

# The Protection of Human Rights in South Africa: Unpacking the Duty of the State to Realise the Right to Development

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## Abstract

The 1986 *United Nations Declaration on the Right to Development* (DRTD) presents a multifaceted framework that blends political aspirations with principles from international human rights treaties. Advocating "people-centered development" places individuals at the forefront, empowering them as principal beneficiaries of development efforts. According to Article 2 of the DRTD, both state and non-state actors are responsible for formulating inclusive national development policies to continually enhance the well-being of the entire populace. This involves ensuring active, accessible, and meaningful participation in development processes and fair distribution of the resulting benefits. South Africa's duty to realise the right to development comes under scrutiny in this context. Despite its obligations under international instruments like the *African Charter*, challenges persist in effectively implementing developmental advancements. This includes fields critical for sustainable progress, such as renewable energy, biotechnology and information technology. Furthermore, the COVID-19 pandemic has exacerbated existing obstacles, straining resources and threatening to reverse recent developmental gains. Budget constraints, particularly in the research and development sectors, hinder progress towards meeting development objectives. Therefore, while the DRTD and other international instruments emphasise the importance of the right to development, critical debates regarding its scope and implementation persist. Addressing these issues requires a nuanced understanding of development dynamics, balancing global aspirations with practical considerations. It necessitates collaborative efforts to refine and operationalise the right to development, ensuring equitable progress and sustainable development for all.

## Keywords

Africa; business and human rights; right to development; rights; science.

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## 1 Introduction

The right to development is a fundamental human right that guarantees everyone the opportunity to participate in, advance, and profit from social progress. Internationally acknowledged, the right to development emphasises that states and non-state actors such as corporations bear responsibility for creating the conditions that facilitate individuals and communities in realising their full potential. The legal basis, challenges and potential implementation strategies for the state's duty to realise the right to development will all be covered in this chapter.<sup>1</sup> Before unpacking the subject of the right to development it is important to define what human rights are. This question is a "philosophic inquiry". Heyns and Steffiszyn write that:

how one understands the meaning of human rights will influence one's judgment on such issues as which rights are regarded as universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programmes for implementation, and for which one will fight.<sup>2</sup>

To discuss human rights one must first understand the rights of being human. That doesn't mean that those who possess them are automatically considered human; instead, it refers to humans' rights simply because they are human beings, regardless of their unique social situations or levels of merit.

Human rights are dynamic and cannot be understood in isolation from the context and environment in which they operate, as the African continent serves as a stark reminder. Respect for human rights standards could serve as a conflict resolution strategy and a tool for achieving enduring peace. As a result, conflict serves as human rights' perpetual rival and shadow, and by comprehending how it works and how to prevent it we may learn much about human rights. Some academics consider human rights "important", "moral", and "universal". Although attributing those qualities to human rights is consoling, they have some ambiguities. When one says a right is significant enough to qualify as a human right, one may be referring to one or more of the following qualities: (1) intrinsic value; (2) instrumental value; (3) significance to a system of rights; (4) significance in not being superseded by other considerations; or (5) significance as structural support to a good life system. The "universal" and "moral" concepts are possibly

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<sup>1</sup> Kirchmeier 2006 <https://library.fes.de/pdf-files/iez/global/50288.pdf>.

<sup>2</sup> Heyns and Steffiszyn *Human Rights, Peace, and Justice* 3.

even more challenging. Still, this raises another question: who decides what makes certain rights universal, moral and essential?

Examining the term "human rights" does not simplify the definitional process. The phrase "rights" may denote a wide range of legal connections. The term "right" can be used strictly, meaning that the bearer of a right must do something to uphold it. It can refer to protection from changing one's legal status. It can mean that you have the right to do something, and it can also refer to the ability to establish a legal relationship. These concepts have been recognised as rights, although each enacts various safeguards. What is meant when referencing the rights outlined in the *International Covenant on Economic, Social, and Cultural Rights*, such as the right to social security, health care, education and development, as well as the right to fair compensation, a good quality of life, and even paid holidays?<sup>3</sup> Are these rights ones that people may claim, or are they merely ideals? Who are the remedial responsibilities imposed on if they are rights as intended? These questions certainly have complicated definitional responses.

One critical question that arises is whether the right to development should stand alone or be viewed as a component integrated in the broader spectrum of human rights. Advocates for its standalone recognition argue that development is fundamental to the realisation of all human rights and therefore deserves autonomous recognition. Conversely, others argue that embedding the right to development in the existing framework of human rights provides a more coherent and practical approach, ensuring its alignment with established legal norms and mechanisms. Addressing these critical issues requires a nuanced understanding of both the theoretical underpinnings and practical implications of the right to development. While acknowledging the validity of criticism, it is essential to explore avenues for refining and strengthening the concept to ensure it effectively promotes equitable and sustainable development for all individuals and communities worldwide.

## 2 Legal framework of the right to development

The international community acknowledges the right to development as a fundamental human right. It includes the right for everyone to take part in, contribute to, and benefit from political, social, cultural and economic growth.<sup>4</sup> The right to development has a legal framework formed through several international instruments and institutions designed to support and safeguard this right for all people and countries worldwide.

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<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR).

<sup>4</sup> Agyemang 2022 *Pretoria Student Law Review* 95.

The concept of the right to development first appeared in the post-World War II era as newly independent nations looked to break free from colonialism and advance economically.<sup>5</sup> The *Declaration on the Establishment of a New International Economic Order* was adopted by the UN General Assembly in 1974 and recognised that all countries have the freedom to choose their economic policies and to receive international support for those efforts. However, the UN General Assembly did not adopt the *Declaration on the Right to Development* (DRTD) until 1986.<sup>6</sup> This historic declaration emphasised the interdependence of all human rights, the right to development as an intrinsic human right, and the necessity of international cooperation to achieve development objectives.

In order to create a binding document on the right to development, the UN Commission on Human Rights subsequently formed an open-ended working group, which resulted in the 1989 approval of the *Declaration on the Right to Development*. The right to development is now firmly established in international law. Although the 1989 Declaration is of particular significance since it addresses the binding character of the right to development, the 1986 Declaration still has persuasive authority.<sup>7</sup> The *Universal Declaration of Human Rights* (1948) (UDHR) has transcended its original role as a mere declaration to become a cornerstone of international customary law. Initially articulated as aspirational ideals, its principles have evolved into universally recognised norms guiding state behaviour. Through widespread acceptance and practice by states, the UDHR has acquired the status of customary law, being binding even on nations that haven't explicitly ratified it. This evolution profoundly influences global human rights discourse and legal frameworks. As a result, the UDHR reflects universal values and serves as a powerful instrument for promoting and protecting human dignity worldwide. The right to development is a universal and unalienable right that is fundamental to the body of human rights legislation, according to the 1989 Declaration. In addition, the 1989 Declaration lays forth the fundamental principles governing the right to development such as non-discrimination, equality of opportunity, participation and accountability. It asserts that states are primarily responsible for creating national and international conditions conducive to realising the right to development.<sup>8</sup>

Both the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) contain provisions that guarantee the right to development.<sup>9</sup> The discourse surrounding the international framework concerning the human

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<sup>5</sup> Teshome 2022 *H R L Rev* 4.

<sup>6</sup> *UN Declaration on the Right to Development* (1986).

<sup>7</sup> Shah 2010 *Hum Rts Q* 235-263.

<sup>8</sup> Sepulveda and Nyst 2013 *Hum Rts Q* 313-348.

<sup>9</sup> ICESCR; *International Covenant on Civil and Political Rights* (1966) (ICCPR).

right to development often falls short of comprehensively addressing its multifaceted nature. Beyond the UDHR, numerous international instruments further solidify and elaborate on this right, enriching its scope and applicability. For instance, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, the *Convention on the Rights of Persons with Disabilities*, and the *African Charter on Human and Peoples' Rights* each contain provisions that explicitly or implicitly recognise and promote the human right to development. These instruments collectively contribute to a more holistic understanding and implementation of development rights within the global human rights framework. All peoples have the right to self-determination, and Article 1 of the ICESCR emphasises that they should be free to pursue their own economic, social, and cultural advancement. Additionally, Article 2 of the ICESCR requires states to take action to fully realise economic, social and cultural rights, including the right to development, both on an individual and global level.

### **3 The state's duty to create an enabling environment**

Achieving the right to development necessitates the establishment of a conducive atmosphere by the government. This entails creating legal frameworks, laws and institutions that foster sustainable development, alleviate poverty and diminish inequality.<sup>10</sup> A primary focus should be on addressing the needs of the most marginalised and vulnerable groups, ensuring their active involvement in development endeavours. Moreover, the government is responsible for safeguarding political, civil, and social rights, empowering individuals and communities to participate meaningfully in decision-making processes. Encouraging democratic governance, accountability, transparency and adherence to the rule of law are integral to this objective. By creating such an enabling environment the government offers opportunities for citizens to assert their agency, express their concerns and contribute to overall developmental aspirations.<sup>11</sup>

The history of South Africa is characterised by a protracted battle against racial injustice and discrimination under the apartheid system. The legacy of this period still impacts on various facets of society, resulting in continuing disparities in wealth, access to basic services, education and healthcare. Significant improvements were made throughout the post-apartheid era, which held out the prospect of a more inclusive and egalitarian society. However, there is still a pressing need to rectify the historical injustices and make sure that everyone in South Africa has access to development. South

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<sup>10</sup> Alston 2005 *Harv Hum Rts J* 1-28.

<sup>11</sup> Sengupta *Right to Development* 221-249

Africa is required to respect, uphold and realise the right to development as a signatory to several international human rights treaties.

To support the realisation of this right, the government must take deliberate steps to establish an enabling environment. To effectively realise the human right to development, it is imperative for governments to not only acknowledge this right but also to take deliberate and transparent actions to establish and maintain an enabling environment. This includes implementing policies and programmes aimed at fostering economic growth, social inclusion and environmental sustainability. It is crucial to assess whether the government has indeed undertaken such measures and, if so, to what extent they have been successful in achieving the objectives of development. Clarity regarding the specific actions taken, their adequacy, and their impact is essential for evaluating the government's commitment to realising the human right to development. Among the most important duties are that government should create and put into effect laws and programmes that advance social justice, equality, and inclusion.<sup>12</sup> Injustices from the past must be addressed, marginalised communities must be strengthened, and equal possibilities for socio-economic development must be offered.

**The elimination of poverty:** Poverty is a significant barrier to development. To raise the standard of living for the most vulnerable groups, the government must conduct successful poverty alleviation programmes, assuring access to essentials like food, clean water and shelter.<sup>13</sup>

**Access to quality education:** One of the main pillars of development is education.<sup>14</sup> The government ought to make investments in a strong, open-access educational system that gives people the abilities and information they need to contribute fully to society and the economy. Providing access to high-quality healthcare and social services is essential for improving the population's well-being and productivity. These services must be adequately provided to achieve sustainable growth.

**Employment possibilities:** To ensure that residents have the means to support themselves and contribute to the nation's economic prosperity, it is essential to create an environment that is favourable to job creation and entrepreneurship.

**Land reform:** In South Africa, the topic of land ownership is extremely divisive. Fair and just land reforms can help right historical wrongs and assist marginalised people to realise their economic potential.

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<sup>12</sup> Sen *Development as Freedom* 1-5.

<sup>13</sup> Sengupta *Right to Development* 221-249.

<sup>14</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

An environment that is supportive of the right to development has the following advantages: A development-friendly environment encourages inclusive economic growth by ensuring that the advantages of advancement are shared fairly across all facets of society. This promotes social solidarity and lowers financial inequality. Social stability is improved through resolving disparities and giving all residents access to opportunity. A society with less inequality and better living conditions benefits from more harmony.

#### **4 Unrealised right to development**

South Africa's unmet right to development highlights the country's persistent struggles to provide equal socioeconomic advancement for its residents. Despite the tremendous progress made since the end of apartheid, the country is still dealing with deep-seated inequities that are perpetuated by historical injustices and systemic discrimination.<sup>15</sup> The United Nations defines the right to development as the right of every citizen to actively participate in their country's economic, social, cultural, and political growth. However, for many underprivileged communities in South Africa, this right remains mostly unmet.

The continuance of poverty and unemployment is a major impediment to the attainment of the right to development in South Africa. The rich-poor divide remains wide, with historically disadvantaged communities suffering the brunt of economic hardship.<sup>16</sup> Despite attempts by the government to alleviate poverty through social welfare programmes and economic policies, the impact has been insufficient to pull everyone out of poverty and provide sustainable livelihoods. The issues that marginalised populations experience are exacerbated by a lack of access to decent education and healthcare. Unequal educational opportunities impede social mobility and perpetuate the poverty cycle, preventing individuals from attaining their full potential. Inadequate healthcare facilities and services harm vulnerable communities disproportionately, restricting their capacity to live healthy and productive lives.

Furthermore, corruption and inefficiency in government and public institutions drain resources away from development programmes, entrenching inequality even further.<sup>17</sup> The misallocation of finances and a lack of accountability hinder progress and prevent development efforts from being implemented effectively.<sup>18</sup> In South Africa the unmet right to development is a complicated and diverse issue. To address this issue a comprehensive solution that addresses poverty, unemployment, education,

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<sup>15</sup> Sen *Development as Freedom* 1-5.

<sup>16</sup> Sengupta *Right to Development* 221-249.

<sup>17</sup> Sengupta *Right to Development* 221-249.

<sup>18</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

healthcare, land reform, governance and corruption is required. It necessitates a commitment from the government, civic society and the commercial sector to collaborate and work together to develop a fairer and more prosperous South Africa for all South Africans. Only by working together to address historical injustices and institutional hurdles can the right to development be realised for all citizens in the country.

The government's response to unemployment has included initiatives such as the Expanded Public Works Programme (EPWP) and various skills development programmes.<sup>19</sup> However, these efforts have been insufficient to address the scale of the problem. The EPWP, while providing temporary employment to many, does not offer long-term solutions or pathways to sustainable livelihoods. Moreover, the mismatch between the skills produced by the education system and the needs of the labour market continues to hamper efforts to reduce unemployment. As a result, many South Africans remain trapped in a cycle of poverty and unemployment, unable to realise their right to development.

Education is widely recognised as a key driver of development, providing individuals with the knowledge and skills needed to participate fully in society and the economy.<sup>20</sup> However, in South Africa, access to quality education remains highly unequal, with significant disparities between different regions, racial groups, and socioeconomic classes. These inequalities are a direct legacy of the apartheid era, during which the education system was deliberately designed to disadvantage the majority of the population.<sup>21</sup>

Although the government has made strides in expanding access to education since 1994, quality remains a significant issue.<sup>22</sup> Schools in historically disadvantaged areas are often under-resourced, with inadequate infrastructure, overcrowded classrooms, and a shortage of qualified teachers. This has led to poor educational outcomes, with many students failing to achieve basic literacy and numeracy skills.<sup>23</sup> The situation is further compounded by high dropout rates, particularly at the secondary level, as many learners are forced to leave school due to financial pressures or a lack of support.

The inequities in the education system have far-reaching implications for social mobility and economic development. Without access to quality education, many South Africans are unable to acquire the skills needed to

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<sup>19</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

<sup>20</sup> Sengupta *Right to Development* 221-249.

<sup>21</sup> Sen *Development as Freedom* 1-5.

<sup>22</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

<sup>23</sup> *Ibid*



secure decent jobs, perpetuating the cycle of poverty.<sup>24</sup> Furthermore, the failure to provide adequate education to all citizens undermines the country's ability to compete in the global economy, as a poorly educated workforce is less productive and innovative.<sup>25</sup>

To address these challenges, there is a need for targeted interventions that focus on improving the quality of education in under-resourced areas. This includes investing in school infrastructure, providing ongoing professional development for teachers, and implementing early childhood development programmes to ensure that all children have a strong foundation for learning. Additionally, efforts must be made to reduce the financial barriers to education, such as providing free school meals and transportation for students from low-income families. By addressing these issues, South Africa can begin to close the educational gap and empower more citizens to realise their right to development.

Access to quality healthcare is a fundamental aspect of the right to development, as good health is essential for individuals to lead productive and fulfilling lives.<sup>26</sup> However, in South Africa, healthcare services are often inadequate, particularly in rural and disadvantaged communities. The country's healthcare system is characterised by a dual structure, with a well-resourced private sector serving the wealthier segments of the population and an underfunded public sector that struggles to meet the needs of the majority. The disparities in healthcare access are stark, with many South Africans facing long wait times, a shortage of healthcare professionals, and a lack of essential medicines and equipment in public health facilities. These challenges are particularly acute in rural areas, where the nearest clinic or hospital may be hours away, and where there is a severe shortage of doctors and nurses. The situation is further exacerbated by the high burden of diseases such as HIV/AIDS, tuberculosis, and non-communicable diseases, which place additional strain on the healthcare system.<sup>27</sup>

The government's efforts to improve healthcare have included initiatives such as the introduction of the National Health Insurance (NHI) scheme, which aims to provide universal health coverage.<sup>28</sup> However, the implementation of NHI has been slow, and there are concerns about the adequacy of funding and the capacity of the public health system to deliver on its promises. As a result, many South Africans continue to suffer from preventable and treatable conditions, unable to access the care they need to lead healthy lives.

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<sup>24</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

<sup>25</sup> *Ibid*

<sup>26</sup> Mothudi 2018 *Public Service Accountability Monitor* 1-27.

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

Improving healthcare services in South Africa requires a multifaceted approach that addresses both the immediate needs of the population and the long-term sustainability of the healthcare system. This includes increasing investment in public health facilities, particularly in rural areas, to ensure that all citizens have access to essential services. Additionally, there is a need to strengthen the healthcare workforce by training and retaining more healthcare professionals, as well as implementing community-based health programmes to reach underserved populations.<sup>29</sup> By improving healthcare access and quality, South Africa can enhance the well-being of its citizens and support their right to development.

The legacy of apartheid and colonialism continues to cast a long shadow over South Africa, affecting every aspect of society and undermining efforts to realise the right to development.<sup>30</sup> The deeply entrenched inequalities created by decades of racial segregation, economic exploitation, and social exclusion have not been fully addressed, and their effects are still felt today. These historical injustices have left a significant portion of the population marginalised and disadvantaged, with limited access to resources, opportunities, and services.<sup>31</sup> The ongoing impact of historical injustices is evident in the spatial inequality that characterises South Africa's cities and towns. The apartheid government's policy of forced removals and racial segregation created a highly unequal urban landscape, with black South Africans confined to overcrowded townships and informal settlements on the peripheries of cities. These areas are often poorly serviced, with inadequate housing, limited access to transportation, and a lack of economic opportunities. The result is a stark divide between wealthy, predominantly white suburbs and impoverished, predominantly black townships.

Efforts to address these inequalities have included policies aimed at urban renewal and integrated development, such as the Reconstruction and Development Programme (RDP) and the National Development Plan (NDP).<sup>32</sup> However, progress has been slow, and many of the structural inequalities created by apartheid remain intact. For example, the majority of black South Africans still live far from economic centres, with limited access to employment opportunities, quality education, and healthcare. To address the ongoing impact of historical injustices, there is a need for more targeted and effective interventions that focus on reducing spatial inequality and promoting inclusive development. This includes investing in affordable housing, improving public transportation, and creating economic

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<sup>29</sup> Mothudi 2018 *Public Service Accountability Monitor* 1-27.

<sup>30</sup> World Bank Group *An incomplete transition: Overcoming the legacy of exclusion in South Africa* (2018) UCT Press.

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

opportunities in historically disadvantaged areas. Additionally, there is a need to address the social and psychological effects of apartheid, such as the legacy of trauma, social exclusion, and a lack of social cohesion. By confronting these historical injustices head-on, South Africa can create a more just and equitable society in which all citizens have the opportunity to realise their right to development.

While the government has a crucial role to play in realising the right to development, civil society and the private sector also have important roles to play.<sup>33</sup> Civil society organisations (CSOs) have been at the forefront of advocating for social justice, human rights, and development in South Africa. These organisations play a vital role in holding the government accountable, raising awareness of issues affecting marginalised communities, and providing services and support where the government falls short.

The private sector, as a major driver of economic growth, also has a significant role to play in promoting development. However, the private sector's contribution to development has been mixed. While some companies have embraced corporate social responsibility and invested in community development, others have been criticised for perpetuating inequality, exploiting workers, and engaging in corrupt practices. For South Africa to realise the right to development, there must be greater collaboration between the government, civil society, and the private sector. This includes fostering partnerships that leverage the strengths of each sector, such as the private sector's resources and expertise, civil society's grassroots connections and advocacy skills, and the government's regulatory and policy-making power. These sectors can create a more inclusive and sustainable development model that benefits all South Africans by working together.

Therefore, South Africa's unmet right to development is a complex and multifaceted issue that requires a comprehensive and coordinated approach. The persistence of poverty, unemployment, inequality in education and healthcare, corruption, inadequate land reform, and the ongoing impact of historical injustices are all significant barriers to development.<sup>34</sup> Addressing these challenges requires a commitment from all sectors of society to work together towards a more just and equitable South Africa. The realisation of the right to development is not only a matter of economic growth but also of social justice, human rights, and the fulfilment of the promises made at the end of apartheid. It is about creating a society where all citizens, regardless of their background, have the

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<sup>33</sup> World Bank Group *An incomplete transition: Overcoming the legacy of exclusion in South Africa* (2018) UCT Press.

<sup>34</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

opportunity to participate fully in the country's economic, social, cultural, and political life. Only by addressing the root causes of inequality and injustice can South Africa begin to fulfil its commitment to the right to development and ensure a better future for all its people.

## **5 Strategies for Realising the Right to Development in South Africa**

The right to development is especially important in South Africa because of the historical backdrop of apartheid, which resulted in pervasive poverty and deeply ingrained inequality. The government and civic society have worked together to address these problems since the end of apartheid, but there are still many obstacles to overcome as discussed in the preceding section. In South Africa, achieving the Right to Development requires a multifaceted strategy that includes legal, economic, social, and political tactics. A strong legal foundation that incorporates the right to development into national legislation is essential for the realisation of this right in South Africa.<sup>35</sup> Although South Africa's Constitution is one of the most progressive in the world, with a Bill of Rights that guarantees various socio-economic rights, the Right to Development is not explicitly recognised. Incorporating this right into the Constitution would provide a stronger legal basis for its enforcement and ensure that all government policies and programmes are aligned with the goal of development for all.

Besides being recognised by the constitution, thorough policy reform that prioritises development is required. This entails reviewing current laws about social welfare, healthcare, education, and land reform, among other topics. In South Africa, for example, land reform has been a divisive topic since many feel that the country's current policies fall short of adequately addressing the historical injustices of land dispossession. Two important ways to support rural development and reduce poverty are redistributing land more quickly and ensuring it is put to good use. To fully realise the Right to Development, economic growth is essential, but it also needs to be sustainable and inclusive. Although there have been times of strong economic growth in South Africa, rising inequality has frequently coincided with these times. To address this, the government should implement policies that promote job creation, particularly in sectors that have the potential to absorb large numbers of workers, such as agriculture, manufacturing, and services.

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<sup>35</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

Small and medium-sized enterprises (SMEs) are crucial in job creation and economic development.<sup>36</sup> The government should enhance support for SMEs through access to finance, training, and market opportunities. Moreover, fostering innovation and entrepreneurship, especially among the youth, can drive economic diversification and reduce dependence on traditional sectors such as mining. Another important aspect of economic strategy is the promotion of regional development. South Africa's economy is heavily concentrated in a few urban centres, leading to significant disparities between urban and rural areas. Investing in infrastructure, such as roads, telecommunications, and energy, in rural and underdeveloped regions can stimulate local economies and improve the quality of life for residents.<sup>37</sup>

Social development is integral to the Right to Development, and this requires a strong focus on education, healthcare, and social protection. Education is a key driver of development, as it equips individuals with the skills and knowledge needed to participate fully in society and the economy. The South African government has made significant investments in education, but challenges remain, particularly in terms of quality and access. Improving the quality of education, especially in rural and disadvantaged communities, is essential for ensuring that all South Africans have the opportunity to realise their potential. Strengthening the healthcare system, with a focus on primary healthcare and preventive services, is crucial for improving health outcomes and supporting development.<sup>38</sup> Social protection is also a vital component of the Right to Development. South Africa has a relatively well-developed social security system, including grants for the elderly, disabled, and children. However, there is a need to expand coverage and ensure that social protection measures are adequate to lift people out of poverty. This could involve increasing the value of social grants, extending unemployment benefits, and introducing a basic income grant to provide a safety net for the most vulnerable.

The realisation of the Right to Development also requires political strategies that promote participatory governance and accountability.<sup>39</sup> Development cannot be imposed from above; it must involve the active participation of all stakeholders, including communities, civil society organisations, and the private sector.<sup>40</sup> This means creating spaces for meaningful dialogue and consultation in the formulation and implementation of development policies.

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<sup>36</sup> Klaas 2020 *Master's Thesis*.

<sup>37</sup> *Ibid*

<sup>38</sup> Mothudi 2018 *Public Service Accountability Monitor* 1-27.

<sup>39</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

<sup>40</sup> *Ibid*

Decentralisation is one approach to promoting participatory governance. By devolving power and resources to local governments, the central government can enable communities to take greater control over their development. Local governments, in turn, must be capacitated and held accountable to ensure that they are responsive to the needs of their constituents.

Transparency and accountability are crucial for the success of development initiatives. Corruption and mismanagement of resources have been major obstacles to development in South Africa. Strengthening institutions that oversee public expenditure, such as the Auditor-General and Public Protector, can help to reduce corruption and ensure that public funds are used effectively for development.<sup>41</sup> Sustainable development is a key aspect of the Right to Development, particularly in the context of climate change. South Africa is highly vulnerable to the impacts of climate change, which can undermine development gains and exacerbate poverty and inequality. Therefore, strategies for realising the Right to Development must include measures to enhance environmental sustainability and climate resilience.

One approach is to promote the transition to a low-carbon economy. This involves shifting away from fossil fuels, which currently dominate South Africa's energy mix, towards renewable energy sources such as solar, wind, and hydropower. The government has made some progress in this area, but much more needs to be done to scale up renewable energy and ensure that the benefits of the transition are shared equitably. Climate resilience is also critical, particularly for vulnerable communities that are most affected by climate change. This can be achieved through investments in infrastructure, such as flood defences and water management systems, as well as through social protection measures that help communities to cope with climate-related shocks.

The Right to Development is not just a national issue; it is also a global one. South Africa, as a member of the international community, has a role to play in promoting global development and addressing global inequalities. This requires active participation in international forums, such as the United Nations, and a commitment to international cooperation and solidarity. South Africa should advocate for a more equitable global economic system that supports the development of all countries, particularly those in the Global South. This includes pushing for reforms in areas such as trade, finance, and intellectual property rights, which currently disadvantage developing countries. Additionally, South Africa can share its experiences

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<sup>41</sup> Fobosi 2018 *Public Service Accountability Monitor* 1-22.

and expertise with other developing countries through South-South cooperation, thereby contributing to global development efforts.

Therefore, the realisation of the Right to Development in South Africa requires a comprehensive and integrated approach that addresses the various dimensions of development. This includes legal and policy reforms, economic strategies that promote inclusive growth and job creation, social strategies that focus on education, healthcare, and social protection, political strategies that enhance participatory governance and accountability, environmental strategies that promote sustainability and climate resilience, and international cooperation and solidarity. The challenges facing South Africa are significant, but they are not insurmountable. With the right strategies in place, it is possible to realise the Right to Development and create a society in which all South Africans can enjoy the benefits of development. This requires a collective effort from the government, civil society, the private sector, and the international community. By working together, it is possible to build a more just, equitable, and sustainable South Africa, where the Right to Development is not just an aspiration, but a reality for all.

## **6 Conclusion**

The discourse surrounding the right to development is multifaceted, incorporating diverse perspectives and critical considerations. While critics raise valid concerns regarding its specificity and implementation, the imperative to address global inequities and promote human flourishing remains undeniable. Whether recognised as a standalone right or integrated in existing human rights frameworks, the pursuit of development must prioritise inclusivity, sustainability and social justice. Moving forward, collaborative efforts are essential to refine and operationalise the right to development, ensuring that it serves as a catalyst for positive change and empowers individuals and communities to realise their full potential in a just and equitable world. The state's duty to realise the right to development is crucial to human rights and sustainable development. By creating an enabling environment, addressing challenges and implementing effective strategies states can fulfill their obligation to promote and protect the right to development. This requires comprehensive policies, political will, and the meaningful participation of individuals and communities. Achieving the right to development contributes to a more equitable, inclusive and prosperous world. The duty of South Africa to realise the right to development is not merely a legal obligation but a moral imperative that aligns with the principles of human rights, equality and global justice. As a nation emerging

from a history of inequality and oppression, South Africa is uniquely responsible for uplifting its citizens and creating an environment conducive to their overall well-being. Realising the right to development involves more than just economic progress; it also encompasses social, cultural and political advancements. South Africa can pave the way for a more equitable and prosperous future by addressing historical injustices, promoting inclusive policies, and fostering sustainable development. Furthermore, the interconnectedness of nations and the global community underscores the significance of South Africa's efforts. Its commitment to realising the right to development could serve as a model for other countries facing similar challenges and aspirations. By fostering partnerships and international cooperation South Africa could contribute to a world where every individual's potential is maximised, regardless of background or circumstances. In this pursuit it is crucial for South Africa to prioritise the needs of marginalised and vulnerable populations, ensuring that the benefits of development are shared equitably. Empowering communities, investing in education and healthcare, and promoting sustainable economic growth can all contribute to a more just and inclusive society. Therefore, South Africa's duty to realise the right to development is a multifaceted commitment that requires dedication, collaboration, and a steadfast commitment to human rights. By embracing this duty South Africa could not only transform itself but also inspire positive change on a global scale, contributing to a world where development is a shared endeavour that respects the dignity and rights of all individuals.

South Africa's journey toward realizing the Right to Development is marked by both progress and persistent challenges. The government has initiated several programs, such as the Expanded Public Works Programme (EPWP) and various skills development initiatives, in an effort to address unemployment and poverty. However, these measures have often fallen short, providing only temporary relief without addressing the deeper, systemic issues that perpetuate inequality and hinder sustainable development.

Education, a cornerstone of development, continues to be marred by significant disparities rooted in the legacy of apartheid. While access to education has improved since 1994, quality remains uneven, particularly in historically disadvantaged areas. The result is a generation of young South Africans who, despite having access to education, often lack the necessary skills and opportunities to break the cycle of poverty. This educational divide has far-reaching implications, limiting social mobility and reducing the nation's capacity to compete in the global economy.

Similarly, healthcare in South Africa is characterized by profound inequalities. The dual healthcare system, with a well-resourced private



sector and an underfunded public sector, reflects the broader social and economic divides in the country. Although initiatives like the National Health Insurance (NHI) scheme aim to bridge these gaps, progress has been slow, and many South Africans continue to suffer from preventable and treatable conditions due to inadequate access to healthcare.

The legacy of apartheid and colonialism remains a significant barrier to development, manifesting in spatial inequalities that segregate the rich from the poor, predominantly along racial lines. Despite policies aimed at urban renewal and integrated development, these inequalities remain deeply entrenched, exacerbated by the slow pace of land reform and the lack of economic opportunities in rural and disadvantaged areas. To address these challenges, South Africa requires a comprehensive and coordinated approach that involves legal, economic, social, and political strategies. The right to development must be explicitly recognized and incorporated into the national legal framework to provide a stronger foundation for its enforcement. Economic policies should prioritize job creation and inclusive growth, with a focus on supporting small and medium-sized enterprises (SMEs) and fostering innovation, particularly among the youth.

One of the most pressing issues in South Africa is the stark economic inequality that exists within the population. Despite being one of Africa's largest economies, South Africa remains one of the most unequal societies in the world. This inequality is a direct legacy of apartheid, which systematically disenfranchised the majority of the population, leaving a significant portion of society without access to basic services, education, and economic opportunities. Realizing the right to development is essential to dismantling these structural barriers and creating a more equitable society.

Economic inequality in South Africa manifests in various forms, including unequal access to education, healthcare, and employment. These disparities perpetuate a cycle of poverty, where the poor have limited opportunities to improve their socioeconomic status. For example, individuals from impoverished communities often attend underfunded schools, receive substandard education, and are less likely to gain the skills needed to secure well-paying jobs. This, in turn, leads to higher unemployment rates and lower income levels, further entrenching poverty. Realizing the right to development would mean ensuring that all South Africans have equal access to quality education and training, which is critical for breaking this cycle and promoting social mobility.

Furthermore, spatial inequality, a direct consequence of apartheid-era policies, continues to hinder South Africa's development. Many black South Africans remain confined to underdeveloped townships and informal settlements, far from economic opportunities and essential services. This

spatial segregation exacerbates poverty and limits access to education, healthcare, and employment. Realizing the right to development involves addressing these spatial inequalities through inclusive urban planning and development initiatives. This could include investing in affordable housing, improving public transportation, and creating economic hubs in historically disadvantaged areas. Such measures would not only improve living conditions but also integrate marginalized communities into the broader economy, fostering a more inclusive society.

Another critical aspect of the right to development is its emphasis on participation. For development to be sustainable and equitable, all members of society must have a say in the decisions that affect their lives. In South Africa, this means involving communities in the planning and implementation of development projects, ensuring that their needs and aspirations are reflected in national and local policies. This participatory approach can help build trust between the government and its citizens, reduce social tensions, and ensure that development efforts are more effective and responsive to the needs of the population.

Moreover, realizing the right to development aligns with South Africa's commitment to social justice and human rights. The country's constitution, one of the most progressive in the world, enshrines various socio-economic rights, including the rights to education, healthcare, and housing. However, these rights remain out of reach for many South Africans due to systemic inequalities. The right to development provides a holistic framework for addressing these issues, emphasizing the need for a comprehensive approach that integrates economic, social, cultural, and political dimensions. By prioritizing the right to development, South Africa can make significant strides towards achieving the constitutional promise of a just and equitable society. Therefore, realizing the right to development is essential for addressing South Africa's most pressing challenges. It offers a comprehensive and inclusive approach to development, one that prioritizes the needs and rights of all citizens, particularly the marginalized and disadvantaged. By focusing on economic inclusion, equitable access to services, and participatory governance, South Africa can begin to dismantle the structural barriers that perpetuate inequality and hinder progress. In doing so, the country can build a more just, prosperous, and cohesive society, where all individuals have the opportunity to realize their full potential.

## **Bibliography**

### **Literature**

Agyemang 2022 *Pretoria Student Law Review*

Agyemang C "Realising the Right to Development in Ghana through its Parliament" 2022 *Pretoria Student Law Review* 90-111

Alston 2005 *Harv Hum Rts J*

Alston P "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals" 2005 *Harv Hum Rts J* 1-28

Fobosi 2018 *Public Service Accountability Monitor*

Fobosi SC "Expenditure Tracking Report" 2018 *Public Service Accountability Monitor* 1-22.

Heyns and Stefiszyn *Human Rights, Peace, and Justice*

Heyns C and Stefiszyn K *Human Rights, Peace, and Justice in Africa: A Reader* (Pretoria University Law Press Pretoria 2006).

Klaas 2020 *Master's Thesis*

Klaas A "The effect of social capital on the performance of Small, Medium and Micro Enterprises (SMMES) in Makana Municipality" 2020 *Master's Thesis in Fulfillment of the Requirements for the Master of Commerce at the University of Fort Hare*.

Mothudi 2018 *Public Service Accountability Monitor*

Mothudi TM "Expenditure Tracking Report" 2018 *Public Service Accountability Monitor* 1.27.

Sen *Development as Freedom*

Sen A *Development as Freedom* (Oxford University Press Oxford 2001)

Sengupta *Right to Development*

Sengupta A (ed) *The Right to Development in International Law: The Case of Pakistan* (Ashgate Farnham 2002)

Sepulveda and Nyst 2013 *Hum Rts Q*

Sepúlveda M and Nyst C "The Human Rights Approach to Development: Between the Ambition of the Millennium Declaration and the Reality of the Millennium Development Goals" 2013 *Hum Rts Q* 313-348

Shah 2010 *Hum Rts Q*

Shah B "Right to Development as a Human Right: An Analysis of Human Rights Approaches to Development" 2010 *Hum Rts Q* 235-263

Teshome 2022 *H R L Rev*

Teshome RG "The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?" 2022 *H R L Rev* 1-24.

World Bank Group An “incomplete transition: Overcoming the legacy of exclusion in South Africa” 2018 *UCT Press*.

### **International instruments**

*African Charter on Human and Peoples' Rights* (1981)

*Convention on the Elimination of All Forms of Discrimination against Women* (1979)

*Convention on the Rights of Persons with Disabilities* (2006)

*Convention on the Rights of the Child* (1989)

*International Covenant on Civil and Political Rights* (1966)

*International Covenant on Economic, Social and Cultural Rights* (1966)

*UN Declaration on the Establishment of a New International Economic Order* (1974)

*UN Declaration on the Right to Development* (1986)

*Universal Declaration of Human Rights* (1948)

### **Internet sources**

Kirchmeier 2006 <https://library.fes.de/pdf-files/iez/global/50288.pdf>

Kirchmeier F 2006 *The Right to Development – Where Do We Stand? State of the Debate on the Right to Development* <https://library.fes.de/pdf-files/iez/global/50288.pdf> accessed 29 May 2024

### **List of Abbreviations**

DRTD	Declaration on the Right to Development
Harv Hum Rts J	Harvard Human Rights Journal
H R L Rev	Human Rights Law Review
Hum Rts Q	Human Rights Quarterly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations