mushi, A 'Untangling Blame and Responsibility for Service Delivery and Local Governance Performance: Testing a Grounded Social Accountability Approach in Tanzania' (2021) 47(6) *Local Government Studies* 996.

<sup>202</sup> Note 195.

<sup>203</sup> Pieterse, M 'Towards a Right to the City?: The Slow Convergence of Rights to Housing and Land in South African Constitutional Jurisprudence' (2022) 11(1) *International Human Rights Law Review* 42-48.

meeting its responsibilities concerning SERs.<sup>204</sup> This legal framework fosters a rights-based approach to development, according to this approach, people are at the centre of development and service delivery, which is person-centred and necessitates encouraging the government to prioritize the well-being of its citizens.<sup>205</sup> Programs like the RDP have directly impacted millions of individuals by providing essential housing and basic services and as a result, these initiatives have demonstrably contributed to poverty alleviation and improved living standards for a significant portion of the population.<sup>206</sup> The government's increasing focus on rural development through targeted programs and infrastructure investments addresses historical neglect of these areas. This emphasis on rural development seeks to close the divide between urban and rural communities in accessing essential services and economic opportunities, thereby promoting a more equitable allocation of resources.<sup>207</sup>

The introduction of social grant programs offers a safety net for at-risk populations, including children, the elderly, and individuals with disabilities. These grants play a crucial role in alleviating poverty and enhancing the fundamental living conditions of these groups.<sup>208</sup> The strengths highlighted above demonstrate the South African government's commitment to using legal and programmatic interventions to address socio-economic inequalities. The legal framework empowers citizens and fosters accountability, while social programs provide direct assistance and improve living standards for many. However, it is crucial to acknowledge that these strengths need

---

<sup>204</sup> Boyle, K *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020) 122-135.

<sup>205</sup> Ackerman, C 'The Rights-Based Approach To Local Government Development And Service Delivery: Putting Women (Back) In the Centre of Attention' (2012) 11(2) *Journal of African Elections* 125-129.

<sup>206</sup> Manomano, T, Tanga, PT & Tanyi, P 'Housing Problems and Programs in South Africa: A Literature Review' (2016) 7(2) *Journal of Sociology and Social Anthropology* 112.

<sup>207</sup> Ghosn, F 'Rural vs. Urban Development Disparities in the Middle East' In *Unveiling Developmental Disparities in the Middle East* (IGI Global 2024) 65-92.

<sup>208</sup> Chagunda, C 'The South African Social Grant System: A Positive Effect on Poverty Alleviation and Unforeseen Socio-Cultural Consequences' (2019) 17(4) *Gender and Behaviour* 14240-14242.

to be coupled with effective implementation and ongoing evaluation to ensure their long-term sustainability and impact.

#### 4. 3. 2. Demerits

While the South African government's efforts to develop SERs demonstrate strengths, significant weaknesses and challenges persist. The government often grapples with budgetary pressures, which can restrict funding for vital social programs. This can lead to delays in service delivery, inadequate infrastructure development, and limitations on program reach.<sup>209</sup> Corruption at various levels of government remains a persistent obstacle. The misappropriation of funds intended for social programs undermines their effectiveness and diverts resources away from those who need them most. Corruption erodes public trust and weakens government accountability mechanisms. Inefficiencies in service delivery and implementation gaps between policy design and on-the-ground execution hinder progress. Bureaucratic hurdles, lack of proper planning, and inadequate monitoring and evaluation processes can lead to wasted resources and unfulfilled promises.<sup>210</sup>

Despite strides towards social justice, significant inequalities persist, particularly along racial and economic lines. The legacy of apartheid continues to cast a long shadow, with historically disadvantaged communities often bearing the brunt of socio-economic hardship.<sup>211</sup> Disparities in service provision remain a challenge. Rural areas often have limited access to basic services like healthcare, sanitation, and education compared to urban centres.<sup>212</sup> This unequal distribution of resources perpetuates

---

<sup>209</sup> John, D & Betty, H 'Corruption and Healthcare in South Africa: A Critical Analysis' (2005) 61(7) *Social Science & Medicine* 1581.

<sup>210</sup> Sihlangu, E & Odeku, L 'Socio-Economic Rights In South Africa: An Analysis of Progress and Challenges' (2021) 12(2) *Journal of African Law and Economics* 9-14.

<sup>211</sup> International Monetary Fund. South Africa: Staff Report for the 2020 Article IV Consultation (2020) Retrieved from <https://www.imf.org/en/Publications/CR/Issues/2023/06/06/South-Africa-2023-ArticleIV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-534271> accessed 25 November 2024.

<sup>212</sup> Kundu, A, Rahaman, M & Khan, K 'Access of Urban Poor to Basic Services: Concerns of Sustainability and Equity' (2024) 54(1) *Social Change* 10-12.

existing inequalities and hinders rural development. The long-term sustainability of current initiatives is a concern. The South African economy faces challenges, and fiscal constraints may limit the government's ability to maintain current funding levels for social programs.<sup>213</sup> The weaknesses and challenges highlighted above illuminate the complexities of achieving socio-economic justice in South Africa. Resource constraints necessitate innovative financing mechanisms and improved resource allocation strategies. Combating corruption requires robust anti-corruption measures and fostering transparency within government institutions.<sup>214</sup> Addressing implementation gaps demands streamlining bureaucratic processes, strengthening monitoring and evaluation frameworks, and ensuring community participation in service delivery. Tackling persistent inequalities requires targeted interventions aimed at uplifting historically disadvantaged communities. Bridging the urban-rural divide necessitates increased investment in rural infrastructure development and ensuring equitable access to basic services.<sup>215</sup> Finally, ensuring the sustainability of social programs requires exploring alternative funding models, promoting economic growth, and fostering fiscal responsibility.

Despite the frameworks outlined above, challenges persist. Investigations and court cases often face lengthy delays, thus diminishing their effectiveness, and enforcing court rulings and recommendations can be challenging, hindering the realisation of SERs.<sup>216</sup> Both the SAHRC and the Public Protector's office grapple with resource limitations, impeding their ability to effectively monitor and investigate rights violations.<sup>217</sup> While South Africa's legal framework offers a robust platform for

---

<sup>213</sup> Finn, BM & Bandaiko, E 'Dwindling Funds and Increased Responsibilities: Decentralization, Unfunded Mandates and Harare's Infrastructure Crisis' (2024) 148 *Habitat International* 2-3.

<sup>214</sup> Naidoo, G 'The Critical Need For Ethical Leadership To Curb Corruption And Promote Good Governance In The South African Public Sector' (2012) 47(3) *Journal of Public Administration* 672.

<sup>215</sup> Baffoe, G, Zhou, X, Moinuddin, M, Somanje, AN, Kuriyama, A, Mohan, G & Takeuchi, K *Urban– Rural Linkages: Effective Solutions for Achieving Sustainable Development in Ghana from an SDG Interlinkage Perspective* (Vol. 16) (Springer Japan 2021) 1341-1362.

<sup>216</sup> Schmitz, AJ 'Expanding Access to Remedies through E-Court Initiatives' (2019) 67 *Buff. L. Rev* 119.

<sup>217</sup> Beredugo, AJ & Viljoen, F 'Towards A Greater Role And Enhanced Effectiveness Of National Human Rights Commissions In Advancing The Domestic Implementation Of Socioeconomic Rights: Nigeria,

accountability, strengthening these mechanisms is crucial for achieving lasting progress. Streamlining investigation processes and improving coordination between the SAHRC, Public Protector, and the judicial system can expedite accountability procedures. Allocating adequate resources to these institutions is essential for them to fulfil their mandates effectively. Raising public awareness about available legal mechanisms empowers citizens to seek redress for violations of their SERs. A strong and independent media plays a vital role in exposing government failures, holding public officials accountable, and promoting transparency.<sup>218</sup> By acknowledging these weaknesses and challenges, the South African government can develop a more comprehensive approach to developing SERs. A multi-pronged strategy that addresses both resource constraints and implementation gaps while promoting equity is crucial for achieving lasting progress towards a more just and equal society.

#### **4. 3 Legal Mechanisms for Accountability**

The South African legal system offers a range of mechanisms designed to hold the government accountable for upholding SERs. Firstly, there is the Promotion of Administrative Justice Act (PAJA).<sup>219</sup> This Act guarantees that administrative actions taken by the government are lawful, reasonable, and follow fair procedures as in terms of section 33 of the Constitution of South Africa which confers everyone with the right to administrative action that is lawful, reasonable and procedurally fair.<sup>220</sup> PAJA empowers citizens to challenge arbitrary or unfair decisions that may negatively impact their SERs, to be given written reasons for the decision taken that adversely affects

---

South Africa And Uganda As Case Studies' (2015) 48(3) *Comparative and International Law Journal of Southern Africa* 416.

<sup>218</sup> Camaj, L 'The Media's Role in Fighting Corruption: Media Effects on Governmental Accountability' (2013) 18(1) *The International Journal of Press/Politics* 27-29.

<sup>219</sup> No 3 of 2000.

<sup>220</sup> Hona, ZA *The Applicability of the Promotion of Access to Information Act 2 of 2000 and Promotion of Administrative Justice Act 3 of 2000 to the South African Legal Practice Council* Masters Dissertation (University of Cape Town 2020) 31-34.

their rights as in terms of section 5 of the act.<sup>221</sup> There is also the SAHRC. This independent body plays a critical role in monitoring and investigating human rights violations, including those related to SERs. The SAHRC can investigate complaints, conduct public hearings, and make recommendations to the government to address identified shortcomings.<sup>222</sup>

The Public Protector serves as an independent watchdog, investigating allegations of maladministration, corruption, and abuse of power by organs of state. These investigations can expose deficiencies in service delivery and hold government officials accountable for failing to uphold SERs.<sup>223</sup> Furthermore, South African courts have emerged as powerful instruments for enforcing SERs. Landmark cases such as *Grootboom* and *Treatment Action Campaign (TAC) v Minister of Health*,<sup>224</sup> have established important precedents that highlight the government's legal obligation to fulfil these rights such as health as in the *TAC* case that government is internationally and constitutionally required to design and execute a comprehensive, effective, and progressive program aimed at preventing mother-to-child transmission of HIV nationwide. These cases demonstrate the judiciary's role in providing judicial oversight and ensuring government compliance.

#### 4. 4 Conclusion

This chapter presented, discussed, and analysed data on the South African government's contributions to SERs since democracy's dawn in 1994. The analysis revealed a story of progress marked by both triumphs and challenges. The legal framework established a strong foundation, guaranteeing rights like housing and

---

<sup>221</sup> Pienaar, J 'Property Meeting the Challenges of the Commons in South Africa' In *Property Meeting the Challenge of the Commons* (Cham: Springer International Publishing 2023) 347-413.

<sup>222</sup> South African Human Rights Commission 'Complaints Handling Procedure of the South African Human Rights Commission' 2018 [Complaints Handling Procedures - SAHRC - Public - 1 January 2018.pdf](#) accessed 22 November 2024.

<sup>223</sup> The Office of the Public Protector South Africa <https://www.pprotect.org/>

<sup>224</sup> *Minister of Health v Treatment Action Campaign 2002 SA (CC)*.

healthcare. Initiatives like the RDP housing program and the NHI scheme demonstrate a commitment to improving lives. However, resource constraints, corruption, and uneven implementation create roadblocks. To forge a more just and equitable society, South Africa must address these hurdles by strengthening policy execution, securing resources, combating corruption, promoting equity, and ensuring program sustainability. Only through such a multi-pronged approach can the nation bridge the gap between promises and lived realities, achieving a future where SERs are not just enshrined in law, but truly experienced by all.

## **CHAPTER 5: SUMMARY OF OUTCOMES, RECOMMENDATIONS AND RESEARCH CONCLUSION**

### **5. 1 Introduction**

Chapter 5 synthesizes the findings and analyses presented in the preceding chapters to provide a comprehensive summary and actionable recommendations for enhancing the South African government's contributions to SERs. This final chapter begins by revisiting the research objectives outlined in Chapter 1, which aimed to evaluate the South African government's efforts in advancing SERs since the end of apartheid in 1994. Drawing on the extensive literature review in Chapter 2, which explored existing frameworks and identified key debates and research gaps, Chapter 5 integrates these insights with the methodological approach detailed in Chapter 3, encompassing qualitative and quantitative data collection and analysis techniques. The data presented and analysed in Chapter 4 highlighted both the strengths and weaknesses of the government's initiatives in housing, healthcare, and access to basic services. Chapter 5 distils these findings to summarize the key achievements and persistent challenges, identifies critical research gaps, and offers targeted recommendations to address implementation barriers, improve resource allocation, and ensure equitable access to SERs. By concentrating on these areas, the South African government can strengthen its legal and policy frameworks to foster a more just and equitable society, thereby realizing the commitments made during the post-apartheid era.

### **5. 2 Summary of findings**

The analysis of the contributions made by the South African government to SERs since 1994 reveals a convoluted tale of advancement and enduring difficulties. Strong legal and policy frameworks, most notably the Constitution's Bill of Rights, have made socioeconomic rights like housing, healthcare, and access to essential services guaranteed. Prominent programmes such as the National Health Insurance (NHI) programme and the RDP demonstrate the government's resolve to redress historical injustices. More than 3 million RDP homes have been constructed as a result of these

efforts, and significant investments have been made in healthcare facilities, particularly in underprivileged rural areas. In addition, the introduction of social subsidies and focused programs for rural development has helped many people live in better conditions and with less poverty.

Despite these achievements, several challenges still exist. The challenges faced by municipalities such as Alfred Nzo District in processing housing applications are indicative of the widespread obstacles that impede the efficient implementation of policies at the local level, including implementation gaps, bureaucratic obstacles, and resource limitations. Progress is still being hampered by corruption and inefficiency in the provision of services, which take funds away from the intended recipients. Access to SERs is still shaped by historical disparities, especially those based on race and geography, with underprivileged people frequently bearing the brunt of these injustices. These persistent problems are further highlighted by disparities in healthcare access, as demonstrated by hospitals in rural Eastern Cape areas, and by challenges with subpar construction in RDP housing complexes. To achieve lasting socio-economic development in South Africa, a comprehensive strategy is required. This strategy should emphasize improved implementation, equitable resource distribution, rigorous monitoring and evaluation, and heightened transparency and accountability to effectively address these challenges.

### **5.3 Recommendations**

Building on the findings and gaps identified in the previous chapters, several recommendations emerge to enhance the South African government's efforts towards fulfilling SERs.

#### **5.3.1 Strengthen Implementation Mechanisms**

It is essential that policies and initiatives be implemented effectively. Additionally, there's a need to eliminate red tape, simplify procedures, and guarantee proper resource distribution at local government levels. This will ensure prompt and effective service delivery, especially in underserved and rural areas.

### **5.3.2 Enhance Monitoring and Evaluation**

Create reliable mechanisms for monitoring and evaluating the effects of socioeconomic policy. Continue to gather data in order to evaluate the state of affairs, spot weaknesses, and modify plans of action as necessary. Make sure reports are transparent, and use data-driven insights to guide resource allocation and policy changes.

### **5.3.3 Combat Corruption**

The adoption of strict anti-corruption policies at all governmental levels will bolster oversight procedures and hold those responsible accountable when public monies meant for socioeconomic development are misappropriated. Declare victories in situations of corruption to discourage similar behaviour in the future.

### **5.3.4 Targeted Equity Programs**

Create and carry out focused initiatives to successfully reach vulnerable and underrepresented communities. Make certain that the socioeconomic advantages are dispersed fairly along racial, geographic, and economic lines. Give community involvement and engagement top priority while designing and implementing programs.

### **5.3.5 Sustainable Development Practices**

Implement sustainable development strategies in infrastructure projects, with a focus on sanitation and water. To stop deterioration, place a strong emphasis on maintaining and renovating the current infrastructure. Incorporate climate-resilient tactics to lessen the effects of the environment on water resources.

### **5.3.6 Strengthen Legal Frameworks**

Boost the ability of legal institutions like the Public Protector and the SAHRC to quickly handle complaints and look into rights abuses. Provide sufficient funding to enable them to carry out their responsibilities and maintain their impartiality in holding the government responsible.

## **5.4 Research Gap**

The study highlights a number of research gaps that need to be filled. More thorough information is required to assess the success of local socioeconomic initiatives, especially in rural and neglected areas. Furthermore, a thorough examination of the long-term viability and effects of government programs such as the RDP housing program and the NHI plan is lacking. In addition, the causes of corruption and inefficiency in the implementation procedures should be investigated further, as should the differences in SERs access across various demographic groups. Lastly, a thorough analysis of the function that community-based organizations and civil society play in promoting and overseeing the realisation of socioeconomic rights may offer insightful information about how to improve service delivery and accountability.

## **5.5 Research Conclusion**

The complexity of socioeconomic rights in South Africa has been examined in this study, with an emphasis on both ongoing difficulties and accomplishments. A strong foundation is provided by the legal framework, which upholds the state's duty to guarantee access to housing, healthcare, water, and sanitary facilities. The NHI program and the RDP housing program, for example, represent important advancements in the quality of life for a large number of people. However, there are significant challenges in the way of achieving socioeconomic equality. The efficacy of initiatives aimed at improving underprivileged areas is compromised by implementation deficiencies, resource limitations, and institutional corruption. Historical injustices that are made worse by regional differences still stand in the way of the realisation of socioeconomic rights for all people.

## BIBLIOGRAPHY

### BOOKS AND BOOK CHAPTERS

Appelhans, N 'The Hybridisation of Public Transport in Dar es Salaam and Nairobi: Challenging Inscriptions of Innovation Policy in Bus Rapid Transit Systems' In *Everyday Urban Practices in Africa* (Routledge 2024).

Badewa, AS & Dinbabo, MF 'South Africa's Political Commitment to the Promotion and Protection of the Rights of Vulnerable Groups' In *Democracy and Political Governance in South Africa: The African Peer Review Mechanism* (Springer 2022).

Baffoe, G, Zhou, X, Moinuddin, M, Somanje, AN, Kuriyama, A, Mohan, G & Takeuchi, K *Urban–Rural Linkages: Effective Solutions for Achieving Sustainable Development in Ghana from an SDG Interlinkage Perspective* (Vol. 16) (Springer Japan 2021).

Ballard, R, Hamann, C & Mkhize, T 'Johannesburg: Repetitions and Disruptions of Spatial Patterns' In Lemon, A, Donaldson, R & Visser, G (Eds.) *South African Urban Change Three Decades after Apartheid: Homes Still Apart?* (Springer 2021).

Bennett, T & Murray, C 'Traditional Leaders' In Woolman, S, Roux, T, Klaaren, J, Stein A & Chaskalson, M (eds) *Constitutional Law of South Africa* (2nd ed Juta & Co 2005).

Bilchitz, D, Glaser, D, Konstant, A, Du Toit, L, Moshikaro, K & Werbeloff, M *Assessing the Performance of the South African Constitution* (Stromsburg: International IDEA 2016).

Boyle, K *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020).

Brankovic, J, Mphahlele, B, Nunu, S, Ngxukuma, A, Njana, N & Sishuba, Y *Violence, Inequality and Transformation: Apartheid Survivors on South Africa's Ongoing Transition* (DSI-NRF Centre of Excellence in Human Development 2020).

Clark, M & Tissington, K 'Courts as a Site of Struggle for Informal Settlement Upgrading In South Africa' In Cirolia, LS, Gorgens, T, van Donk, M, Smit, W & Drimie, S (Eds) *Upgrading Informal Settlements In South Africa: A Partnership Approach* (UCT Press 2016).

Conley, D *Being Black, Living In the Red: Race, Wealth, and Social Policy in America* (University of California Press 2010).

Ghosn, F 'Rural vs. Urban Development Disparities in the Middle East' In *Unveiling Developmental Disparities in the Middle East* (IGI Global 2024).

Gunter, A & Manuel, K 'Urban Housing in South Africa: The Role of Housing in Development and Transformation' In *Urban Geography in South Africa: Perspectives and Theory* (Springer 2020).

Heywood, M 'Seize Power! The Role of the Constitution in Uniting a Struggle for Social Justice in South Africa' In Satgar, V (Ed.) *Capitalism's Crises: Class Struggles in South Africa and the World* (Wits University Press 2015).

Hohmann, J *The Right to Housing: Law, Concepts, Possibilities* (Bloomsbury Publishing 2013).

Kuhn, H 'Reducing Inequality Within and Among Countries: Realizing SDG 10—A Developmental Perspective' In Kaltenborn, M, Krajewski, M & Kuhn, H (Eds.) *Sustainable Development Goals and Human Rights* (Springer 2020).

Ladan, MT, Okukpon, I & Maduekwe, NC 'Realising Sustainable Access to Water and Sanitation in Africa: Role of Critical Institutions' In *SDGs in Africa and the Middle East Region* (Cham: Springer International Publishing 2024).

Langford, M 'Housing Rights Litigation: *Grootboom* and Beyond' In Langford, M, Cousins, B, Dugard, J & Madlingozi, T (Eds) *Economic Rights in South Africa: Symbols or Substance?* (Cambridge University Press 2014).

Leuta, T 'Living among the Dead: Disrupting Narratives on the Inclusion of the Homeless through a Case of Public Open Space in Johannesburg' In *Everyday Urban Practices in Africa* (Routledge 2024).

Liebenberg, S *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta and Company Ltd 2010).

Ndinda, C & Adebayo, P 'Human Settlement Policies And Women's Access To The City: Implications For Inclusive Cities' In Magidimisha, HH & Chipungu, LC (Eds) *Urban Inclusivity In Southern Africa* (Springer 2021).

Oren, ML & Alterman, R 'The Right to Adequate Housing around the Globe: Analysis And Evaluation Of National Constitutions' In *Agrawal, S (Ed.) Rights and the City: Problems, Progress and Practice* (University of Alberta Press 2022).

Pienaar, J 'Property Meeting the Challenges of the Commons in South Africa' In *Property Meeting the Challenge of the Commons* (Cham: Springer International Publishing 2023).

Roux, T *The Politics of Principle: The First South African Constitutional Court, 1995–2005* (Vol. 6) (Cambridge University Press 2013).

Sonneborn, L *The End of Apartheid in South Africa* (Infobase Publishing 2010).

Wilson, WJ *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (University of Chicago Press 2012).

Youngs, R *Civic Activism Unleashed: New Hope Or False Dawn For Democracy?* (Oxford University Press 2019).

## **CASES**

*Certification of the Constitution of the Republic of South Africa* 1996 ZACC 26.

*City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011).

*Fischer v Persons Listed on Annexure X and Others* (9443/14; 11705/15; 14422/14) [2017] ZAWCHC 99.

*Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

*Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) ; 2010 (4) SA 1 (CC) (8 October 2009).

*MEC for Human Settlements and Public Works of the Province of KwaZulu-Natal v Ethekwini Municipality and Others* (3329/2013, 9189/2013) [2015] ZAKZDHC 69; [2015] 4 All SA 190 (KZD) (20 August 2015).

*Minister of Health v Treatment Action Campaign* 2002 SA (CC).

*Minister of Water and Sanitation v Sembcorp Siza Water (Pty) Ltd and Another* (CCT 300/19) [2021] ZACC 21; 2021 (10) BCLR 1152 (CC); 2023 (1) SA 1 (CC) (23 July 2021).

*Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

*Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

*Sarrahwitz v Maritz NO and Another* 2015 8 BCLR 925 (CC).

*Soobramoney v Minister of Health (Kwazulu-Natal)* 1997 SA (CC).

*Van Den Berg v Skosana* (LCC10R/03) [2003] ZALCC 7 (18 February 2003).

## **DISSERTATIONS**

Bafo, PS *Challenges in the implementation of the upgrading of informal settlements programme (UISP): an evaluation of two Gauteng Metropolitan Municipalities* Masters Dissertation (University of the Witwatersrand 2016).

Bafo, PS *Challenges in the Implementation of the Upgrading of Informal Settlements Programme (UISP): An Evaluation of Two Gauteng Metropolitan Municipalities* Masters Dissertation (University of the Witwatersrand 2016).

Fieuw, WVP *Informal Settlement Upgrading in Cape Town's Hangberg: Local Government, Urban Governance and the 'Right to the City'* Masters dissertation (Stellenbosch University 2011).

Hona, ZA *The Applicability of the Promotion of Access to Information Act 2 of 2000 and Promotion of Administrative Justice Act 3 of 2000 to the South African Legal Practice Council* Masters Dissertation (University of Cape Town 2020).

Kathar, RH *The Interconnectedness between the Right of Access to Adequate*

*Housing and the Right to Human Dignity in South Africa* Masters Dissertation (University of Johannesburg 2020).

Kongo, MM *Water and Sociality in Khayelitsha: An Ethnographic Study* Doctoral Dissertation (University of Cape Town 2022).

Mafune, IA *The Effects of Bureaucracy on the Delivery of Services within the City of Johannesburg* Masters Dissertation (University of the Witwatersrand 2014).

Maganadisa, KP *Exploring the Effectiveness of in Situ Upgrading on Improving the Quality of Life: A Case Study of Slovo Park Informal Settlement* Masters Dissertation (University of Johannesburg 2020).

Mbiada, CJT *Strengthening the Role of Political Account Ability in the Realisation of the Right to Housing in South Africa* Doctoral Dissertation (North-west University 2014)

Molefe, S *The Impact of Economic Growth on Residential Segregation: A Lephalale Case Study* Masters Dissertation (University of the Witwatersrand 2018).

Mukiga, AK *Community Activism and Social Change of the Urban Poor in the Western Cape: Advocating for Sustainable Sanitation in Cape Town's Informal Settlements* Doctoral Dissertation (University of the Western Cape 2021).

Munchick, C *Making (Sense Of) History after Apartheid: Neoliberal Education in the 'New' South Africa* Bachelor Thesis (Vassar College 2017).

Nkwinika, RCL *The Rights Of The Evicted Versus The Evictor: A Critical Analysis Of The Prevention Of Illegal Eviction From And Unlawful Occupation Of Land Act 19 Of 1998: Moving Towards A Permanent Housing In South Africa* Masters Dissertation (University of Limpopo 2021).

Ntema, LJ *Self-help housing in South Africa: Paradigms, Policy and Practice* Doctoral Dissertation (University of the Free State 2018).

Oluwaseyi Olatundun, E *The Impact of Internal Migration on Housing Shortage and Affordability: The Case of Cape Town, South Africa* Masters Dissertation (University of the Western Cape 2024).

Radebe, SB *The Protection of the Right of Access to Adequate Housing by the South African Constitutional Court* Masters Dissertation (Stellenbosch University 2013).

Rapeleng, T *An Evaluation of the Right to “Access to Adequate Housing” In Joe Morolong Local Municipality, South Africa* Masters Dissertation (University of the Free State 2013).

Rodina, LA *Lived Notions of Citizenship and the Human Right to Water in Site C, Khayelitsha, Cape Town, South Africa* Masters Dissertation (University of British Columbia 2013).

Sharpley, GG *Government Housing Rectification Programme and Practice in South Africa: A Case Study of Three Selected Eastern Cape Communities* Doctoral Dissertation (University of the Western Cape 2018).

Strauss, M *A Right to the City for South Africa’s Urban Poor* Doctoral Dissertation (Stellenbosch University 2017).

Trusler, RK *Is ‘Breaking New Ground’ As A Comprehensive Plan For Housing Delivery, A Realistic Solution to the Housing problem faced in South Africa?* Honours Dissertation (University of Pretoria 2012).

## **INTERNATIONAL INSTRUMENTS**

The Habitat Agenda of 1996

The International Covenant on Economic, Social and Cultural Rights Adopted by the General Assembly of the United Nations on 16 December 1966.

Universal Declaration of Human Rights of 1948.

Vancouver Declaration on Human Settlements of 1976.

## **INTERNET SOURCES**

Auditor-General of South Africa ‘Local Government Audit Outcomes Report’ (2022) <https://www.agsa.co.za/> accessed 22 November 2024.

Department of Human Settlements 'People's Housing Process' [People's Housing Process | National Department of Human Settlement](#) accessed 22 November 2024.

Department of Water and Sanitation (DWS) 2024 <https://www.dws.gov.za/> accessed 22 November 2024.

International Monetary Fund. South Africa: Staff Report for the 2020 Article IV Consultation (2020) Retrieved from <https://www.imf.org/en/Publications/CR/Issues/2023/06/06/South-Africa-2023-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-534271> accessed 25 November 2024.

Liebenberg, S 'What The Law Has To Say About Evictions' (2014) Mail&Guardian [What the law has to say about evictions – The Mail & Guardian](#) accessed on 26 November 2024.

Mavedzenge, J 'How South Africa Shapes a World-Leading Constitution' 27 October 2024 [How South Africa shaped a world-leading constitution – The Mail & Guardian](#) accessed 11 November 2024.

National Library of Medicine 'Qualitative Study' (2022) <https://www.ncbi.nlm.nih.gov/books/NBK470395/> accessed 09 October 2024.

Scribbr 'What are Ethical Considerations in Research?' < <https://www.scribbr.com/frequently-asked-questions/what-are-ethical-considerationsin-research/> > accessed 10 October 2024.

South African Human Rights Commission 'Complaints Handling Procedure of the South African Human Rights Commission' 2018 [Complaints Handling Procedures - SAHRC - Public - 1 January 2018.pdf](#) accessed 22 November 2024.

The Office of the Public Protector South Africa <https://www.pprotect.org/> accessed 27 November 2024.

Van Staden, M 'Colonialism and Apartheid Stripped Black SA's of Land and Labour rights' (2024) [2024-10 - Colonialism and apartheid stripped black SA's of land and labour rights - Wits University](#) accessed 21 November 2024.

## JOURNAL ARTICLES

Ackerman, C 'The Rights-Based Approach To Local Government Development And Service Delivery: Putting Women (Back) In the Centre of Attention' (2012) 11(2) *Journal of African Elections* 116-139.

Alexander, GS 'Property, Dignity and Human Flourishing' (2018) 104(4) *Cornell L. Rev* 991-1045.

Alfaro-Velcamp, T & Shaw, M "Please Go Home and Build Africa': Criminalising Immigrants in South Africa' (2016) 42(5) *Journal of Southern African Studies* 983-998.

Bakker, K 'Water Governance in Transition: Emerging Spaces, Scales and Practices in South Africa' (2012) 26(11) *Water Resources Management* 3183-3195.

Beredugo, AJ & Viljoen, F 'Towards A Greater Role And Enhanced Effectiveness Of National Human Rights Commissions In Advancing The Domestic Implementation Of Socioeconomic Rights: Nigeria, South Africa And Uganda As Case Studies' (2015) 48(3) *Comparative and International Law Journal of Southern Africa* 401-430.

Buckley, RM, Kallergis, A & Wainer, L 'The Emergence of Large-Scale Housing Programs: Beyond A Public Finance Perspective' (2016) 54 *Habitat International* 199209.

Camaj, L 'The Media's Role in Fighting Corruption: Media Effects on Governmental Accountability' (2013) 18(1) *The International Journal of Press/Politics* 21-42.

Cameron, R 'The Reconstruction and Development Programme' (1996) 8(2) *Journal of Theoretical Politics* 283-294.

Chagunda, C 'The South African Social Grant System: A Positive Effect on Poverty Alleviation and Unforeseen Socio-Cultural Consequences' (2019) 17(4) *Gender and Behaviour* 14237-14250.

Chenwi, L 'Implementation of Housing Rights in South Africa: Approaches and Strategies.' (2015) 24(4) *Journal of Law and Society* 68-87.

Cirolia, LR 'South Africa's Emergency Housing Programme: A Prism of Urban Contest' (2014) 31(3) *Development Southern Africa* 397-411.

Coles, CM 'Land Reform for Post-Apartheid South Africa' (1993) 20 *Boston College of Environmental Affairs Law Review* 699-758.

Dickinson, GS 'The Blue Moonlight Remedy: Formulating the Voucher Scheme into a New Emergency Housing Remedy in South Africa' (2013) 130(3) *South African Law Journal* 554-596.

Ferreira, N 'Feasibility Constraints and the South African Bill of Rights: Fulfilling the Constitution's Promise in Conditions of Scarce Resources' (2012) 129(2) *South African Law Journal* 274-302.

Fieuw, W & Mitlin, D 'What the Experiences of South Africa's Mass Housing Programme Teach Us about the Contribution of Civil Society to Policy and Programme Reform' (2018) 30(1) *Environment and Urbanization* 215-232.

Finn, BM & Bandaiko, E 'Dwindling Funds and Increased Responsibilities: Decentralization, Unfunded Mandates and Harare's Infrastructure Crisis' (2024) 148 *Habitat International* 1-11.

Fourie, D & Malan, C 'Public Procurement in the South African Economy: Addressing the Systemic Issues' (2020) 12(20) *Sustainability* 1-23.

Greyling, C 'The RDP Housing System in South Africa' (2009) *University of Pretoria* 1-51.

Huchzermeyer, M 'Housing for the Poor? Negotiated Housing Policy in South Africa' (2001) 25(3) *Habitat International* 303-331.

John, D & Betty, H 'Corruption and Healthcare in South Africa: A Critical Analysis' (2005) 61(7) *Social Science & Medicine* 1577-1587.

Kundu, A, Rahaman, M & Khan, K 'Access of Urban Poor to Basic Services: Concerns of Sustainability and Equity' (2024) 54(1) *Social Change* 7-35.

Magagula, ME & Mubangizi, BC 'Government Housing Subsidy: Exploring Administration Processes in the Dispensation of Title Deeds in South Africa' (2019) 33(2) *Loyola Journal of Social Sciences* 39.

Majiedt, JS “‘Dreams and Aspirations Deferred?’: The Constitutional Court’s Approach to the Fulfilment of Socio-Economic Rights in the Constitution’ (2022) 26(1) *Law, Democracy & Development* 1-31.

Manomano, T, Tanga, PT & Tanyi, P ‘Housing Problems and Programs in South Africa: A Literature Review’ (2016) 7(2) *Journal of Sociology and Social Anthropology* 111-117.

Marutlulle, NK ‘A Critical Analysis Of Housing Inadequacy In South Africa And Its Ramifications’ (2021) 9(1) *Africa’s Public Service Delivery & Performance Review* 1-16.

Mashiane, K & Odeku, KO ‘A Critical Legal Perspective on the Context and Content of the Right to Access to Adequate Housing in South Africa’ (2020) 10 *Juridical Tribune/Tribuna Juridica* 90-121.

Masombuka, SSN & Thani, XC ‘Challenges and Successes of the Government-wide Monitoring and Evaluation System: The Role of the Department of Planning, Monitoring and Evaluation in the Presidency’ (2023) 31(3) *Administratio Publica* 146172.

Mbajjorgu, DG & Odeku, KO ‘Fighting Food Insecurity, Hunger, and Poverty: The Content and Context of the Socio-Economic Right of Access to Sufficient Food in South Africa’ (2023) 43(3) *Obiter* 467-488.

Mbazira, C ‘Grootboom: A Paradigm of Individual Remedies Versus Reasonable Programmes’ (2011) 26(1) *Southern African Public Law* 60-80.

Mbhense, T ‘Does ESTA Still Protect Occupiers of Farm Land in South Africa?’ (2014) 544 *De Rebus* 22-23.

Mbiada, CJT ‘The Public Protector as a Mechanism of Political Accountability: The Extent of Its Contribution to the Realisation of the Right to Access Adequate Housing in South Africa’ (2017) 20(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1-34.

McLean, K ‘Meaningful Engagement: One Step Forward or Two Back? Some Thoughts on Joe Slovo’ (2010) 3(1) *Constitutional Court Review* 223-242.

Mdee, A & Mushi, A 'Untangling Blame and Responsibility for Service Delivery and Local Governance Performance: Testing a Grounded Social Accountability Approach in Tanzania' (2021) 47(6) *Local Government Studies* 993-1013.

Mhlanga, L 'Eviction Orders from Private Land: A Case for Convenient Deference' (2024) 49(2) *Journal for Juridical Science* 101-125.

Mkhwanazi, S 'RDP Housing and the Makings of Discontent: The Case of Makhaza B, Khayelitsha' (2019) 30(4) *Urban Forum* 517-534.

Mlambo, DN & Maserumule, MH 'Constitutional and Legislative Frameworks for the Local Sphere of Government in South Africa: Analytical and Interpretive Perspective' (2024) 16(2) *Insight on Africa* 211-229.

Mosala, SJ, Venter, JCM & Bain, EG 'South Africa's Economic Transformation Since 1994: What Influence Has the National Democratic Revolution (NDR) Had?' (2017) 44(3-4) *The Review of Black Political Economy* 327-340.

Mubangizi, JC 'Protecting Human Rights amidst Poverty and Inequality: The South African Post-Apartheid Experience on the Right of Access to Housing' (2008) 2(2) *African Journal of Legal Studies* 130-146.

Mudzielwana, T & Odeku, KO 'Reinvigorating the Right of Access to Adequate Housing and the Institutions Responsible for the Enforcement of This Right in South Africa' (2023) 12(3) *Perspectives of Law & Public Administration* 399-413.

Naidoo, G 'The Critical Need For Ethical Leadership To Curb Corruption And Promote Good Governance In The South African Public Sector' (2012) 47(3) *Journal of Public Administration* 672.

O'Leary, S 'Grassroots Accountability Promises In Rights-Based Approaches to Development: The Role of Transformative Monitoring and Evaluation in NGOs' (2017) 63 *Accounting, Organizations and Society* 21-41.

Odeku, L 'Socio-Economic Rights In South Africa: An Analysis Of Progress And Challenges' (2022) 13(2) *Journal of African Law and Economics* 11-32.

Okpaluba, C 'Can a Court Review the Internal Affairs and Processes of the

Legislature? Contemporary Developments in South Africa' (2015) 48(2) *Comparative and International Law Journal of Southern Africa* 183-218.

Pieterse, M 'Towards a Right to the City?: The Slow Convergence of Rights to Housing and Land in South African Constitutional Jurisprudence' (2022) 11(1) *International Human Rights Law Review* 36-61.

Pillay, K 'An Interpretation Of "Relevant Organs Of State" In Section 184 (3) Of The Constitution And Their Duty To Provide Information On Socio-Economic Rights To The South African Human Rights Commission' (1998) 2(2) *Law, Democracy & Development* 179-196.

Pillay, K 'Property v Housing Rights: Balancing the Interests in Evictions Cases: Case Review' (2004) 5(5) *ESR Review: Economic and Social Rights in South Africa* 16-18.

Ramutsindela, M 'Property Rights, Land Tenure And the Racial Discourses' (2012) 77 *GeoJournal* 753-763.

Roodt, MJ 'Security of Tenure and Livelihood Options in South Africa: A Case Study of a Rural Community Facing Eviction under Post-Apartheid Legislation in the Eastern Cape Province' (2007) 37(1) *Africanus* 1-16.

Ruiters, P & van den Brink, E 'Water Scarcity and Governance in South Africa: Challenges and Opportunities' (2010) 26(2) *International Journal of Water Resources Development* 245-262.

Satterthwaite, D 'Upgrading Informal Settlements' (2012) 7 *International Encyclopaedia of Housing and Home* 206-211.

Schmitz, AJ 'Expanding Access to Remedies through E-Court Initiatives' (2019) 67 *Buff. L. Rev* 89-163.

Seekela, K 'The Challenge of Implementing Socio-economic Rights in South Africa' (2010) 11(1) *African Human Rights Law Journal* 122-143.

Sihlangu, E & Odeku, L 'Socio-Economic Rights In South Africa: An Analysis of Progress and Challenges' (2021) 12(2) *Journal of African Law and Economics* 1-23.

- Slarks, HK 'Where Human Rights Law and Development Politics Meet: Housing Rights in South Africa' (2010) 3 *UCL Hum. Rts. Rev* 164-198.
- Sobantu, M, Zulu, N & Maphosa, N 'Housing as A Basic Human Right: A Reflection on South Africa' (2019) 31(1) *Southern African Journal of Social Work and Social Development* 1-18.
- Strydom, J & Viljoen, S 'Unlawful Occupation of Inner-City Buildings: A Constitutional Analysis of the Rights and Obligations Involved' (2014) 17(4) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1207-1261.
- Thabo, MT & Odeku, KO 'Separation of Powers, Checks and Balances and Judicial Exercise of Self-Restraint: An Analysis of Case Law' (2021) 42(3) *Obiter* 547-560.
- Thamari-Odhiambo, M 'Embracing Risky Refuge: Women, Land Laws and Livelihood Vulnerabilities in Rural Kenya' (2021) 25 *Law, Democracy and Development* 71-94.
- Turpie, J, Davies-Coleman, M & Marais, C 'The Water Security Implications of Climate Change for South Africa' (2020) *Environmental Science & Policy* 115.
- Van der Sijde, E 'Tenure Security for ESTA Occupiers: Building on the Obiter Remarks in *Baron v Claytile Limited*' (2020) 36(1) *South African Journal on Human Rights* 74-92.
- Van Staden, M 'Land Loss and Labour Control: The Intersection of Land Dispossession and Labour Law in South African History' (2024) *Industrial Law Journal* 1-33.
- Wilcox, A, Mota, N, Haffner, M & Elsinga, M 'Compact Housing for Incremental Growth: The K206 RDP Project in Alexandra, Johannesburg' (2024) 9 *Urban Planning* 7736.
- Wilkinson, P 'Housing Policy in South Africa' (1998) 22(3) *Habitat International* 215229.

## **LEGISLATION**

Black Areas Land Regulations, no R188 of 1969.

Building Regulations and Building Standards Act 103 of 1977.

Constitution of the Republic of South Africa, 1996.

Elimination and Prevention of Re-emergence of Slums Act 6 of 2007.

Extension of Security of Tenure Act 62 of 1997.

Group Areas Act 36 of 1966.

Group Areas Act 41 of 1950.

Group Areas Act 51 of 1950.

Home Loan and Mortgage Disclosure Act 63 of 2000.

Housing Act 107 of 1997.

Housing Arrangements Act 155 of 1993.

National Minimum Wage Act 9 of 2004.

National Minimum Wage Act 9 of 2018.

Natives (Urban Areas) Act 21 of 1923.

Natives Land Act 27 of 1913.

Natives Resettlement Act 19 of 1954.

Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

Prevention of Illegal Squatting Act 52 of 1951.

Promotion of Administrative Justice Act 3 of 2000.

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

The Natives Land Act 27 1913.

Water Services Act 108 of 1997.

## **OTHER SOURCES**

Dawson, H & McLaren, D 'Monitoring the Right of Access to Adequate Housing in South Africa: An Analysis of the Policy Effort, Resource Allocation and Expenditure and Enjoyment of the Right to Housing' (2014) SPII Working Paper 8.

Department of Housing, 2004.

Department of Housing, 2008.

DHS Annual Report, 2023.

Kahanovitz, S 'An Urban Slice of Pie: The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act in South Africa' *Case Study Prepared for the Global Report on Human Settlements* 1-13.

National Housing Code, 2009.

Phuhlisani, NPC 'The Role of Land Tenure and Governance in Reproducing and Transforming Spatial Inequality' (2017) Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa.

Ramasodi, L, Van Bergen, JW 'The Peoples' Housing Process: Its Meaning And Relevance' 2005 World Congress on Housing 1-8.

Selebalo, H & Webster, D 'Monitoring the Right of Access to Adequate Housing in South Africa' (2017) *Studies in Poverty and Inequality Institute (SPII)*.

South African Human Rights Commission: The Right to Adequate Housing Fact sheet.

Tissington, K 'A Review of Housing Policy and Development in South Africa since 1994' (2010) *Studies in Poverty and Inequality Institute (SPII): Socio Economic Rights Institute. Typescript.* 1-91.

Transvaal Provincial Administration Report of the Local Government Commission, 1922.