

LL.M. MINI THESIS**THE UNIVERSITY OF THE WESTERN CAPE****LAW FACULTY****STUDENT NAME** CARMENITO MARCELLE MARTIN**STUDENT NUMBER** 2922568**TITLE** DOES A RIGHT TO ACCESS TO ADEQUATE HOUSING INCLUDE A RIGHT TO THE CITY IN SOUTH AFRICA?**SUPERVISOR** PROF. E. DUROJAYE**DATE OF SUBMISSION** 27 SEPTEMBER 2017

Submitted in partial fulfilment of the requirements for the Degree of Masters in Law (LLM)



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Declaration

I, Carmenito Marcelle Martin, declare that 'Does a right to access to adequate housing include a right to the city in South Africa?' is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.



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27 September 2017

Prof. E Durojaye

27 September 2017

Acknowledgements

“For I know the plans I have for you,” declares the Lord “plans to prosper you and not to harm you, plans to give you hope and a future.” – Jeremiah 29:11

First and foremost, words cannot express my degree of thankfulness to my Heavenly Father for His insurmountable grace, strength and continuous intervention not only throughout the drafting of this dissertation, but throughout my life generally. I will continue my life journey in awe and gratitude of His faith in me. I would also like to thank the University of the Western Cape, and very importantly, Professor Ebenezer Durojaye for his constant direction, patience, and willingness to work around my schedule (as I work full-time). Apart from this dissertation, Professor Durojaye has played a key role in helping me discover my purpose, and I will forever be thankful to him. Lastly, I would like to thank my mother (Sylvia Martin), and my two brothers (Nolan and Adrian Martin) for their constant encouragement, comfort and patience, not only while I was working on this dissertation, but throughout every chapter of my life. I am who I am because I have been raised (and continue to be supported) by heavenly helpers gifted to me as family.

I dedicate this work to the Lord, Professor Ebenezer Durojaye, my family, and everyone I pray I get to help one day.

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Abstract

The Constitution of South Africa is often commended for the protection that it affords to socio-economic rights - including the right to access to adequate housing, 'Adequate' housing is said to comprise of more than just a roof over one's head, and requirements have also been set regarding the overall location of the housing provided.

Processes such as 'gentrification' have presented a threat to the fulfilment of the abovementioned right. Gentrification results in escalated property prices in the areas undergoing gentrification, with original residents of these areas consequently being unable to afford to stay in these areas and facing possible eviction as a result thereof. Although legislation is in place to prevent homelessness for those facing eviction, individuals who stand to be evicted often find themselves being relocated to state-provided Temporary Relocation Areas (TRAs). As particularly evident in Cape Town, these TRAs are commonly located on the outskirts of cities (arguably in defiance of the Constitution's requirement in terms of the location of adequate housing), and those who have been relocated to these TRAs commonly criticize the remote locations of these TRAs (due to it being far from employment opportunities and other amenities). This has led to a continued demand by individuals facing eviction to TRAs (and advocacy groups) for the state to provide them with alternative accommodation in the inner city and surrounding areas, resembling a 'Right to the City'.

In light of the above, this study considers the existence and development of a 'Right to the City' in South Africa, and included in this consideration, whether this right may provide

much-needed protection to those who face possible eviction to TRAs located on the outskirts of cities – far from employment opportunities.



Keywords, acronyms and phrases

1. KEYWORDS

- Location
- Displacement
- Right to adequate housing
- Right to the city
- South Africa

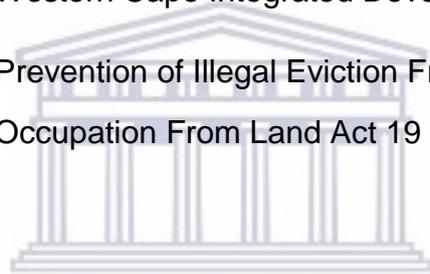
2. ACRONYMS AND PHRASES

- RTC Right to the City¹
- ICESCS International Covenant on Economic, Social and Cultural Rights
- Committee The Committee of the International Covenant on Economic, Social and Cultural Rights
- UN United Nations
- COE Council of Europe
- ECHRFF European Convention on Human Rights and

¹ It bears mentioning that this study focuses on the RTC theory as founded by Lefebvre, as opposed to the 'just city' theory founded by Susan Fainstein. The latter theory also forms part of the broader group of critical urban theories, however its primary focus is on diversity and democracy as its central elements. Diversity in this context refers to a city's approach regarding cultural and economic differences, while democracy refers to the extent to which community demands have been incorporated in government policy. Brenner N, Marcuse P. Mayer M *Cities For People, Not For Profit: Critical Urban Theory and the Right to the City* (2012) 177 – 188.

Fundamental Freedoms

- ECHR European Court of Human Rights
- ESC European Social Charter (Revised)
- TRA Temporary Relocation Area
- CC Constitutional Court
- SCA Supreme Court of Appeal
- HC High Court
- NDP National Development Plan
- WCIDP Western Cape Integrated Development Plan
- PIE Prevention of Illegal Eviction From and Unlawful Occupation From Land Act 19 of 1998.



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Chapter 1: Introduction

1. BACKGROUND

Gentrification has been described as the ‘process of urban renewal and rebuilding, accompanying the influx of middle-class or affluent people into deteriorating areas’.² The process of gentrification has positive, as well as negative consequences³, and with regards to the negative consequences, the process of gentrification often results in the loss of homes and displacement of original residents from areas undergoing gentrification (due to original residents being unable to afford increased rentals and property taxes in gentrified areas)⁴ to areas located on the outskirts of cities.⁵

Globally the displacement of residents originally residing in areas undergoing gentrification to areas located far from inner cities and surrounding areas (and thus also work opportunities) has inspired much conversation and protest around continued further divides (physical, economic, social, and more). In the United States, for example, the ‘*Right To The City*’, a national alliance of racial, economic and environmental justice organizations, developed in 2007 as a response to gentrification and a call to halt the displacement of, *inter alia* low-income people from

² Merriam-Webster Collegiate Dictionary 11 ed (2014).

³ Ebenezer O ‘Gentrification and Socioeconomic Impacts of Neighbourhood Integration and Diversification in Atlanta, Georgia’ (2010) 35 *National Social Sciences Journal* 6.

⁴ Gentrification results in lower income residents in areas subject to gentrification losing their homes (generally located close to the city), being moved off land they had owned for many years, and being moved to undeveloped areas far from their place of work. Forys I ‘Gentrification on the example of suburban parts of Szczecin urban agglomeration’ (2013) 21 *Real Estate Management and Valuation* 6.

⁵ Smith P.D *City: A Guidebook for the Urban Age* (2012) 138.

their historic urban neighbourhoods.⁶ Europe, in turn, saw the emergence of the ‘*European Action Coalition for the Right to Housing and to the City*’, a Europe-wide coalition of housing rights activists.⁷ Similar movements have evolved in various countries and regions, and it is not surprising that conversations and protests concerning the displacement of residents to areas located far from cities have also been witnessed in South Africa.

In South Africa, ‘victims’ of gentrification i.e. those who have been displaced or who are facing displacement to isolated areas on the outskirts of cities as a result of gentrification, are demanding that the government, as part of their obligation to guarantee everyone the right to access to adequate housing in terms of the Constitution⁸, also make affordable housing available to them in the inner city and surrounding areas. This has led to the emergence of campaigns such as the ‘*Reclaim the City*’ campaign⁹, which have been leading protests for desegregation and affordable housing developments in the inner city of Cape Town, as well as the formulation of NGO’s such as ‘*Ndifuna Ukwazi*’, which works to advance urban land justice in Cape Town.¹⁰

In light of the above, and focusing on the continued demand for government to provide affordable housing in the inner city and surrounding areas of Cape Town, this study will focus on whether individuals (who have been displaced) have a right to

⁶ The ‘Right to the City’ website available at <http://righttothecity.org/about/mission-history/> (accessed 12 February 2017).

⁷ *European Action Coalition for the Right to Housing and to the City* website available at <https://housingnotprofit.org/en> (accessed 14 March 2017).

⁸ Constitution of the Republic of South Africa, 1996.

⁹ ‘Reclaim The City’ website available at <http://reclaimthecity.org.za/> (accessed 1 February 2017).

¹⁰ ‘Ndifuna Ukwazi’ website available at <http://nu.org.za/what-we-do/> (accessed 5 February 2017).

stay in the (inner) city in South Africa, and specifically, whether the Constitutional right to access to adequate housing and the characteristics of this right may be interpreted to also include a 'right to the city' (specifically the inner city and surrounding areas).

1. PROBLEM STATEMENT

As indicated above, one of the important consequences of gentrification is that it often results in the displacement of low-income individuals from inner cities and surrounding areas to areas located on the outskirts of cities, far from employment opportunities and basic amenities such as schools and health care facilities.¹¹ In Cape Town for example, areas such as Observatory, Salt River and Woodstock¹² have all been undergoing gentrification over recent years, with the original residents of these areas experiencing the wrath thereof – that is, being displaced to areas far from the city. It is accepted that affordable housing in Cape Town is generally located far from the city¹³, and one of the most prevalent criticisms against government-provided Temporary Relocation Areas (TRA's), is that it is located far from the city.¹⁴

¹¹ Ebenezer O (2010) 6.

¹² Gamielien MZ 'The Gentrification Equation' The Con 19 April 2017 available at <http://www.theconmag.co.za/2017/04/19/the-gentrification-equation/> (accessed 5 May 2017).

¹³ Hogarth K *Leveraging the Private Sector to Enable the Delivery of Well-located Affordable Housing in Cape Town* (Masters of City and Regional Planning dissertation, University of Cape Town, 2015) 13.

¹⁴ Evans J 'Evicted Cape Town residents challenge city's emergency housing offer' *News24.com* 31 January 2017 available at <http://www.news24.com/SouthAfrica/News/evicted-cape-town-residents-challenge-citys-emergency-housing-offer-20170131> (accessed 25 February 2017).

Further to the above, Blikkiesdorp, one of the most well-known TRAs in Cape Town is located approximately 30kms away from the city. In addressing the location of Blikkiesdorp, one of the residents of Blikkiesdorp has stated that ‘begging on the streets and sleeping outdoors is better than living in a tin shack 40kms from the city, as there are no jobs, and nobody to ask for hand-outs’.¹⁵ To this end, it was reported that many people who were displaced to Blikkiesdorp lost their jobs due to poor transport links from Delft to the rest of Cape Town, and those who managed to keep their jobs, found themselves spending five times as much on transport as they previously did.¹⁶

In addition to the above, Woodstock, for example, is currently undergoing gentrification, resulting in some of the original residents of the area facing potential evictions and displacement to Wolwerivier, a TRA located some 30 - 36km away from the Cape Town CBD. In an article that appeared on *News24.com* on 3 February 2017, one of the residents of Wolwerivier stated that:

‘It’s the isolation...I can’t deal with it. I feel like nobody knows I exist. We were promised a new home with everything we need, but got dumped and forgotten here instead, *out of the sight of people who don’t want us to taint their perfect little picture of the suburbs* I don’t want to die here’ (own emphasis added).¹⁷

¹⁵ Ntsaluba G ‘Cape Town’s clean up’ *Mail and Guardian* 21 May 2010 available at <https://mg.co.za/article/2010-05-21-cape-towns-cleanup> (accessed 25 February 2017).

¹⁶ Development Action Group *Living On The Edge: A Study of the Delft Temporary Relocation Area* (2007) 4.

¹⁷ Petersen T ‘We have been sent here to die’ *News24.com* 3 February 2017 available at <http://www.news24.com/SouthAfrica/News/we-have-been-sent-here-to-wait-until-we-die-wolwerivier-residents-20170203> (accessed 15 February 2017).

Concerning the same matter¹⁸, in an additional article that appeared on *News24.com* on 13 February 2017, Bishop Garth Counsell expressed his criticism against the poor having to resort to the courts to 'fight for their *democratic right to a home close to their place of work, school, essential services and livelihood opportunities*' (own emphasis added).¹⁹

Further to the above, tension has also simultaneously been rising recently over areas in central Cape Town earmarked for property development (the City of Cape Town has given the final green light to a billion-rand development in the Bo-Kaap, and over Sea Point, which has been the subject of a continuing struggle over the use of a piece of central land which activists such as *Ndifuna Ukwazi* say should have been devoted to the development of affordable housing close to the city.²⁰

The above references to the location of the government-provided TRAs, and the development of inner city and Sea Point land and property are indicative of the growing demand for government to make affordable housing available in the inner city and surrounding areas. The question however remains as to whether this demand by disgruntled individuals could be formulated into a plausible legal claim.

¹⁸ It is noted that the residents of Bromwell Street in Woodstock have applied to the Western Cape High Court for an order that their eviction be put on hold, and that the City of Cape Town's decision to put them in a temporary relocation area almost 30kms away is irrational. The matter regarding the possible relocation of occupiers of Woodstock to Wolwerivier is still ongoing. Mortlock M 'City argues Wolwerivier 'appropriate' for Bromwell Street residents' *EyewitnessNews* 14 September 2017 available at <http://ewn.co.za/2017/09/14/city-argues-wolwerivier-appropriate-location-for-bromwell-street-resident> (accessed 14 September 2017).

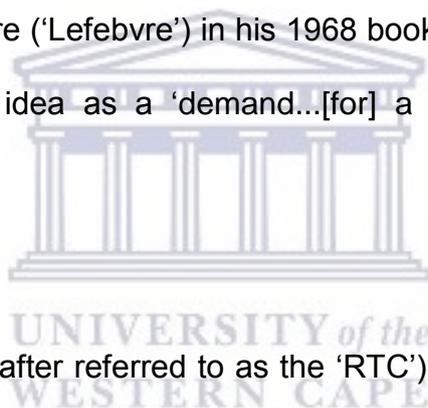
¹⁹ Evans J 'Wealthy turning Woodstock residents into refugees says church' *News24.com* 13 February 2017 available at <http://www.news24.com/SouthAfrica/News/wealthy-turning-woodstock-residents-into-refugees-says-church-20170213> (accessed 15 February 2017).

²⁰ Davis, R 'Property Wars: The battle for the soul of Cape Town', *Daily Maverick*, 30 January 2017 available at <https://www.dailymaverick.co.za/article/2017-01-30-property-wars-the-battle-for-the-soul-of-cape-town/#.WcPBjoyCzIU> (accessed 15 February 2017).

Further to this, this study therefore specifically seeks to examine whether individuals have a legal claim demanding that the government in South Africa make affordable/government housing available in inner cities (such as Cape Town) and surrounding areas to those who have been displaced to the outskirts of cities (especially as a result of gentrification).

2. LITERATURE REVIEW

The idea that citizens should be allowed to live in cities is not novel, and was first introduced by Henri Lefebvre ('Lefebvre') in his 1968 book titled '*Le Droit a la ville*'. Lefebvre summarized the idea as a 'demand...[for] a transformed and renewed access to urban life'.²¹



The right to the city (hereinafter referred to as the 'RTC') as introduced by Lefebvre refers to the right of 'all inhabitants, present and future, permanent and temporary, to use, occupy and produce just, inclusive and sustainable cities'.²² The RTC also implies responsibilities on governments to claim, defend, and promote this right²³, and it is said to also incorporate a claim to the city centre.

²¹ Purcell M 'Excavating Lefebvre: The right to the city and its urban politics of the inhabitant' (2002) 58 *Geojournal* 102.

²² Brown A (ed) *Rebel Streets and the Informal Economy: Street Trade and the Law* (2017) 6.

²³ Global Platform for The Right to The City 'What's the right to the city? Inputs for the New Urban Agenda' available at https://www.escri-net.org/sites/default/files/what_r2c_digital.pdf (accessed 10 February 2017).

In the 'World Charter for the Right to the City'²⁴ (hereafter referred to as 'World Charter'), the United Nations recognised that the RTC confers upon inhabitants of cities (particularly those from vulnerable and marginalized groups), legitimacy of action and organization, with the objective to achieve full exercise of, *inter alia*, the right to an adequate standard of living²⁵. Noteworthy, the World Charter addresses the affiliation between the RTC and the right to adequate housing²⁶, and in this regard, it is stated that cities should adopt measures to guarantee all citizens that housing fulfil adequate living conditions, that it be adequately located, and that it adapt to the cultural and ethnic characteristics of those who inhabit it.²⁷ Additional Regional Charters such as the European Charter for the Safeguarding of Human Rights in the City have also recognised a RTC.²⁸

The RTC as acknowledged in these charters emphasise the importance of the 'use value' of urban space over its exchange/monetary value.²⁹ Further, the RTC is described as being inter-dependent of all human rights, and includes an array of rights such as *inter alia* the right to work in equitable conditions, the right to build and create a city, the right to food, water, health, education and culture³⁰, emphasizing on the right to housing and habitation.³¹ The RTC also calls for the recognition of ancillary rights such as the right to land, adequate sanitation, transportation, and energy; as well as the development of new rights in response to certain urban

²⁴ WSF World Charter for the Right to the City (2005).

²⁵ World Charter, Article 1.

²⁶ World Charter, Article 16.

²⁷ World Charter, Article 16.

²⁸ Moeckli D *Exclusion from Public Space: A Comparative Constitutional Analysis* (2016) 417

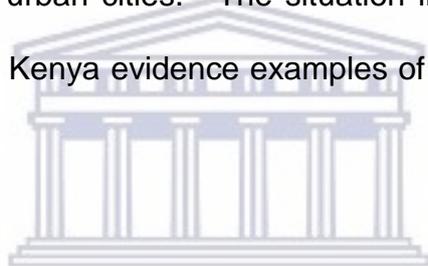
²⁹ Purcell M (2002) 100.

³⁰ Habitat International Coalition – Latin America 'The Right to the City around the World' available at <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?entidad=Textos&id=11617&opcion=documento> (accessed 21 March 2017).

³¹ Vaddiraju A 'Commentary: Urban Governance and Right to the City' (2016) *Economic & Political Weekly* 21.

challenges, such as the right to be able to move from place to place easily and quickly (mobility), and the right to have public spaces that have nearby and accessible facilities that would give different urban areas the value of centrality.³²

Internationally, the existence of a RTC has gained traction from activists over recent years, and local and regional governments in certain Latin American and European countries have supported the inclusion of the RTC concept in its legal frameworks. As an example, Brazil, in its 2001 City Statute incorporated a RTC into national law, which prescribes that a new legal-urban order should be created to provide land access and equity in large urban cities.³³ The situation in Brazil is not unique, and Belgium, New Zealand and Kenya evidence examples of the RTC being included in policies.³⁴



The RTC is not without criticism, and has been criticised for being drafted too broadly, encompassing too wide of a variety of rights, including cultural memory, telecommunications, day-care facilities, etc., which renders the eventual implementation of this right questionable – especially in developing countries.³⁵ It is however acknowledged that the RTC, at present, is still an emerging right that has

³² Habitat International Coalition – Latin America ‘The Right to the City around the World’ *Global* (publication date not specified) available at <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?entidad=Textos&id=11617&opcion=documento> (accessed 21 March 2017).

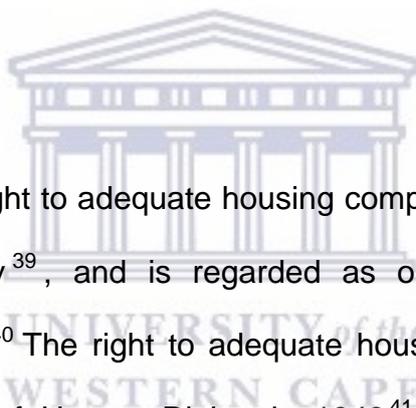
³³ Fernandes E, ‘Constructing the “Right to the City” in Brazil’ (2007) 16(2) *Social and Legal Studies* 1-2.

³⁴ De Paula N, ‘The Right to the City and the New Urban Agenda’ *ISSD Knowledge Hub* 12 July 2016 available at <http://sdg.iisd.org/commentary/policy-briefs/the-right-to-the-city-and-the-new-urban-agenda/> (accessed 08 February 2017).

³⁵ Purcell M ‘Possible worlds: Henri Lefebvre and the Right to the City’ (2013) 36(1) *Journal of Urban Affairs* 150-151.

not been universally accepted. The scope and content of the RTC thus remain subject of debate.³⁶

A number of national legislation do not cater for an express RTC as yet (as is the case in South Africa), and notwithstanding its general lack of legal authority, international developments concerning the RTC, and the apparent relationship between the RTC and the right to adequate housing is instructive in the present instance³⁷. Current knowledge and developments of housing rights provide guidance in interpreting whether a RTC exists, or should exist in specific jurisdictions, such as South Africa.³⁸



Further to the above, the right to adequate housing comprises an indispensable part of ensuring human dignity³⁹, and is regarded as one of the most important international human rights.⁴⁰ The right to adequate housing was first embedded in the Universal Declaration of Human Rights in 1948⁴¹, and subsequently in the International Covenant on Economic, Social and Cultural Rights in 1966 (hereinafter

³⁶ Muller G 'Proposing a way to develop the substantive content of the right to access to adequate housing: An alternative to the reasonableness review model' (2015) 30(1) *Southern African Public Law* 91.

³⁷ Muller G (2015) 91.

³⁸ In the case of *City of Johannesburg v. Rand Properties (Pty) Ltd and Others* 2006 (6) BLCR 728 (W) (hereafter referred to as '*Rand Properties*') the High Court interpreted the Constitutional right to access to adequate housing as a right to live in a location within reasonable distance of employment opportunities.

³⁹ South African Human Rights Commission *Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery* (2015) 7.

⁴⁰ South African Human Rights Commission *The Right of Access to Adequate Housing Chapter 2* (2002) 1.

⁴¹ The Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (hereafter referred to as the 'Universal Declaration of Human Rights') described the right to housing as 'the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity'.

referred to as the 'ICESCR').⁴² These two international legal instruments comprise the strongest references to the right to adequate housing.

In explicating the right to adequate housing, the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the 'Committee') published its interpretation of the aforementioned right in the form of General Comment 4.⁴³ General Comment 4 clarifies that the right to adequate housing should be interpreted widely⁴⁴ (in this regard, it is stated that the right to housing comprises more than merely a roof over one's head), and provides a list of factors which *must* be taken into account when determining the 'adequacy' of housing. One of the listed factors specifically pertains to the *location* of the housing. In this regard, General Comment 4 states that 'housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if it is located in polluted or dangerous areas'.⁴⁵ This was also echoed by the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000, which provided that adequate housing should be located close to work and basic facilities.⁴⁶ The 'adequacy' of housing is thus, *inter alia*, dependant on the location of

⁴² Article 11(1) International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993 3.

⁴³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23 (hereafter referred to as 'General Comment 4').

⁴⁴ Saul B, Kinley D & Mowbray J *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (2014) 929.

⁴⁵ Para 8, General Comment 4 of the Committee.

⁴⁶ Para 5, UN General Assembly, Global Strategy for Shelter to the Year 2000: resolution / adopted by the General Assembly, 4 February 1998, A/RES/52/191.

the housing provided, and the proximity of the housing provided to employment opportunities, schools, health care services, etc.⁴⁷

The right to adequate housing has been recognised in a number of regional legal instruments such as the European Convention on the Legal Status of Migrant Workers (1977), the African Charter on the Rights and Welfare of the Child (1990) and the revised European Social Charter (1996).⁴⁸

In terms of national legal frameworks, South Africa has always been considered as a country with some of the most progressive housing laws. To this end, the Constitution⁴⁹ explicitly provides that 'everyone has the right to access to adequate housing', and various South African cases have emphasised the importance of this right, such as the seminal *Government of the Republic of South Africa and Others v Grootboom and Others*⁵⁰ case (hereafter referred to as '*Grootboom*') wherein the Constitutional Court (hereafter the 'CC') held that the fulfilment of the right to access to adequate housing, as included in the Bill of Rights, entails 'more than bricks and mortar'.⁵¹ It is also expressly provided that international law be taken into consideration when interpreting the provisions of the Constitution, and the Committee's guidelines on determining adequacy, also in terms of the location of the housing provided is instructive.

⁴⁷ Chenwi L 'Advancing the Right to Adequate Housing of Desperately Poor People: City of Johannesburg v Rand Properties' (2006) 14 *Human Rights Brief* 13-17.

⁴⁸ United Nations '*Fact Sheet No 21, Rev 1, The Right to Adequate Housing*' (2014) 10.

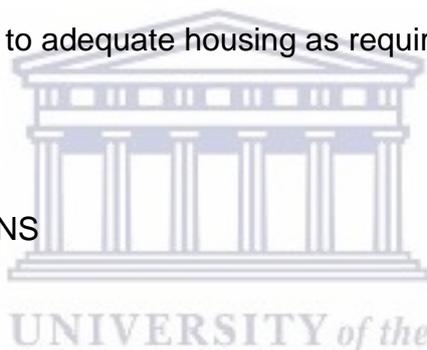
⁴⁹ Constitution of the Republic of South Africa, 1996.

⁵⁰ 2001 (1) SA 46 (CC).

⁵¹ *Grootboom*, para 35.

In light of the above, an argument can thus be made that due to the close affiliation between the RTC and the general right to adequate housing, governments have an obligation to also provide affordable housing in locations close to the city, and more specifically employment opportunities and basic facilities. The reality however remains that the cities are often reserved for middle class and upper class individuals, with the poor being moved further and further from the city. This study thus seeks to examine whether residents who have been displaced from the inner city and surrounding areas have a right to be provided with accommodation in the city, and whether the South African government, by failing to provide accommodation in or close to the inner city to displaced individuals, is failing in its general obligation to provide everyone access to adequate housing as required by the Constitution.⁵²

3. RESEARCH QUESTIONS



The main research question for this study is whether the Constitutional right to access to adequate housing could and should be interpreted to include a RTC in South Africa. In addressing the main research question, the following sub-questions will be answered:

- 1) What is the scope and content of the right to access to adequate housing, specifically in relation to the location of the housing provided?
- 2) What does the RTC entail?
- 3) Does a RTC exist in South Africa (especially in light of the Constitution)

⁵² Constitution of the Republic of South Africa, 1996.

- 4) Does gentrification and the subsequent displacement of individuals to areas on the outskirts of cities amount to a violation of the possibly existing RTC or the right to housing?
- 5) Should a RTC be found to exist in South Africa, what are government's obligations in terms of this right?

4. RESEARCH OBJECTIVES / AIM OF THIS STUDY

Cape Town has seen many residents of areas surrounding the inner city being forcibly removed and displaced to locations often far away from basic amenities and employment opportunities. The housing crisis, particularly in Cape Town, has led to increased pressure on government to provide accommodation closer to the city. This study is thus significant as a contribution to the body of knowledge on the right to access to adequate housing, and particularly whether a RTC exists in terms of South African law (and if not, whether it should be included in legislation).

5. LIMITATION OF STUDY

This study focuses on the impact of gentrification in Cape Town and does not consider its effect on the entire country. Further, with regards to the RTC concept, due to paucity in academic works on the subject in South Africa (from a legal perspective), references will be drawn mainly from international sources on the subject such as books, journal articles, reports and discussion papers.

6. RESEARCH METHODOLOGY

This research is primarily a desktop investigation. To this end, the researcher will substantially rely on sources such as legislation on the subject, journal articles, books, reports, media articles and other materials that are relevant to the study.

7. CHAPTER OVERVIEW

Chapter 1: Introduction

This chapter will present a brief background to the study, the problem statement, research objectives and the questions to be answered by the study, the research methodology and outline of chapters.

Chapter 2: The right to access to adequate housing - scope and content

This chapter will introduce the scope and content of the right to access to adequate housing within international and national legal instruments.

Chapter 3: What does the 'right to the city' entail?

This chapter will discuss the scope and content of the right to the city as introduced by international academics, legislatures and civil society bodies (internationally as well as nationally).

Chapter 4: Does a right to the city exist in South Africa?

This chapter will consider whether the right to the city exists in South Africa (considering learnings from the previous chapters). Further to this, this chapter will also consider whether individuals who have been displaced as a result of gentrification thus have a right to stay in the city.

Chapter 5: Government's responsibility - efforts by government

This chapter will discuss government's obligations in relation to the fulfilment of the right to the city should it be found to exist in South Africa.

Chapter 6: Observations, Conclusions and Recommendations.

Based on the outcome of the preceding chapters, this chapter will draw observations while making recommendations for the future.



Chapter 2: The Right to Adequate Housing

'Housing really affects all aspects of a person's life.' – Youth Volunteer (Twin Cities Habitat for Humanity)

1. INTRODUCTION

The right to housing is often described as one of the most important human rights.⁵³ Due to the inherent interrelated and inter-dependent nature of human rights, a denial of the right to housing potentially also leads to a denial of an array of ancillary human rights, such as the right to water and sanitation, the right to food, the right to human dignity and equality, and even the right to life.⁵⁴ This is based on the understanding that without a home, it is difficult to find shelter from the elements, to satisfy basic needs or to replenish one's body and mind.⁵⁵

It is against this backdrop that this chapter will provide a brief overview of the scope and content of the right to housing, particularly as provided for in international and regional human rights frameworks, as well as in South Africa.

⁵³South African Human Rights Commission *The Right of Access to Adequate Housing Chapter 2* (2002) 1.

⁵⁴Golay C & Osden M 'The Right To Housing – A Fundamental Right Affirmed By The United Nations And Recognised In Regional Treaties And Numerous National Constitutions' *Cetim* at 2 available at <http://www.cetim.ch/legacy/en/documents/bro7-log-A4-an.pdf> (accessed 5 April 2017).

⁵⁵United Nations Human Rights Office of the High Commissioner website available at <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx> (accessed 16 September 2017).

2. THE RIGHT TO HOUSING IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The foundation for the right to housing can be traced back to the Universal Declaration of Human Rights, which provides that everyone has the right to an adequate standard of living - unequivocally including a right to housing.⁵⁶ The Universal Declaration of Human Rights, by its nature as a non-binding resolution,⁵⁷ however lacked legal enforceability, and the ICESCR⁵⁸, a legally binding instrument that was entered into in 1966, is often described as the most significant international human rights instrument dealing with the right to housing.⁵⁹ The ICESCR echoes what was stated in the Universal Declaration of Human Rights with regards to an adequate standard of living. It provides that State parties recognize the right of everyone to an adequate standard of living for himself and his family, including

⁵⁶ Article 25 (1) Universal Declaration of Human Rights.

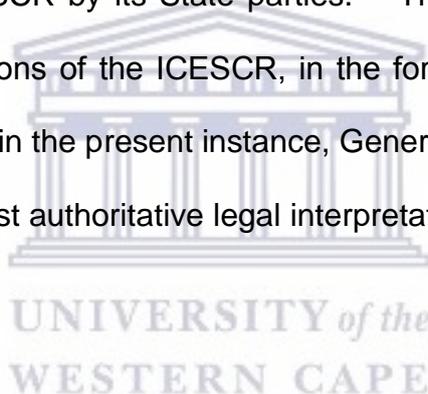
⁵⁷ Romero S 'Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe' (2007) 5 *Northwestern Journal of International Human Rights* 282.

⁵⁸ As per the United Nations Treaty Collection website, the Member States are: Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Columbia, Comoros, Congo, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinae, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinae, Guinae – Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Korea (Democratic People's Republic Of), Korea (Republic of), Kyrgyztan, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritiana, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russia, Rwanda, St Vincent and the Grenadines, San Marino, Sao Tome and Principle, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, State of Palestine, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikisatan, Thailand, The former Yugoslav Republic of Macedonia, Timor – Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, and Zimbabwe available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3&chapter=4&clang=en (accessed 6 April 2017).

⁵⁹ 'Housing Rights Watch' website available at <http://www.housingrightswatch.org/page/un-housing-rights> (accessed 6 April 2017).

adequate housing, and binds State parties to the continuous improvement of living conditions.⁶⁰ In terms of the ICECSR, State parties are obliged to progressively take appropriate steps to ensure the realization of the right to an adequate standard of living and thus also the right to adequate housing, and a general decline in living and housing conditions, directly attributable to policy and legislative decisions by State parties, in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the ICESCR.⁶¹

In light of the above, the Committee was established to ensure and monitor the implementation of the ICESCR by its State parties.⁶² The Committee publishes its interpretation of the provisions of the ICESCR, in the form of 'General Comments', and of specific importance in the present instance, General Comment 4 and General Comment 7 provide the most authoritative legal interpretation of housing rights under international law.⁶³



2.1 The scope and content of the right to adequate housing

General Comment 4 articulates the elements of the right to adequate housing⁶⁴, and provides that the right to housing applies to all individuals, regardless of age,

⁶⁰ Article 11(1) International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993 3.

⁶¹ Para 11, General Comment 4.

⁶² United Nations Human Rights Office of the High Commissioner *Fact Sheet No 16 (Rev 1) The Committee on Economic, Social and Cultural Rights* (1996) 3.

⁶³ Audefroy J 'Eviction trends worldwide - and the role of local authorities in implementing the right to housing' (1994) 6 *Environment and Urbanization Journal* 9.

⁶⁴ Thiele B 'The Human Right to Housing: A Tool for Promoting and Protecting Individual and Community Health' (2002) 92(5) *American Journal of Public Health* 713.

economic status, group or other affiliation or status.⁶⁵ It lays the foundation that adequate housing should be ensured to all persons irrespective of income or access to economic resources, and that due priority should in fact be given to those social groups living in unfavourable conditions.⁶⁶ Policies and legislation should therefore not be designed to benefit advantaged social groups at the expense of others.⁶⁷

General Comment 4 edifies the expansive nature of the right to adequate housing⁶⁸ in terms of which housing is required to comprise of more than a 'roof over one's head'.⁶⁹ The addition of adequacy as an element of the right to housing, affirms the wide interpretation that is afforded to this right, and much of the consideration with regards to the fulfilment of the right to adequate housing, concerns what should be regarded as 'adequate' in a particular context.⁷⁰ General Comment 4 provides interpretive guidance on this, stating that the concept of 'adequacy' underlines a number of factors which *must* be taken into account when considering whether a particular form of shelter should be regarded as adequate⁷¹ (own emphasis added). These factors include: legal security of tenure⁷², availability of services, materials, facilities and infrastructure⁷³; the affordability⁷⁴, habitability⁷⁵, accessibility⁷⁶ and

⁶⁵ Para 6, General Comment 4.

⁶⁶ Augusta M & Moreta L *The Human Rights Fundamentals of Conservation in the Context of the Extraction of Energy Resources* (2015) 191-211.

⁶⁷ Leckie S & Gallagher A *Economic, Social, and Cultural Rights: A Legal Resource Guide* (2011) 295

⁶⁸ Office of the High Commissioner for Human Rights *United Nations Housing Rights Programme Report No. 7: Indigenous people's right to adequate housing* (2005) 20.

⁶⁹ Para 7, General Comment 4.

⁷⁰ Para 8, General Comment 4.

⁷¹ Para 8, General Comment 4.

⁷² Para 7(a), General Comment 4 provides that 'tenure' can take a variety of different forms, including rental accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

⁷³ Adequate housing must contain certain facilities essential for health, security, comfort and nutrition. These facilities include sustainable access to natural and common resources, safe drinking water,

cultural adequacy of housing⁷⁷, as well as very importantly for the present purposes, the location of the housing provided.⁷⁸ The latter location element of housing is especially important in cases where people are relocated to other areas.⁷⁹ While the aforementioned elements do not constitute a *numerus clausus* (closed list) of factors to be taken into consideration when determining the adequacy of housing, it is however reiterated that according to the Committee, each one of these elements must at least be present for the right to housing to be enjoyed.⁸⁰

Due to the wide interpretation that is afforded to the right to adequate housing, while it is recognized that the aforesaid right and the fulfilment of the factors listed above cannot be realized immediately, State parties must aim towards the progressive realization of the right to adequate housing (and thus towards the progressive realization of the above factors).⁸¹ This means that State parties must be deliberate,

energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. Para 7(b), General Comment 4.

⁷⁴ The 'personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs'. Para 7(c), General Comment 4.

⁷⁵ Adequate housing must be habitable. In this regard, adequate housing should provide occupiers with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. Para 7(d), General Comment 4.

⁷⁶ Adequate housing must be accessible to those entitled to it, which includes affording disadvantaged groups with full and sustainable access to adequate housing resources. Para 7(e), General Comment 4.

⁷⁷ The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Housing developments should not compromise the cultural dimensions of housing, and modern technological facilities should be ensured. Para 7(g), General Comment 4.

⁷⁸ The location of adequate housing should allow for access to employment options, health-care services, schools, childcare centres and other social facilities. Para 7(f), General Comment 4.

⁷⁹ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 145.

⁸⁰ Para 8, General Comment 4.

⁸¹ Chenwi, L 'Unpacking "Progressive Realisation", Its Relation To Resources, Minimum Core And Reasonableness, And Some Methodological Considerations For Assessing Compliance' (2013) 39 *De Jure* 742.

targeted and concrete, and must move as expeditiously and effectively as possible towards the goal of housing rights realization, irrespective of factors such as resource constraints.⁸² This notwithstanding, some substantive obligations are however immediate, and the Committee has imposed certain ‘minimum core obligations’ on State parties. This requires at least the very minimum essential levels of each right to be catered for immediately.⁸³ Any State not protecting this minimum core is *prima facie* in violation of the ICESCR.⁸⁴

2.3 The protection against forced evictions

In order for the right to adequate housing to be enjoyed, individuals should also be protected from the deprivation thereof. This notwithstanding, thousands of people are forcibly evicted every year.⁸⁵ Forced evictions are defined as the ‘permanent or temporary removal of individuals, families and communities from the homes and/or land which they occupy, against their will, and without appropriate forms of legal or other protection’.⁸⁶ Forced evictions constitute a gross violation of the right to adequate housing, and owing to the interrelationship and inter-dependency which exist among all human rights, it frequently violates a number of human rights.⁸⁷ Forced evictions also escalate social conflict and inequality and invariably affect the

⁸² Chenwi, L (2013) 742.

⁸³ Chenwi, L (2013) 753.

⁸⁴ General Comment 4 does not specify what the ‘minimum core’ in relation to housing rights is. Brodie J, Pastore C *Poverty Law: Policy and Practice* (2014) ch 6.

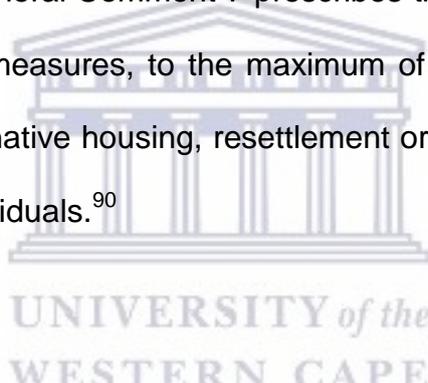
⁸⁵ Golay C & Osden M ‘The Right To Housing – A Fundamental Right Affirmed By The United Nations And Recognised In Regional Treaties And Numerous National Constitutions’ *Cetim* at 37 available at <http://www.cetim.ch/legacy/en/documents/bro7-log-A4-an.pdf> (accessed 5 April 2017).

⁸⁶ Office of the United Nations High Commissioners for Human Rights *Fact Sheet No 21 (Rev 1) - The Right to Adequate Housing* (2014) 4.

⁸⁷ Office of the United Nations High Commissioners for Human Rights *Fact Sheet No 21 (Rev 1) - The Right to Adequate Housing* (2014) 5.

poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society.⁸⁸

Although some evictions may be justifiable, such as in the case of persistent non-payment of rent, relevant authorities still have to ensure that evictions are carried out in a manner warranted by international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.⁸⁹ Where those affected by evictions are unable to provide for themselves, General Comment 7 prescribes that the relevant State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, is available to affected individuals.⁹⁰



3. THE RIGHT TO HOUSING IN REGIONAL HUMAN RIGHTS FRAMEWORKS

3.1 The right to adequate housing in Europe

The ICESCR influenced the subsequent development of a number of regional human rights instruments. Specifically concerning the right to adequate housing, in

⁸⁸ United Nations General Assembly *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*. A/HRC/10/7/Add.3 17 February 2009 10.

⁸⁹ Para 16, UN Committee on Economic, Social and Cultural Rights General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22 (hereafter referred to as 'General Comment 7').

⁹⁰ Para 16, General Comment 7.

Europe, the Comments of the European Commission recognise and address the right to adequate housing.⁹¹ Further to this, the Council of Europe (COE) which was established in 1949 and currently encompassing 47 member states, has promoted a rights-based approach in many areas, including housing rights, through the European Convention on Human Rights and Fundamental Freedoms (hereafter, ECHRFF) with its allied European Court of Human Rights (hereafter, ECHR) and also within the European Social Charter (hereafter, ESC).⁹²

The ECHRFF is deemed to be one of the most powerful regional treaties on human rights protection as its application is controlled by the ECHR where individuals can apply directly against a Member State of the COE.⁹³ The decisions of the ECHR are binding on the Member States concerned and have led governments to alter their legislation and administrative practice in a wide range of areas.⁹⁴ The ECHRFF does not contain a direct right to housing, however, provisions thereof have been interpreted by the ECHR as leading to the development of housing rights, especially within article 8 (respect for private life, family life, and home).⁹⁵ Article 8 (1) specifically provides that 'everyone has the right to respect for his private and family life, his *home* and his correspondence'.⁹⁶ In the *Moreno Gómez v. Spain* case, the ECHR developed the notion of home regarding privacy and stated that 'the home is

⁹¹ Kucs A, Sedlova Z & Pierhurovica L 'The Right to Housing: International, European and National Perspectives' (2008) *Cuadernos Constitucionales de la Cátedra Fadrigue Furió Ceriol* 101-123.

⁹² Kucs A, Sedlova Z & Pierhurovica L (2008) 101-123.

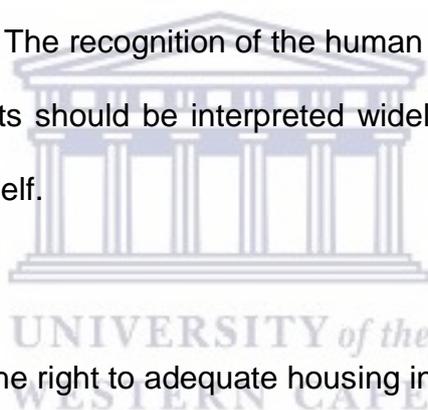
⁹³ Kucs A, Sedlova Z & Pierhurovica L (2008) 101-123.

⁹⁴ Kucs A, Sedlova Z & Pierhurovica L (2008) 101-123.

⁹⁵ Kucs A, Sedlova Z & Pierhurovica L (2008) 101-123.

⁹⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (Article 8) available at <http://www.refworld.org/docid/3ae6b3b04.html> (accessed 6 August 2017).

the place, the physically defined area, where private and family life develops'.⁹⁷ This case stressed the social function of housing, and developed the understanding that substance, not form, is decisive in establishing whether a certain place can be qualified as a *home*.⁹⁸ This approach was followed in *Buckley v UK*⁹⁹ and *London Borough of Harrow v Qazi*¹⁰⁰ wherein it was held that the determination of a 'home' is a simple, factual and untechnical test taking account of all factual circumstances (including the existence of sufficient and continuous links between the individual and the property concerned). The right to housing is therefore rather seen through the concept of *home* as opposed to *property* which attaches a human dimension to the right.¹⁰¹ To this end, as stated in *Uratemp Ventures Ltd v Collins*¹⁰² housing is the 'centre of one's existence'. The recognition of the human dimension very importantly reiterates that housing rights should be interpreted widely comprising of more than just the physical dwelling itself.



The ESC, in turn, sets out the right to adequate housing in article 31. Article 31 of the ESC provides that, with a view to ensuring the effective exercise of the right to housing, the State Parties undertake to take measures designed to promote access to housing of an adequate standard.¹⁰³ The main elements of the right to housing envisaged under the ESC are 'adequacy', 'prevention and reduction of

⁹⁷ *Moreno Gómez v. Spain* (application no. 4143/02) European Court of Human Rights (Press Release issued by the Registrar) 572.

⁹⁸ Kucs A, Sedlova Z & Pierhurovica L (2008) 101-123.

⁹⁹ *Buckley v United Kingdom* Merits, App No 20348/92, Case No 23/1995/529/615, ECHR 1996-IV, [1996] ECHR 39, (1997) 23 EHRR 101, IHRL 3110 (ECHR 1996), 25th September 1996, European Court of Human Rights [ECHR].

¹⁰⁰ *London Borough of Harrow v Qazi* [2003] UKHL 43 at para 10'

¹⁰¹ Kucs A, Sedlova Z & Pierhurovica L (2008) 111.

¹⁰² *Uratemp Ventures Ltd v Collins* [2001] UKHL 43.

¹⁰³ *Autism-Europe v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, para. 53.

homelessness' and 'accessibility'.¹⁰⁴ In terms of the ESC, adequate housing is defined as meaning a dwelling which is safe from a sanitary and health point of view, not over-crowded, with secure tenure that is supported by the law.¹⁰⁵ It is incumbent on States to ensure that housing is adequate through different measures such as an inventory of the housing stock, urban development rules and maintenance obligations for landlords.¹⁰⁶ Public authorities must also protect against the interruption of essential services such as water, electricity and telephone.¹⁰⁷ In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing, states must set up procedures to limit the risk of eviction.¹⁰⁸

3.2 The right to adequate housing in Africa

The African Charter on Human and People's Rights (hereafter the 'African Charter') laudably provides for both civil and political rights as well as economic, social and cultural rights in one document.¹⁰⁹ This notwithstanding, the African Charter is silent on an express right to adequate housing.¹¹⁰ Article 14 of the African Charter however guarantees the right to property, stating that this right shall only be encroached upon in the interest of public need or in the general interest of the community. It also

¹⁰⁴ Gailiute D 'Right to Housing in the Jurisprudence of the European Committee of Social Rights' (2012) *Societal Studies* 1605 - 1622.

¹⁰⁵ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163 (Article 31(2)), available at <http://www.refworld.org/docid/3ae6b3678.html> (accessed 6 August 2017).

¹⁰⁶ Gailiute D (2012) 1612.

¹⁰⁷ Gailiute D (2012) 1612.

¹⁰⁸ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163 (Article 31(3)), available at <http://www.refworld.org/docid/3ae6b3678.html> (accessed 6 August 2017).

¹⁰⁹ Chenwi L 'The right to adequate housing in the African regional human rights system: Convergence or divergence between the African Commission and South African approaches' (2013) 17 *Law Democracy and Development* 344.

¹¹⁰ Lumina C 'The promotion and protection of economic, social and cultural rights and the right to development under the African Regional Human Rights System' (2006) 27(2) *Obiter* 316-332.

states, in article 24, that all people shall have the right to a general satisfactory environment favourable to their development.¹¹¹

In light of the inter-dependency of human rights, the African Commission interpreted the African Charter to include a right to adequate housing.¹¹² In *SERAC & CESR v Nigeria*¹¹³, the African Commission held that, although the right to housing or shelter is not explicitly provided for under the African Charter, housing rights are protected through the combination of provisions protecting the right to property (article 14), the right to enjoy the best attainable standard of mental and physical health (article 16), and the protection accorded to the family (article 18(1)).¹¹⁴ The African Commission interpreted the African Charter to provide for an implied right to housing, as the destruction of housing intrinsically leads to the right to property, health and family life being adversely affected.¹¹⁵ The notion of the inter-dependence and mutually supportive nature of rights therefore becomes important, and the aforesaid interpretation by the African Commission illustrates the cavernous nature of a right to housing as comprising of more than just a physical dwelling.¹¹⁶ This approach was later codified in the African Commission's '*Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights*' which expressly states that the right to adequate housing refers to a right of every person to

¹¹¹ African Charter on Human and People's Rights Adopted in Nairobi June 27, 1981 available at <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf> (accessed 7 April 2017).

¹¹² Acheampong K.A 'Reforming the substance of the African Charter on Human and People's Rights: Civil and political rights and socio-economic rights' (2001) 2 *African Human Rights Law Journal* 202.

¹¹³ *Nigeria: Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* [2001] AHRLR Rep 60.

¹¹⁴ *Nigeria: Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* [2001] AHRLR Rep 60.

¹¹⁵ Chenwi L (2013) 344-346.

¹¹⁶ Chenwi L (2013) 344-346.

'gain and sustain a safe and secure home and community in which to live in peace and dignity, which includes access to natural and common resources, safe drinking water, energy for cooking, heating, cooling and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services'.¹¹⁷

Moreover, the elements that must be taken into account in determining the adequacy of shelter or housing include availability, adequacy, affordability, acceptability (culturally appropriate) and security of tenure,¹¹⁸ and are thus akin to the elements for the determination of adequate housing under the ICESCR.

The African Commission also found that the right to adequate housing encompasses the protection against forced evictions.¹¹⁹ In this regard the African Commission held that the right to protection from forced evictions is a derivative of the right to housing.¹²⁰ In addition to this, protection from forced evictions may also be derived from the right to freedom of movement and residence (article 12(1)), as well as the right to liberty and security (article 6).¹²¹

¹¹⁷ Para 78, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (hereafter referred to as 'African Commission Principles and Guidelines'), adopted in 2010 and formally launched in 2011.

¹¹⁸ Para 3 & para 79 African Commission Principles and Guidelines.

¹¹⁹ Juma L 'Nothing but a mass of debris: Urban evictions and the right of access to adequate housing in Kenya' (2012) 12 *African Human Rights Law Journal* 480.

¹²⁰ Chenwi L (2013) 344-346.

¹²¹ Communication 279/03, *Sudan Human Rights Organisation v The Sudan*, and Communication 296/05, *Centre on Housing Rights and Evictions v The Sudan*.

4. SOUTH AFRICA

4.1 Overview

In addition to the various international and regional instruments that have provided for a right to adequate housing as explicated above, there are also numerous national legal frameworks that provide for the right to adequate housing. Of these national legal frameworks, the South African legal framework is often commended for the Constitutional protection that it affords to socio-economic rights, and specifically the right to adequate housing.¹²²

The Constitution prescribes that when interpreting the Bill of Rights, a court, tribunal or forum *must* consider international law (and may consider foreign law).¹²³ It is for this reason not surprising that the international approach regarding the right to adequate housing is largely emulated in South African legislation and by decisions of the courts.¹²⁴ Further to this, section 26 of the Constitution specifically deals with the right to housing, with section 26(1) expressly providing that everyone has the right to have access to adequate housing.¹²⁵ Slightly deviating from the wording of the ICESCR, the addition of the word 'access' emphasises that the State must create

¹²² Williams LA 'The Right to Housing in South Africa: An evolving jurisprudence' 2016 *Columbia Law Journal* 818.

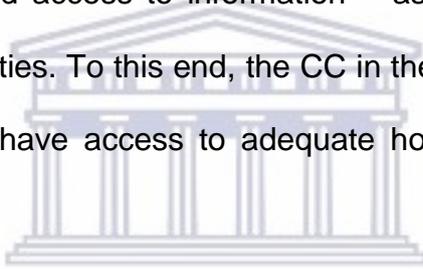
¹²³ Section 39 of the Constitution.

¹²⁴ The similarity between South African housing law developments and international developments regarding the right to adequate housing is further expected as South Africa signed the ICESCR on 3 October 1994, and later ratified the ICESCR on 12 January 2015. The latter ratification means that South Africa committed itself to the goals, obligations and standards of the ICESCR, and is bound by international law to act in accordance of the ICESCR. Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 142.

¹²⁵ Section 26 of the Constitution.

conducive conditions for all its citizens to access affordable housing¹²⁶ (the State's obligations in respect of the right to access to adequate housing is explicated in further detail in Chapter 5).

Notwithstanding the slight deviation in wording, in line with the approach noted in international human rights frameworks, the South African courts have also taken the stance that the right to access to adequate housing is to be interpreted widely.¹²⁷ This is due to the right to access to adequate housing being intrinsically bound up with a number of other cross-cutting rights – including the right to public participation, equality, human dignity, and access to information – as well as a range of socio-economic goods and amenities. To this end, the CC in the seminal *Grootboom* case, in interpreting the right to have access to adequate housing, stated that housing entails:


 'More than bricks and mortar. It also requires, *inter alia*, available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself'.¹²⁸

The *Grootboom* case emphasized that for a person to have access to adequate housing in terms of the Constitution, the person should be provided with access to

¹²⁶ South African Human Rights Commission *The Right of Access to Adequate Housing Chapter 2* (2002) 1.

¹²⁷ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* [2009] ZACC 16, Case No CCT 22/08.

¹²⁸ *Grootboom*, para 35.

more than just a physical dwelling. There must also be access to land, and access to basic services (both arguably making reference to the location of the housing).¹²⁹

Akin to what is noted in terms of international and regional human rights frameworks, the South African courts have also asserted that much of the discussion with regards to a fulfilment of the right to access to adequate housing, turns on the definition of 'adequacy' in a particular context. In this regard the CC has acknowledged that it is extremely difficult to define the parameters of what would constitute 'adequacy' in the housing context as it depends on the specific conditions and circumstances of households and individuals, the type of housing, and, importantly for the present purposes, the location of the housing provided.¹³⁰ While the South African courts have not provided a detailed discussion on what constitutes 'adequacy' in a particular context as yet, Warren Smit developed a matrix to assess the adequacy of different housing typologies in terms of some key criteria which are nearly identical to the key factors outlined in General Comment 4.¹³¹ These factors include *inter alia* adequacy of location; adequacy of shelter; affordability (upfront and ongoing costs); adequacy of service availability; adequacy of space; physical security; security of tenure; accessibility (transport) as well as availability¹³² of housing. Taking the aforesaid discussion into consideration, it is clear that in the South African context, housing also concerns much more than just providing shelter from the elements. The entitlements to individuals in terms of General Comment 4 are thus also applicable to individuals in South Africa under housing law.

¹²⁹ *Grootboom*, para 35.

¹³⁰ Tissington K 'A review of Housing Policy and Development in South Africa since 1994' *Socio-Economic Rights Institute of South Africa* (2010) 28.

¹³¹ Tissington K (2010) 28.

¹³² Tissington K (2010) 28.

Although it is clear that the South African housing rights framework largely emulates the international framework concerning this right, one of the important developments created by the South African housing rights framework is the introduction of ‘reasonableness’ as a yardstick to measure policy, legislative and other measures adopted by government in order to achieve the progressive realisation of the right of access to adequate housing. The introduction of a reasonableness analysis does away with the ‘minimum core’ concept, and it means that courts can require an explanation from the State of the measures chosen to fulfil the right of access to adequate housing and all other economic and social rights.¹³³ The courts can also require the State to give an account of its progress in implementing these measures. In short, therefore, the introduction of the ‘reasonableness analysis’ prescribes that the State has an obligation to justify the means it chooses to fulfil its obligations to realise economic and social rights.¹³⁴ The obligations of the State in relation to the right to access to adequate housing is discussed in further detail in Chapter 5. Importantly for the present purposes however, the reasonableness analysis also requires that due regard be given to South Africa’s history. In this regard, the CC in the *Soobramoney* case stated that:

‘We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services.’

¹³³ South African Human Rights Commission *Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery* (2015) 22.

¹³⁴ South African Human Rights Commission *Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery* (2015) 22.

These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order.¹³⁵

Where a State's policy fails to take cognisance of the factors outlined above, and where it ignores the plight of the most vulnerable sections of the community, it will be highly relevant when the courts come to a decision on whether the state policy is reasonable and therefore constitutionally valid or not.¹³⁶

The right to access to adequate housing also extends to the provision of temporary relief for people. Such temporary relief would be applicable to those living in intolerable conditions, or who were in crisis due to natural disasters such as a fire or floods, or facing imminent threat of eviction.¹³⁷ As regards eviction from homes, forced removals and the relocation, these actions have to be replaced with a system in which the State must strive to provide access to adequate housing for all and, where that exists, refrain from permitting people to be removed unless it can be justified.¹³⁸ Hence, any measure that removes from people their pre-existing access to adequate housing limits the right to housing in the Constitution.

¹³⁵ *Soobramoney v Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) (hereafter 'Soobramoney' case, para 8).

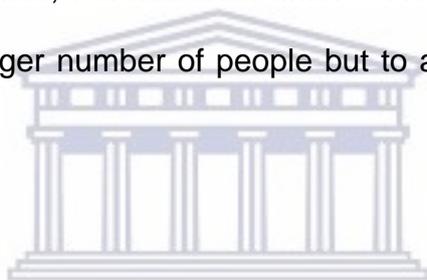
¹³⁶ *Soobramoney*, para 8.

¹³⁷ South African Human Rights Commission *Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery* (2015) 25.

¹³⁸ *Jaftha v Schoeman and Others, Van Rooyen v Stoltz and Others* (CCT74/03) [2004] ZACC 25; 2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC) (8 October 2004) para 29 (the 'Jaftha v Schoeman' case).

4.2 Progressive realization of the right to have access to adequate housing

In line with the international approach to the right to adequate housing, the South African legislature and courts also recognise that the right of access to adequate housing cannot be realised immediately. The goal of the Constitution however is that the basic needs of all individuals in our society be effectively met and the requirement of progressive realisation means that the state must continuously take steps to achieve this goal.¹³⁹ It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time.¹⁴⁰ Housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses.¹⁴¹



The above overview in relation to the right to access to adequate housing in South Africa is not comprehensive, and further characteristics of this right, such as the principle of 'meaningful engagement' and the specific duties of the State in relation to the right to access to adequate housing is discussed in further detail in subsequent chapters.

¹³⁹ South African Human Rights Commission *The Right of Access to Adequate Housing: 5th Economic and Social Rights Report Series 2002/2003 Financial Year* (2004) 5.

¹⁴⁰ South African Human Rights Commission *The Right of Access to Adequate Housing: 5th Economic and Social Rights Report Series 2002/2003 Financial Year* (2004) 5.

¹⁴¹ South African Human Rights Commission *The Right of Access to Adequate Housing: 5th Economic and Social Rights Report Series 2002/2003 Financial Year* (2004) 5.

5. CONCLUSION

This chapter provided a concise summation of the right to access to adequate housing in the international as well as South African context. In the South African context, this chapter primarily focused on the content of the right to access to adequate housing in terms of section 26(1) of the Constitution, with the content of section 26(2) and section 26(3) being discussed in further detail in successive chapters. The right to access to adequate housing has developed significantly since the promulgation of the Constitution, and the 'Right to the City', as a development of the right to access to adequate housing will be discussed in Chapter 3.

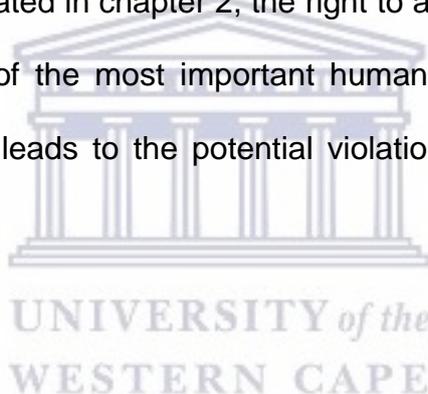


Chapter 3: The Right to the City

'The city is humanity's laboratory, where people flock to dream, create, build and rebuild' - The Triumphant City, Edward L. Glaesser

1. INTRODUCTION

The previous chapter concerned the scope and content of the right to access to adequate housing. As indicated in chapter 2, the right to access to adequate housing is often regarded as one of the most important human rights,¹⁴² particularly as a violation of this right, also leads to the potential violation of a number of ancillary human rights.¹⁴³



Notwithstanding this recognition of the right to access to adequate housing as one of the most significant human rights, in excess of 1.6 billion people are currently living in sub-standard housing, and more than 100 million people are homeless.¹⁴⁴ In 'developing' countries the number of people living in slums exceeds 828 million; with

¹⁴² South African Human Rights Commission *The Right of Access to Adequate Housing Period: April 2000 – March 2002* (2002) 1.

¹⁴³ This is due to the inter-dependent and inter-related nature of human rights. Human Rights Advocacy and the History of International Human Rights Standards *Interdependence and Indivisibility of Economic and Political Rights* website available at <http://humanrightshistory.umich.edu/problems/indivisibility/> (accessed 5 May 2017).

¹⁴⁴ Kothari M & Chaudry S Social Watch Report *Housing, Land and Sustainable Development* (2012) 1.

all of these individuals living in distressed housing conditions without sufficient space or secure tenure.¹⁴⁵

The number of slum dwellers is increasing at almost the same rate as city populations due to widespread globalization.¹⁴⁶ In 2014 more than half of the world's population was estimated to live in urban areas (3.9 billion), and by 2050 this number is expected grow to approximately 6.4 billion people.¹⁴⁷ The migration of individuals from rural to urban areas is unsurprising, as cities are regarded as territories with vast economic, environmental, political and cultural wealth and diversity.¹⁴⁸

Although globalization has highlighted the undeniable economic benefits of cities, it has also highlighted the adverse effects associated with urban growth.¹⁴⁹ Today's cities are yet to offer equitable conditions and opportunities to their inhabitants, leading to an increase in the number of people forced to occupy inadequate and insecure housing and living conditions, along with unstable livelihood options.¹⁵⁰ The majority of the urban population is deprived or limited in the satisfaction of their most basic needs, and more than 60 million new slum dwellers have reportedly been added to the global urban population since 2000.¹⁵¹ In addition to this, globalization

¹⁴⁵ Kothari M & Chaudry S (2012) 1.

¹⁴⁶ Bolay JC 'Slums and Urban Development: Questions on Society and Globalisation' (2006) 18 *The European Journal of Developmental Research* 287.

¹⁴⁷ United Nations *World Urbanization Prospects Revision 2014* (2014) 1.

¹⁴⁸ WFS World Charter for the Right to the City 2005.

¹⁴⁹ Bhatta B *Analysis of Urban Growth and Sprawl from Remote Sensing Data 2010* (2010) 2.

¹⁵⁰ Kothari M 'A Human Rights' perspective for the Right to the City' in UNESCO *Urban Policies and the Right to the City in India: Rights Responsibilities and Citizenship* (2011) 143.

¹⁵¹ Kothari M 'A Human Rights' perspective for the Right to the City' in UNESCO *Urban Policies and the Right to the City in India: Rights Responsibilities and Citizenship* (2011) 143.

often results in mass evictions, segregation, and deterioration of social coexistence.¹⁵²

In the face of this reality, and the need to counter these trends, human rights instruments have provided inspiration to the concept of a RTC, which, *inter alia*, promotes land as a human right and stresses the need to recapture the social function of property.¹⁵³ The RTC evolved through the work of social activists and academics, the growing social and environmental awareness of the 1960s to 1990s, and recent innovations in practice.¹⁵⁴

The RTC provides for the potential for a radical reappraisal of urban policy. The concept provides a framework for debate on civil rights and responsibilities, taking forward international commitments set out in the Universal Declaration of Human Rights.¹⁵⁵ To this end, the RTC envisions a socially and spatially just distribution of material resources which should be accessible in both urbanized areas and self-made settlements, ensuring good living conditions across the human settlement continuum.¹⁵⁶ Resources include, *inter alia*, public spaces, basic infrastructures and services (e.g. water, electricity, waste, and sanitation, education, health-care),

¹⁵² UN Habitat *World Cities Report 2016: Urbanization and Development – Emerging Futures* (2016) 148.

¹⁵³ Purcell M (2014) 142.

¹⁵⁴ UN Habitat *Urban Policies and the Right to the City: Rights, responsibilities and citizenship* (2009) 13.

¹⁵⁵ UN Habitat *Urban Policies and the Right to the City: Rights, responsibilities and citizenship* (2009) 10.

¹⁵⁶ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016) 15.

appropriate, accessible and sustainable transportation options, adequate housing and settlements, equitable livelihood opportunities, and natural risk-free areas.¹⁵⁷

In light of the above, this chapter will consider the content and scope of the RTC, as well as the development thereof by providing brief discussions on key instruments dealing with the RTC. Specific references will be made to the description of adequate housing as per these key instruments.

2. ORIGIN OF THE RTC

While the RTC has been receiving increased attention from human rights activists over recent years, the concept is not novel. The origin of the RTC can be traced back to 1968 when Henri Lefebvre ('Lefebvre'), a French sociologist and philosopher, penned his ideas concerning this issue in his book entitled '*The Right to the City*'.¹⁵⁸ Lefebvre's RTC created a radical new paradigm that challenged the emerging social and political structures of the 20th century.¹⁵⁹ Lefebvre argued that the traditional city is the focus of social, cultural and political life, wealth, knowledge, etc. He argued that the city is a space for encounter, connection, learning, and difference where urban inhabitants engage each other in meaningful interactions through which they overcome their separation, come to learn about each other, and

¹⁵⁷ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016) 15.

¹⁵⁸ Purcell M (2014) 142.

¹⁵⁹ Sherman D (et al) *The Long 1968: Revisions and New Perspectives* (2013) 81.

deliberate together about the meaning and future of the city.¹⁶⁰ Lefebvre further argued that the use value of the city is being overwhelmed by the exchange value resulting from the commercialization of urban assets. To this end, the capitalist city that we experience every day, he argued, is being given over to exchange value.¹⁶¹

According to Lefebvre, the RTC encompasses the ideas that the city is a public place of social interaction and exchange, where encounters with differences thrive, and these differences subsequently creates struggle, as ‘the people compete over the shape of the city, terms of access, or the right to citizenship’.¹⁶² Citizenship, according to Lefebvre is defined to include all urban inhabitants (including the poor and the marginalized), conferring two central rights on urban inhabitants, namely the right to participation and the right to appropriation.¹⁶³

In terms of the above, the right to participation allows urban inhabitants to access decisions that produce urban space.¹⁶⁴ It maintains that citizens (specifically recognising and emphasising the rights of the poor and marginalised urban inhabitants) should play a central role in any decision that contributes to the production of urban space.¹⁶⁵ Lefebvre did not clearly say that decisions that produce urban space should be made entirely by inhabitants, but it is clear that the role that inhabitants play must be central and direct.¹⁶⁶ Appropriation in turn

¹⁶⁰ Purcell M (2014) 146.

¹⁶¹ Purcell M (2014) 142.

¹⁶² Vaddiraju AK (2016) 21-22.

¹⁶³ Purcell M ‘Citizenship and the right to the global city’ (2003) 27(3) *International Journal of Urban and Regional Research* 565-566; 576-579.

¹⁶⁴ Purcell M (2002) 99-108.

¹⁶⁵ Purcell M (2002) 99-108.

¹⁶⁶ Purcell M (2002) 99-108.

concerns the right to physically access, occupy and use urban space, and create new urban space that meets people's needs.¹⁶⁷ It refers to a right to occupy already-produced urban space, as well as a right to produce urban space in order for it to meet the needs of inhabitants.¹⁶⁸ As appropriation gives inhabitants the right to 'full and complete usage' of urban space in the course of everyday life, space must be produced in a way that makes this full and complete usage possible.¹⁶⁹ The use value aspect of urban space must therefore be the primary consideration in decisions that produce urban space.¹⁷⁰

Lefebvre argued that the conception of urban space as private property, as a commodity to be valorized by the capitalist production process, is specifically what the right to appropriation stands against.¹⁷¹ 'Appropriation' reorients the city away from its role as an engine of capital accumulation, and toward its role as a constitutive element in the web of cooperative social relations among urban inhabitants.¹⁷² 'Appropriation' thus dictates that the RTC not only concerns a right to what already exists, but also to remake the city in a different image.¹⁷³

Further to the above discussion, it is imperative to note that while Lefebvre emphasised the RTC as a whole as opposed to specific rights in cities, the RTC according to Lefebvre specifically recognises the right to housing, in addition to other

¹⁶⁷ Purcell M (2002) 101-102.

¹⁶⁸ Purcell M (2002) 101-102.

¹⁶⁹ Görgens T & Van Donk M 'Exploring the potential of the Right to the City to integrate the vision and practice of civil society in the struggle for the socio-spatial transformation of South African cities' *Isandla Institute Strategies to Overcome Poverty and Inequality: Towards Carnegie III* (2012) 5.

¹⁷⁰ Görgens T & Van Donk M (2012) 5.

¹⁷¹ Görgens T & Van Donk M (2012) 5.

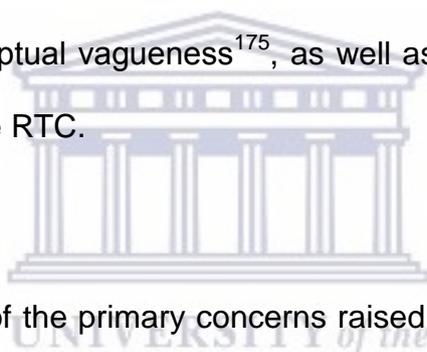
¹⁷² Görgens T & Van Donk M (2012) 5.

¹⁷³ Purcell M (2002) 99-108.

rights such as the right to work, education, health and life as rights encapsulated in the RTC.¹⁷⁴

3. CRITICISMS AGAINST LEFEBVRE'S RTC

The RTC as envisaged by Lefebvre paints a utopian picture of a city, in which all citizens are afforded with equal protection and entitlements to an array of human rights. Due to the extent of the RTC, it is thus unsurprising that a number of criticisms have evolved against the RTC over the years. These criticisms mainly pertain to the RTC's conceptual vagueness¹⁷⁵, as well as the vagueness in relation to the implementation of the RTC.



Further to the above, one of the primary concerns raised against the RTC concerns the definition of the 'urban inhabitant'. As previously indicated, individuals and groups are entitled to the RTC as inhabitants of a city, rather than as citizens of a nation. Lefebvre's RTC, argues that scales defining political membership – such as the urban scale – 'are not pre-given or self-evident, but rather they are socially produced through political struggle'.¹⁷⁶ It therefore follows that determining who is entitled to the RTC and who is not will have to be defined through a process of political struggle.¹⁷⁷ Conflicts regarding eligibility for the RTC could emerge where a

¹⁷⁴ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 92.

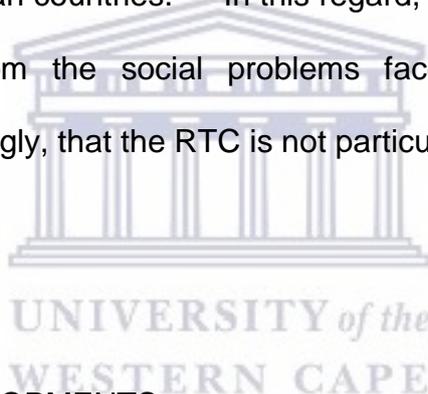
¹⁷⁵ Oomen B & Baumgartel M 'Human Rights Cities' in Mihr A & Gibney M (eds) *The SAGE Handbook of Human Rights: Two Volume Set* (2014) 714.

¹⁷⁶ Purcell M (2002) 103.

¹⁷⁷ Purcell M (2002) 103.

political decision made in the city impacts individuals beyond the city. Conflicts could also occur when a political decision would affect certain inhabitants of the city more than others.¹⁷⁸

In addition to the above, another criticism raised against the RTC pertains to the overly optimistic, and utopian nature of the RTC. This critique becomes particularly relevant when considering developing countries. Further to this, it has been argued that the RTC as envisaged by Lefebvre primarily reflected developed Euro-American realities and neglected the priorities and challenges as experienced by the developing Asian and African countries.¹⁷⁹ In this regard, it has been argued that the RTC diverts attention from the social problems faced by rural communities specifically¹⁸⁰, and accordingly, that the RTC is not particularly relevant to developing countries.



4. SUBSEQUENT DEVELOPMENTS

Notwithstanding the criticisms raised against Lefebvre's RTC, the RTC as initially envisaged by Lefebvre had a great influence on subsequent developments concerning this 'right'. As argued by Marcuse, it should be noted that while referred to as a 'right', the RTC is in fact not a new legal right *per se*¹⁸¹; it is merely an

¹⁷⁸ Kuymulu M.B 'Claiming the Right to the City: Towards the Production of Space from Below' (Ph.D in Anthropology thesis, The City University of New York, 2014) 15.

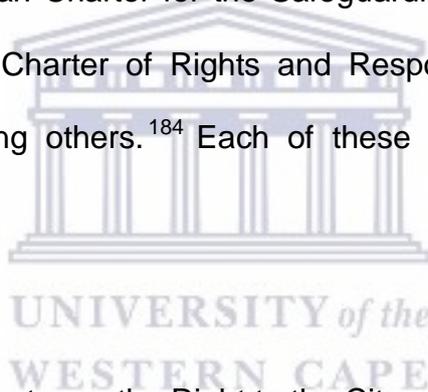
¹⁷⁹ Vogiazides L 'Legal empowerment of the poor versus "Right to the City" - Implications for accessing housing in urban Africa' (2012) *Nordiska Afrikainstitutet* 23.

¹⁸⁰ Vogiazides L (2012) 23.

¹⁸¹ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016)11.

attempt to consolidate the demand for the realization of multiple human rights within urban spaces.¹⁸² In this regard, the RTC envisions the effective fulfilment of all internationally agreed human rights.¹⁸³ This is a particularly important consideration, as even though a particular legal framework may not make specific reference to a 'RTC', at present, the RTC is already set out in a number of existing international and regional human rights treaties and instruments.

The RTC has been explicitly acknowledged in global compacts, national legislation, and city charters around the world, such as the World Charter (2005), Brazil's City Statute (2001), the European Charter for the Safeguarding of Human Rights in the City (2000), the Montréal Charter of Rights and Responsibilities (2006) and the Kenyan Constitution, among others.¹⁸⁴ Each of these instruments will briefly be expounded upon below.



3.1 The World Charter on the Right to the City

The World Charter, signed in 2004 after the Social Forum of the Americas, held in Quito, Ecuador in 2004; and the World Urban Forum, held in Barcelona, Spain in 2004, is an instrument designed to support urban struggles by acknowledging human rights and the RTC in the international system. It is a comprehensive

¹⁸² Marcuse P 'From critical urban theory to the right to the city' in *City* vol 13 (2009) at 193.

¹⁸³ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016)11.

¹⁸⁴ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016) 19.

document, oriented towards fighting exclusion, offering useful guidance and operating principles regarding this right.¹⁸⁵

The World Charter arguably provides for a wide and optimistic interpretation of the RTC. From the outset, the World Charter clarifies that references to ‘cities’ are not to be understood to only refer to urban cities in the traditional sense. Instead, it encompasses any town, village, city, capital, suburb, settlement or similar – therefore, it exists anywhere where there is a local government (the role of local government is thus emphasised)¹⁸⁶. The World Charter indicates that the city is a culturally rich and diversified collective space that pertains to all of its inhabitants and where all people are entitled to the city without any discrimination.¹⁸⁷

The World Charter defines the RTC as an ‘equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice’ in favour of the inhabitants of cities.¹⁸⁸ In explicating on this, the World Charter emphasises the social function of the city, which guarantees for all its inhabitants full usage of the resources offered by the city.¹⁸⁹ In this regard, the World Charter dictates that the city must assume the progressive realization of projects and investments to the

¹⁸⁵ World Charter available at <http://rumboahabitat3.ec/en/news/news/182-world-charter.html> (accessed 3 May 2017).

¹⁸⁶ Brown B, *Not Bored! Anthology 1983 - 2010* (2011) 458.

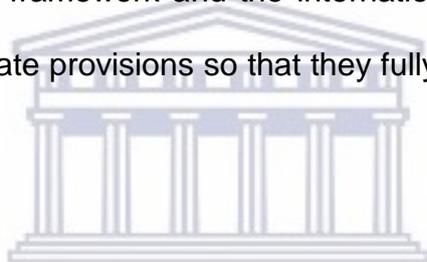
¹⁸⁷ Szpak A *Right to the City as a new paradigm within the concept of human security* (2016) 369.

¹⁸⁸ Habitat International Coalition Global Network for the Right to Habitat and Social Justice ‘World Charter for the Right to the City’ 6 June 2005 available at <http://www.hic-gs.org/document.php?pid=2422> (accessed 5 May 2017).

¹⁸⁹ Article 2, para 3, World Charter.

benefit of the urban community as a whole, to guarantee the well-being of all its inhabitants.¹⁹⁰

While emphasising the role of local governments, the World Charter clarifies that all spheres of governments (phrased as ‘cities, in co-responsibility with national authorities’), should adopt all necessary measures – to the maximum allowed by the resources available to them – to progressively achieve, by all appropriate means and with the adoption of legislative and regulatory measures, the full realization of economic, social, cultural, and environmental rights.¹⁹¹ Furthermore, cities in accordance with their legal framework and the international treaties, should dictate legislative or other appropriate provisions so that they fully reflect the rights gathered in the World Charter.¹⁹²



Transposing Lefebvre’s vision, the World Charter stipulates that all the citizens have the right to participate in the ownership of the urban territory within democratic parameters. The RTC is therefore the collective right of all the inhabitants of cities, that confers upon them legitimacy of action and organization, with the objective to achieve full exercise of an adequate standard of living.¹⁹³ An adequate standard of living, in this regard, is widely construed to include access to public services, water, sanitation, waste removal, energy and telecommunications services, and facilities for

¹⁹⁰ Habitat International Coalition Global Network for the Right to Habitat and Social Justice ‘World Charter for the Right to the City’ 6 June 2005 available at <http://www.hic-qs.org/document.php?pid=2422> (accessed 5 May 2017).

¹⁹¹ Habitat International Coalition Global Network for the Right to Habitat and Social Justice ‘World Charter for the Right to the City’ 6 June 2005 available at <http://www.hic-qs.org/document.php?pid=2422> (accessed 5 May 2017).

¹⁹² Flores E, Martinez N, Zarate M (eds) *Habitat International Coalition: The Right to the City around the World* (2008) 74.

¹⁹³ Flores E, Martinez N, Zarate M (eds) (2008) 10.

health care, education, basic-goods supply, and recreation, an accessible public transportation system provided at a reasonable cost, day-care centres, employment opportunities, and adequate housing.¹⁹⁴

In respect of housing specifically, cities should adopt measures to guarantee for all citizens that housing *inter alia* fulfil adequate living conditions, that it be adequately located, and that it adapt to the cultural and ethnic characteristics of those who inhabit it.¹⁹⁵ Priority should be given to vulnerable groups in housing laws, policies, and programs, and all homeless citizens have the right to demand of the authorities' effective implementation of their right to adequate housing in a progressive manner and through application of all available resources. Further, inhabitants of cities have the right to protection from evictions, expropriation, or forced or arbitrary displacement. In this regard, by referring to General Comment 7, it is stated that cities should protect tenants from profiteering and from arbitrary evictions.¹⁹⁶

In summation, the RTC as per the World Charter broadens the traditional views on the improvement of peoples' quality of life based on housing and the neighbourhood generally. The World Charter speaks to Lefebvre's vision, thus creating the impression of a utopian city, to which all individuals are entitled to.

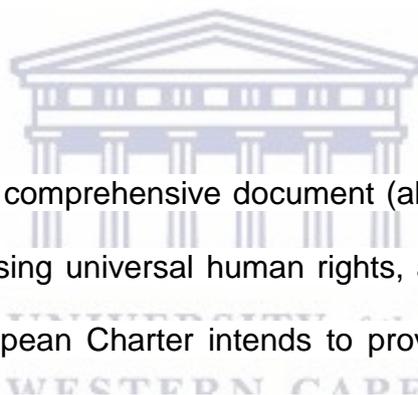
3.3 European Charter to Safeguard Human Rights in the City

¹⁹⁴ Part IV, articles 12 – 19, World Charter.

¹⁹⁵ Part IV, articles 12 – 19, World Charter.

¹⁹⁶ Article 14, World Charter.

The European Charter to Safeguard Human Rights in the City (the 'European Charter') was adopted in the European City Conference for Human Rights, and was approved in the 2nd Conference, which took place in Saint Denis (2000). The European Charter was signed by 400 cities.¹⁹⁷ Since it is a compromise from local authorities of different European cities, and not from nations, it is not an international treaty that has jurisdiction on national governments, but is intended to be a joint administration process.¹⁹⁸ This means that it should 'serve as an instrument to adjust local legal measures to the new needs in protection and guarantee of human rights'.¹⁹⁹



The European Charter is a comprehensive document (albeit to a lesser extent than the World Charter), addressing universal human rights, and urban rights to welfare and governance. The European Charter intends to provide substantive content to human rights, and it underlines that although the city is the best place to guarantee them, it is also the one where more contradictions can take place.²⁰⁰ The European Charter, similar to the World Charter, emphasises the social value of cities, reiterating that cities are collective spaces, belonging to all the inhabitants thereof. In

¹⁹⁷ UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights Member of United Cities and Local Governments European Charter for the Safeguarding of Human Rights in the City available at <https://www.uclg-cisdg.org/en/right-to-the-city/european-charter> (accessed 4 May 2017).

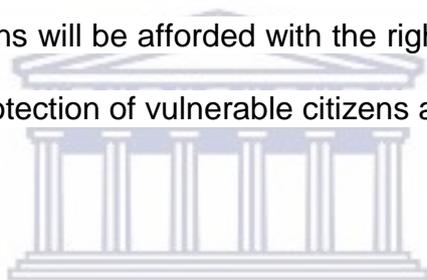
¹⁹⁸ Global 'Towards a Charter-Agenda of Human Rights in the City. Similar experiences regarding this project' available at <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?entidad=Textos&id=11631&opcion=documento>

¹⁹⁹ Global 'Towards a Charter-Agenda of Human Rights in the City. Similar experiences regarding this project' available at <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?entidad=Textos&id=11631&opcion=documento>

²⁰⁰ Preamble, European Charter (page 2).

this regard, cities are defined as being 'home to all kinds of assemblies, and a space for personal development'.²⁰¹

The RTC as per the European Charter implies the right to find the necessary conditions for a proper social, political and environmental environment of all its citizens, and similar to the World Charter, emphasises the role of municipal authorities to foster the respect to everyone's dignity.²⁰² In addition to this, the European Charter provides that the principle of equity of rights and non-discrimination will apply (all citizens are provided with this right if they live in a signing city), and that citizens will be afforded with the right to cultural, linguistic, and religious freedom, to the protection of vulnerable citizens and groups.²⁰³



Similar to the World Charter, the European Charter indicates that the fulfilment of the RTC encompasses the fulfilment of an array of ancillary rights and services. In this regard, the European Charter provides that citizens of cities have *inter alia* a general right to public services²⁰⁴, a right to the environment²⁰⁵, a right to work²⁰⁶, a right to health²⁰⁷, a right to circulation and tranquillity in the city (a right to transportation)²⁰⁸, a right to harmonious and sustainable city development²⁰⁹, and a right to a home.²¹⁰

²⁰¹ Oomen B and Baumgartel M (eds) 'Human Rights Cities' in *The SAGE Handbook of Human Rights: Two Volume Set* (2014) ch 39.

²⁰² Article 1, European Charter.

²⁰³ Articles 2, 3, 4 European Charter.

²⁰⁴ Article 12, European Charter.

²⁰⁵ Article 18, European Charter.

²⁰⁶ Article 14, European Charter.

²⁰⁷ Article 17, European Charter.

²⁰⁸ Article 20, European Charter.

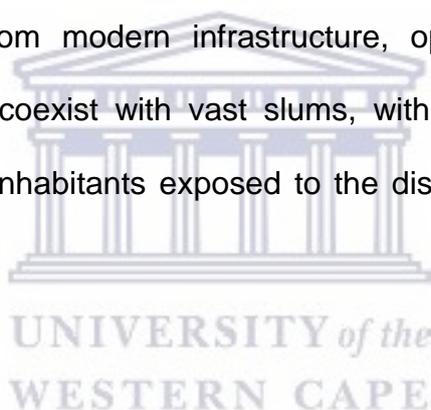
²⁰⁹ Article 19, European Charter.

²¹⁰ Article 16, European Charter.

With regards to the latter right, it is provided that all citizens have the right to a proper, safe and healthy home. The aforementioned usage of the word 'home' instead of the 'housing' further emphasises the social value that housing affords.

3.4 Brazil City Statute (Law No 10.257 of 10 July 2001)

The Brazil City Statute (the 'Statute') was enacted in July 2001 after more than a decade of political negotiation which sought to address the spatial inequalities in Brazil. In respect of these inequalities, the Statute acknowledges that wealthy neighbourhoods benefit from modern infrastructure, open spaces, cultural and sporting amenities, which coexist with vast slums, with little or no infrastructure, insecure tenure, and with inhabitants exposed to the disastrous effects of extreme weather.²¹¹



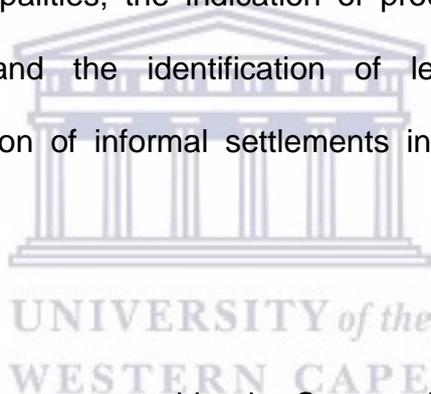
The Statute widened the legal and political role of local government in urban development by providing for consistent legal support to municipalities in order to confront the urban, social and environmental problems that have directly affected the daily living conditions of Brazilian city inhabitants.²¹² Further, in line with Lefebvre's aversion of private property rights, the Statute requires that vacant or under-used

²¹¹ Cities Alliance *The City Statute of Brazil - A Commentary* (2010) 3.

²¹² Instituto Polis *The Statute of the City: new tools for assuring the right to the city in Brazil* (2001) 7.

land be taxed and consequently compulsorily subdivided.²¹³ In this regard critics often argued that the Statute represents a confiscation of private property rights.²¹⁴

Similar to international instruments dealing with a RTC, the Statute promotes citizen participation in the formulation, execution and monitoring of urban development projects, plans and programmes.²¹⁵ Further to this, the Statute has four main dimensions, namely: a conceptual dimension providing elements for the interpretation of the constitutional principle of the social functions of urban property and of the city²¹⁶; the regulation of new instruments for the construction of a different urban order by the municipalities; the indication of processes for the democratic management of cities; and the identification of legal instruments for the comprehensive regularization of informal settlements in private and public urban areas.²¹⁷



With regards to specific rights protected by the Statute, the Statute drew inspiration from the various international developments regarding the RTC. To this end, it guarantees inhabitants of cities the right to sustainable cities understood as a right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and to leisure.²¹⁸

²¹³ UNESCO Management of Social Transformations *Urban Policies and the Right to the City 2009* (2009) 20.

²¹⁴ UNESCO Management of Social Transformations *Urban Policies and the Right to the City 2009* (2009) 20.

²¹⁵ Cities Alliance *The City Statute of Brazil - A Commentary* (2010) 3.

²¹⁶ Instituto Polis *The Statute of the City: new tools for assuring the right to the city in Brazil* (2001) 7.

²¹⁷ Home R (ed) *Local case studies in African land law* (2011) 10.

²¹⁸ Home R (ed) (2011) 10.

3.5 Montréal Charter of Rights and Responsibilities (referred to as the 'Montreal Charter')

The Montréal Charter arose from the Montréal Summit in 2002, a democratic exercise attended by around 4,000 people, in which citizens defined priorities for the newly organized 'City of Montréal'.²¹⁹ An outcome of the consultation was the Committee on Democracy which proposed the Montréal Charter.²²⁰ The Montréal Charter was subsequently introduced to the city on 1 January 2006.²²¹

As with all subsequent developments following Lefebvre's visionary RTC, the Montréal Charter draws largely from the various international instruments concerning the RTC, focusing on corresponding rights and responsibilities between the city and its inhabitants. The Montréal Charter therefore creates a covenant between the city administration, and the inhabitants of the city, regarding all urban services²²², and commits to transparent management of municipal affairs based on citizen involvement and building trust in democratic organizations.²²³

The Montréal Charter, as noted in the various international instruments dealing with a RTC, emphasises the social value of housing. To this end, the Montréal Charter acknowledges that living in a physical, cultural, economic and social environment that protects and enhances the habitat they share with their fellow citizens

²¹⁹ UN HABITAT *Urban Policies and the Right to the City 2009* (2009) 23.

²²⁰ UN HABITAT *Urban Policies and the Right to the City 2009* (2009) 23.

²²¹ A Charter of Rights for Urban Citizens, Cities of Migration available at http://citiesofmigration.ca/good_idea/a-charter-of-rights-for-urban-citizens/ (accessed 5 May 2017).

²²² Article 15 – 18, Montreal Charter.

²²³ Article 15 – 28, Montreal Charter.

contributes to the personal development of citizens.²²⁴ The Montréal Charter covers an array of ancillary human rights that need to be fulfilled in order to fulfil an RTC. This is done by delineating reciprocal rights and responsibilities through seven dimensions, namely democracy; economic and social life (promotes adequate housing and services and action to reduce poverty); cultural life; recreation, physical activities and sports; environment and sustainable development; security: promotes secure development, security for women, and safety in the use of public space; and municipal services.²²⁵

In respect of housing, specifically, the Montréal Charter obliges the city to take appropriate measures to ensure that housing meets public health and safety standards; provide relocation services when a building or dwelling must be closed or vacated; provide homeless persons with temporary and secure shelter, as quickly as possible; takes into account in the implementation of housing measures the needs of vulnerable persons and particularly individuals and families with low or modest incomes; maintaining, with the support of government partners, assistance measures for vulnerable persons that foster their access to appropriate and affordable housing; and take appropriate measures, with the support of partners, to prevent and fight poverty and social exclusion.²²⁶

In summation, the Montréal Charter is a significant example of collaboration between a city administration and civil society. It allows inhabitants to take full advantage of

²²⁴ UN HABITAT *Urban Policies and the Right to the City 2009* (2009) 24.

²²⁵ Montreal Charter, article 15 - 28.

²²⁶ Montreal Charter, article 18.

city life, which permeates all aspects of municipal affairs. The key element of the Montréal Charter is that it is a two-way exchange—the city can guarantee services, but citizens also have to play a responsible role in civic life.

3.5 Kenya

The Kenyan Constitution²²⁷ does not *per se* provide for a direct RTC, however, same may be inferred from the various provisions thereof.²²⁸ Firstly, the various articulations of the RTC found in the international instruments emphasise that a RTC requires participation from the inhabitants of cities. In this regard, the principle of participation is enshrined in numerous provisions of the Kenyan Constitution, e.g. in relation to: section 10, national values and principles of governance; section 69, obligations in respect of the environment; section 118, access to parliament; section 174, articles on devolved government; section 184, which provides for, ‘participation by residents in the governance of urban areas and cities’; and section 196, relating to public participation and county assembly powers.²²⁹

The Kenyan Constitution also pronounces on the economic, social, cultural and environmental development of the city.²³⁰ In this regard, the constitutional provisions, legislative frameworks and policies make provisions for the rights to clean water in

²²⁷ Constitution of Kenya, 2010.

²²⁸ Global Platform for The Right to The City *What's the right to the city? Inputs for the New Urban Agenda* (year of publication unknown) 18 available at https://www.escr-net.org/sites/default/files/what_r2c_digital.pdf (accessed 10 February 2017).

²²⁹ Habitat International Coalition Global Platform for the Right to the City *Moving toward the Implementation of the Right to the City in Latin America and Internationally* 244.

²³⁰ Habitat International Coalition Global Platform for the Right to the City *Moving toward the Implementation of the Right to the City in Latin America and Internationally* 245.

adequate quantities, right to housing²³¹, including right to protection of one's home, right to clean environment, etc. The Kenyan legal framework also includes a freedom from evictions.²³² It is however noted that the Kenyan legal framework omits to engage the right to mobility and right to work – the latter two rights collectively contribute to the determination on the suitability of the location of the housing provided.²³³

5. CONCLUSION

The various principles pertaining to the RTC was recently confirmed at the United Nations General Assembly Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) which was conducted during 2016.²³⁴ During this conference, it was reiterated that the RTC is the collective right of inhabitants of cities, in particular those of vulnerable and marginalized groups that confers upon them the right to the full and complete usage of cities, with the objective to achieve full exercise of the right to free self-determination and an adequate standard of living.²³⁵

²³¹ Juma L (2012) 470-507

²³² *Susan Waithera Kariuki v The Town Clerk*, Nairobi City Council High Court of Kenya, Nairobi, Petition 66 of 2010 (2011) KLR 1 and *Ibrahim Osman v The Minister of State for Provincial Administration and Others* High Court of Kenya, Embu, Constitutional Petition Case 2 of 2011.

²³³ United Nations General Assembly *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (2016) 20.

²³⁴ UNGA Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) A/Conf.226/4 17-20 October 2016.

²³⁵ United Nations General Assembly *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (2016) 5.

It is important to note that the RTC is not a new legalistic right but merely a demand for multiple human rights to be realized within cities, towns and villages.²³⁶ This notwithstanding, the RTC as formulated by Lefebvre and developed in various subsequent international, regional and national human rights frameworks specifically emphasise the right to housing, and additional rights such as the right to work, life and health as being encapsulated in the RTC²³⁷ (the location of housing provided must be close to be employment opportunities, affordable transport opportunities, health-care facilities, day-care centres, recreational amenities, etc.²³⁸). The RTC, in terms of its characteristics also specifically recognise the role of the poor and the marginalised in cities, and thus calls for increased participation by all urban inhabitants in decision making processes.²³⁹ In this regard, the RTC may be regarded as an intensified interpretation and development of General Comment 4 which initially stipulated that the right to adequate housing is to be widely interpreted.²⁴⁰ In light of knowledge gained from chapter 2 and chapter 3, chapter 4 will specifically discuss whether the South African Constitution and jurisprudence indicate that a RTC exists in South Africa.

²³⁶ United Nations General Assembly *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (2016) 3.

²³⁷ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 92.

²³⁸ United Nations General Assembly *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (2016) 4.

²³⁹ Purcell M (2002) 99-108.

²⁴⁰ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 106.

Chapter 4: The Right to the City in South Africa

*'It is shocking that the poor have to resort to the courts to fight for their democratic right to a home close to their place of work, school, essential services and livelihood opportunities.'*²⁴¹ - Bishop Garth Counsell

1. INTRODUCTION

Similar to trends noted globally, South Africa is also facing a housing crisis.²⁴² Housing backlogs are estimated at over two million units,²⁴³ and an estimated 1.4 million households are living in squatter camps and informal housing solutions located on urban peripheries.²⁴⁴ Due to excessive land and property costs²⁴⁵, limited availability of space, limits to planning and financial instruments and lack of infrastructure in appropriate places, formal housing solutions in locations close to employment opportunities and basic services and amenities in South Africa largely remain inaccessible to many lower income individuals.²⁴⁶

²⁴¹ Evans J 'Wealthy turning Woodstock residents into refugees, says church' News24.com available at <http://m.news24.com/news24/SouthAfrica/News/wealthy-turning-woodstock-residents-into-refugees-says-church-20170213> (accessed 12 May 2017).

²⁴² Mmusinyane BO *Comparative implementation strategies for the progressive realisation of the right to adequate housing in South Africa, Canada and India* (LLD thesis, University of South Africa, 2015) 11.

²⁴³ South African Institute of Race Relations *South Africa's Housing Conundrum* (2015) 1.

²⁴⁴ The Nelson Mandela Foundation 'Squatting' available at <https://www.nelsonmandela.org/omalley/cis/omalley/OMalleyWeb/03lv03445/04lv04206/05lv04271/06lv04272.htm> (accessed 18 May 2017).

²⁴⁵ Ndifuna Ukwazi *I used to live there: A call for transitional housing for evictees in Cape Town* (2017) 10-13.

²⁴⁶ Mmusinyane BO *Comparative implementation strategies for the progressive realisation of the right to adequate housing in South Africa, Canada and India* (LLD thesis, University of South Africa, 2015) 11-12.

Gentrification, commonly known as a process of urban renewal that starts with an increased capital investment into an area,²⁴⁷ has often been cited as one of the primary contributors to the housing crisis in urban South Africa described above. The process of gentrification creates and perpetuates spatial segregation and inequalities in cities,²⁴⁸ and ultimately results in physical and class transformation in the area(s) undergoing gentrification.²⁴⁹ The latter transformation is evidenced by surging purchase and rental prices of properties in urban areas, subsequently leading to the eviction and displacement of lower income individuals who are no longer able to afford to stay in the areas undergoing gentrification.²⁵⁰

In light of South Africa's entrenched history of racial discrimination manifested by, *inter alia* spatial inequalities and forced evictions,²⁵¹ the abovementioned eviction and displacement of lower income individuals to urban peripheries is particularly concerning and have led to widespread revolt and protest by residents and advocacy groups demanding for inclusionary housing developments in, or at least in close proximity to inner cities of South Africa.²⁵² These demands resemble demands for a 'RTC' in South Africa.

²⁴⁷ South African Cities Network *Beyond Gentrification: Exploration alternatives to urban renewal* (2016) 12.

²⁴⁸ United Nations General Assembly *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)* (2016) 4.

²⁴⁹ South African Cities Network *Beyond Gentrification: Exploration alternatives to urban renewal* (2016) 12.

²⁵⁰ Ndifuna Ukwazi *I used to live there: A call for transitional housing for evictees in Cape Town* (2017) 10-13.

²⁵¹ South African History Online 'Forced Removals in South Africa' available at <http://www.sahistory.org.za/article/forced-removals-south-africa> (accessed 16 September 2017).

²⁵² Examples of these advocacy groups include *Reclaim the City* and *Ndifuna Ukwazi*.

Further to the above, evictions, threats on security of tenure of urban dwellers, and the right to be an integral part of the decision-making process of defining the destiny of spaces are characteristic of both RTC²⁵³ and housing rights struggles generally, thus contributing to the argument that the RTC is a development of the right to adequate housing (premised on the wide interpretation that is afforded to this right in legal systems across the world). To this end, as argued by Strauss, adjudicating legally enforceable rights such as the right to housing specifically presents a 'potentially powerful avenue through which urban inhabitants can claim their right to the city'.²⁵⁴ It is thus important to reiterate that due to the nexus between the RTC and the right to access to adequate housing, in instances where national legal frameworks do not explicitly provide for a RTC, the development of housing rights, and the approach of the courts to these rights, are instructive when considering the existence and development of a RTC in a particular legal framework.²⁵⁵

Henceforth, as South Africa is one of these countries not providing for an explicitly defined RTC in its legal framework, this chapter will consider the existence (and development) of a RTC in South Africa by specifically considering the approach that the courts have taken when interpreting the right to access to adequate housing (particularly focusing on the stance taken by the courts in eviction matters).

2. THE DEVELOPMENT OF HOUSING RIGHTS - A RTC IN SOUTH AFRICA

²⁵³ Rolnik R 'Place, inhabitation and citizenship: the right to housing and the right to the city in the urban contemporary world' (2014) 3 *International Journal of Housing Policy* 293 - 300.

²⁵⁴ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 106.

²⁵⁵ Muller G (2015) 91.

Housing rights and the protection thereof have developed significantly since the inception of the Constitution in South Africa. These developments largely corroborate international developments²⁵⁶, and have emphasised that the right to access to adequate housing is not limited to the access to the physical structure of the house itself.²⁵⁷ Adequate housing comprises of more than just four walls and a roof, and requirements have been set regarding the overall location of the housing provided in order for the housing to be regarded as adequate.²⁵⁸ In this regard it is noted that the location of housing represents a central point of convergence between the RTC and the right to adequate housing.²⁵⁹

Taking the above into consideration, it is noted that the South African Constitution specifies that access to adequate housing should be provided to *everyone*²⁶⁰, and the adequacy of the location of housing therefore becomes particularly relevant - especially in instances where urban renewal programmes have led to the eviction and displacement of lower income individuals to urban peripheries.²⁶¹ Ancillary to this, as access to adequate housing should be provided to everyone, the Constitution also guards against the violation of this right, by explicitly providing that no one may be evicted from their home, or have their home demolished, without an

²⁵⁶ In *S v Makwanyane* 1995 6 BCLR 665 (CC), para 35, the CC held that international law includes binding and non-binding sources of international law and provides a valuable framework within which the Bill of Rights can be interpreted. To this end, the South African courts have considered the views of the Committee, the European Court of Human Rights, the United Nation Human Rights Committee, as well as United Nations report when deciding on human rights matters. See Dugard J *International Law: A South African perspective* (4 ed) (2011) 63, 320 – 365.

²⁵⁷ As previously indicated, South Africa signed the ICESCR on 3 October 1994, and later ratified the ICESCR on 12 January 2015. Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 142.

²⁵⁸ *Grootboom*, para 35.

²⁵⁹ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 167.

²⁶⁰ Section 26 of the Constitution.

²⁶¹ Hohmann J *The Right to Housing: Law, Concepts, Possibilities* (2013) 27.

order of the court mandating same subsequent to all of the relevant circumstances having been considered.²⁶²

Section 26(3) specifically stresses the social function of housing, and in line with international law (and specifically General Comment 7), these relevant circumstances that need to be considered by the courts include *inter alia* the availability of adequate alternative accommodation²⁶³, and the conducting of meaningful engagement between the State, all those who stand to be evicted and all other relevant parties.²⁶⁴ The aforesaid will be explicated in further detail below.



2.1 The social function of housing

The RTC at its core seeks to emphasise the social function of property (the RTC considers the use value of property as superior to the exchange value), and even in the absence of an explicit RTC, the South African legislature and courts appear to view property in the same manner. In this regard, the court in *PE Municipality*, stated that:

‘Section 26(3) evinces special constitutional regard for a person’s place of abode. It acknowledges that a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security.

²⁶² Section 26(3) of the Constitution.

²⁶³ *Grootboom*, para 34.

²⁶⁴ *Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009] ZACC 31; 2010 (2) BCLR 99 (CC) (14 October 2009) (hereafter referred to as the ‘*Abahlali*’ case), para 116 – 118.

Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent and hostile world.²⁶⁵

Appreciating the social function of housing emphasises that adequate housing is not only a luxury to be limited to a few privileged individuals, but instead, it is a necessity that should be guaranteed to 'everyone'. This is explicitly stated in the Constitution²⁶⁶, and as stated above, is akin to the RTC which dictates that the RTC, including provisions regarding adequate housing in the city, should be afforded to all city inhabitants.

A further similarity between the RTC and the Constitution in highlighting the social function of housing concerns the explicit recognition of the poor and marginalised members of society. The RTC gives specific consideration to these members of society. This is also noted in South Africa where the courts have explicitly emphasised the protection of the poor and the marginalised due to its history of social injustices. The Constitution and the RTC both seek to guard against homelessness, and both these instruments dictate that evictions may not render people homeless or vulnerable to the violation of other human rights (which includes the right to life, dignity, food, water, work, etc.). To this end, state evictions resulting in homelessness would only be justified if those who stand to be evicted are provided with adequate alternative accommodation.²⁶⁷ This has been captured in

²⁶⁵ *PE Municipality*, para 17.

²⁶⁶ Section 26(3).

²⁶⁷ *Occupiers of erven 87 & 88 Berea v Christiaan Frederick De Wet N.O.* [2017] ZACC 18.

various legislation such as the Prevention of Illegal Evictions Act²⁶⁸ (hereafter referred to as 'PIE'), and the Extension of Security of Tenure Act²⁶⁹ that stipulate the necessity of state-provided alternative accommodation as a measure to prevent homelessness.

2.1. 1 Adequate Alternative Accommodation

The term 'adequate alternative accommodation' has not yet been clearly defined by the South African legislature or jurisprudence. The legislature has however defined 'suitable alternative accommodation' as:

'Alternative accommodation which is safe and overall not less favourable than the occupiers' previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and having regard to the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use and services; their joint earning abilities; and the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active'.²⁷⁰

²⁶⁸ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. For further detail regarding this Act, please refer to Chapter 5.

²⁶⁹ Extension of Security of Tenure Act No 62 of 1997

²⁷⁰ Extension of Security of Tenure Act No 62 of 1997, section 1(1)(xvii).

It is noteworthy that the above definition of 'suitable alternative accommodation' makes specific reference to the location of the alternative accommodation as being in close proximity to employment opportunities or other economic activities. Further to this, international law regarding the definition of 'adequate alternative accommodation' is also instructive, and the Committee specifically requires that the alternative accommodation provided be well-located (thus close to employment opportunities and other amenities) in order for it to be regarded as 'adequate'.²⁷¹

In South Africa, the alternative accommodation provided by the state to those facing homelessness immediately subsequent to evictions usually takes the form of TRAs.²⁷² These are provided to evictees as an interim solution to prevent homelessness, and in Cape Town, the most well-known TRAs are those located in Blikkiesdorp²⁷³ or Wolwerivier.²⁷⁴ Dealing with Blikkiesdorp specifically, in *City of*

²⁷¹ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 159.

²⁷² TRAs have been established to accommodate *inter alia* those who cannot be accommodated on a site upgrade, and those who have lost their housing as a result of fire or severe weather events, and the municipality has established that it is too hazardous to provide an on-site emergency housing response. Housing Development Agency *Implementing of emergency housing* (2012) 51.

²⁷³ Blikkiesdorp, located approximately 20-30kms away from Cape Town, was established as a TRA in 2007. It is inhabited by *inter alia* former residents of Salt River, Woodstock, Sea Point and back-yarders from Delft who occupied N2 Gateway houses. Blikkiesdorp provides an illustrative example to the proverbial 'out of sight, out of mind'; it is a fenced-off settlement consisting of approximately 1 750 one-roomed corrugated iron houses, described by some of the inhabitants as a 'human dumping ground ravaged by poverty, illness and drug-induced crime'. Blikkiesdorp offers limited services to its residents. For example, residents are forced to share toilets and basins; there are overcrowded schools, few job opportunities and distant markets. According to research done by the Development Action Group one of the primary concerns of Blikkiesdorp residents pertains to the lack of access to essential services in the area. Development Action Group *Living On The Edge: A Study of the Delft Temporary Relocation Area* (2007) 36-37.

²⁷⁴ Wolwerivier is another TRA that has received increased media attention over recent years. Wolwerivier is located on a farm approximately 30km away from the Cape Town CBD. The first families to be relocated to Wolwerivier were from Richwood, and were relocated to Wolwerivier during July 2015. Many of the criticisms raised by the residents of Blikkiesdorp against the aforementioned TRA have been echoed by the residents of Wolwerivier. These criticisms mainly related to the units being overcrowded, and to the fact that Wolwerivier residents lost their livelihoods due to the relocation; many of these residents are still currently struggling with unemployment. A Social Audit done on the area and media reports state that in order to get to most nearby suburbs, residents need

Cape Town v Maart & Others, residents facing eviction to Blikkiesdorp alleged that Blikkiesdorp is not suitable as alternative accommodation.²⁷⁵ The court held that this alternative accommodation provided by the City of Cape Town was however reasonable premised on it just being a temporal solution.²⁷⁶ The court failed to pronounce on the adequacy of Blikkiesdorp should it be more permanent in nature, however an inference could be drawn that the court may have decided differently should they have known that residents who were moved to Blikkiesdorp during 2007, would still find themselves living in the same dire circumstances far from employment opportunities 10 years later. The court arguably followed a similar approach in the recent *Baron and Others v Claytile (Pty) Limited and Another* case wherein the CC ordered the respondent to transport the children who were subject to the eviction order, from Wolwerivier to the school they are presently attending and back home every day from the date of eviction until the end of the 2017 school year. The imposition of the fixed term can be interpreted as a reinforcement of the understanding the TRAs are merely interim solutions to the housing crisis.²⁷⁷

Notwithstanding the fact that TRAs are not intended to constitute permanent resettlement for evictees, the fact remains that many individuals who have been displaced to TRAs on an interim basis, often find themselves still living in these TRAs years later. It has been stated that the location of housing constitutes a key

to 'walk 4km to the N7 to hitchhike or catch a taxi, or walk 7km to Melkbosstrand to access public transport there'. Ndifuna Ukwazi *Wolwerivier Social Audit Report* (2016) 27 – 29.

²⁷⁵ *City of Cape Town v Maart & Others* (8667/2006) [2010] ZAWCHC 41 (16 March 2010), para 13 (hereafter referred to as the '*Maart*' case).

²⁷⁶ *Maart* case, para 35.

²⁷⁷ *Baron and Others v Claytile (Pty) Limited and Another* [2017] ZACC 24.

element of convergence between the right to adequate housing and the RTC²⁷⁸, and even in the absence of a clear decision by the courts regarding the adequacy of the location of TRAs as a permanent solution to the housing crisis, there is however sufficient jurisprudential evidence which would suggest that the residents of areas undergoing gentrification are entitled to live in (or be resettled in) areas in, or at least in close proximity to their current homes post-gentrification, in line with a RTC (although not explicitly referred to as such).

The *Joe Slovo* case²⁷⁹ laid the foundation of the care taken by the courts in ensuring that those relocated to TRAs are afforded with adequate housing. While this is one of the earlier cases on the issue, the court in this case already set out a detailed order in respect of the ultimate constitution of TRAs, thus indicative of a growing propensity by the courts to provide extra care and consideration to the poor and the marginalised. In *Joe Slovo* residents of informal settlements situated along the N2 were facing relocation to Blikkiesdorp.²⁸⁰ These residents opposed this relocation, averring that a relocation to Delft would leave them worse-off in socio-economic terms than they were in when living in the informal settlements along the N2.²⁸¹ The crux of the residents' objection concerning the move to Delft was not the quality of the TRA itself, but the limited employment opportunities in Delft coupled with the severely curtailed access to public transport there.²⁸² In a submission prepared by *Amici Curiae* (Submissions of the *Amici Curiae*: Community Law Centre (UWC) and

²⁷⁸ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 167.

²⁷⁹ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* 2011 7 BCLR 723 (CC).

²⁸⁰ *Joe Slovo*, para 19.

²⁸¹ Submission by the *Amici Curiae* in the *Joe Slovo* case p6.

²⁸² Submission by the *Amici Curiae* in the *Joe Slovo* case p10.

Centre on Housing Rights and Evictions (COHRE)) it was accepted that individuals living in informal settlements live on the margins of society and are dependent for their survival on fragile social and economic networks.²⁸³ These survival networks depend on the applicants' living within reasonable proximity to economically active areas. The *Amici Curiae* submitted that failing to take this concern seriously in determining the adequacy of housing is contrary to the values enshrined in the Constitution, and stated that the impact of location on people's livelihoods needs to be analysed more carefully before decisions on relocation are made.²⁸⁴ The CC eventually authorised the eviction of the applicants to Blikkiesdorp, subject to a set of strict requirements and specifications that all existing and future TRAs have to comply with in order for the state to discharge its duty to provide adequate alternative accommodation (the CC effectively gave minimum content to alternative accommodation provided by the State).²⁸⁵ Included in these criteria was an obligation placed on local government to provide transport facilities to the affected residents from the TRAs to amenities, including schools, health facilities and places of work.²⁸⁶

The *Joe Slovo* case illustrates the developing appetite by the courts to consider the location of adequate housing when deciding on the adequacy of alternative accommodation. Building on this, in the *Rand Properties* case the City of Johannesburg sought to evict over 300 people from six properties located in the inner city of Johannesburg alleging that the eviction of the evictees would promote

²⁸³ Submission by the *Amici Curiae* in the *Joe Slovo* case p10.

²⁸⁴ Submission by the *Amici Curiae* in the *Joe Slovo* case p109.

²⁸⁵ *Joe Slovo*, para 7.

²⁸⁶ *Joe Slovo*, para 7.

public health and safety and reverse inner city decay.²⁸⁷ The occupiers, relying on PIE, opposed the eviction, claiming *inter alia* that they were entitled to alternative accommodation. The High Court (hereafter referred to as HC) premised its judgment on section 26 of the Constitution, highlighting the fact that occupiers of the properties who earn some income do so by virtue of opportunities afforded by the close proximity of the properties to the centre of Johannesburg.²⁸⁸ According to the HC, the livelihood of occupiers depended crucially on their living at a site in, or adjacent to, the inner city.²⁸⁹ The HC held that an eviction of the occupiers would lead to a loss of employment for the occupiers, and in turn also a deprivation of their livelihood and therefore their right to dignity, and even their life. The HC, in line with a RTC, interpreted the right of access to adequate housing to also include the right to live in a location within reasonable distance of employment opportunities.²⁹⁰ While this judgment is significant when arguing for the existence of a RTC in South Africa, the Supreme Court of Appeal (SCA) however decided that the High Court erred in its decision, as the Constitution does not give a person a right to housing at state expense at a locality of that person's choice (i.e. the inner city).²⁹¹ The SCA acknowledged that the State would be failing in its duty if it were to ignore or fail to give due regard to the relationship between location of residence and the place where persons earn or try to earn their living, but a right of the nature envisaged by the court and the respondents is not to be found in the Constitution. The SCA subsequently held that while the City of Johannesburg is obliged to provide some

²⁸⁷ *Rand Properties*, para 21.

²⁸⁸ Chenwi L (2006) 1. These opportunities include informal trading, collecting and selling scrap metal, cleaning, and doing odd jobs in inner city suburbs.

²⁸⁹ Chenwi L (2006) 3.

²⁹⁰ Chenwi L (2006) 3.

²⁹¹ *Rand Properties*, para 44.

form of housing to the poor, this does not include an obligation upon the State to provide housing to the poor in the inner city specifically.²⁹²

Since the *Rand Properties* case, there have been a number of instances where the courts have addressed the importance of the location of housing. In *Blue Moonlight*²⁹³ for example, the CC had to consider whether the eviction of occupants from an old and dilapidated commercial property was just and equitable. In this matter it was also accepted by the CC that the location of the property in question was crucial to the income of the occupants.²⁹⁴ The occupants have stated that they would not be able to afford the transport costs necessitated by living elsewhere, and further stated that an eviction would render them homeless.²⁹⁵ The CC acknowledged that PIE was adopted with the objective of overcoming past abuses like the displacement and the relocation of people. In this matter, the CC held that the City of Johannesburg must provide relevant occupiers with temporary accommodation in a location as near as possible to the area where the property that they are being evicted from is situated.²⁹⁶ In addition to this case, in *Changing Tides*²⁹⁷ the SCA was once again faced with a similar issue.²⁹⁸ With regards to the provision of alternative accommodation, the SCA ordered that the City of Johannesburg needs to make accommodation available in a location as near as

²⁹² *Rand Properties*, para 44-45.

²⁹³ *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).

²⁹⁴ *Blue Moonlight*, para 6.

²⁹⁵ *Blue Moonlight Properties*, para 6.

²⁹⁶ *Blue Moonlight Properties*, para 104.

²⁹⁷ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* (SCA) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206 (SCA); [2013] 1 All SA 8 (SCA) (14 September 2012).

²⁹⁸ In this matter, *Changing Tides* owned Tikwelo House, a building which was previously a factory of a warehouse. Without the approval of the owners, people subsequently started to live in the factory, notwithstanding the fact that it was unsuited to human habitation. As a result of this, the City of Johannesburg gave *Changing Tides* notice to comply with public health and emergency service by-laws. *Changing Tides*, para 2.

feasibly possible to the area where Tikwelo House (the individuals who stood to be evicted resided at 'Tikwelo House') is situated.²⁹⁹

The provision of alternative accommodation that not only adheres to the requirements of adequacy, but is also in close proximity to previous accommodation (specifically the inner city) not only emphasises the social function of property in line with the RTC, but similarly in line with the RTC's principle of appropriation also illustrates an emphasised right by residents to physically access, *occupy* and use (full and complete) the urban spaces wherein they previously resided.

2.1.2 Meaningful Engagement

As indicated in Chapter 3, another crucial element of the RTC concerns the participation of inhabitants of cities in decisions that ultimately impact them. In this regard, the RTC maintains that inhabitants of cities should play a central role in any decision that contributes to the production of urban space.³⁰⁰

The Constitution, national legislation and international law all indicate that governments have a duty to promote and facilitate community participation.³⁰¹ The manner of active participation as envisaged by the RTC is arguably analogous to the mechanism of 'meaningful engagement'. It is however noted that citizen participation

²⁹⁹ *Changing Tides*, para 65.

³⁰⁰ Purcell M (2002) 102.

³⁰¹ Chenwi L & Tissington K *Engaging meaningfully with government on socio-economic rights - A focus on the right to housing* (2010) 7.

as envisaged by the RTC stresses the central role of urban inhabitants in decision making processes, while the process of 'meaningful engagement' focuses on a dialogue between all relevant parties in order to devise mutually beneficial solutions. In the *Olivia Road*³⁰² case 'meaningful engagement' was defined as a 'two way process' in which a local authority and those that stand to be affected by its decisions would talk to each other meaningfully with the aim of achieving certain objectives.³⁰³ Chenwi and Tissington state that 'meaningful engagement' expresses the dignity of the citizens in South Africa; it can promote social change on the ground by creating a voice for the poor and marginalised in South Africa.³⁰⁴

There is a wealth of case law that emphasises the duty placed on the government to meaningful engage with its citizens regarding decisions that will affect their standard of living. In *PE Municipality* for example, the CC focused on the importance of engagement and mediation as vital legal mechanisms in eviction proceedings, and housing policy. The CC commented that an effective method of obtaining reconciliation between parties in a dispute would be to encourage and require the parties to engage with each other in a proactive and honest endeavour to find mutually acceptable solutions'.³⁰⁵ Mediation and engagement encourage the humanisation of the other parties to a dispute, furthering an awareness of each as an individual bearer of rights and dignity.³⁰⁶ The CC also provided guidance on the manner in which 'meaningful engagements' are to be conducted, and in *Olivia Road*

³⁰² *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

³⁰³ *Olivia Road*, para 14.

³⁰⁴ Chenwi L & Tissington K (2010) 6.

³⁰⁵ *PE Municipality*, para 39.

³⁰⁶ *PE Municipality*, para 39.

the CC clarified that the obligation to engage meaningfully emanates from the Constitution itself.³⁰⁷ The CC stated that when a municipality seeks to evict occupiers and homelessness could ensue, the municipality *must* meaningfully engage with the occupiers regarding the eviction as well as alternative accommodation options based on the constitutional value of openness. To this end, the occupiers, owner and relevant municipality have to meaningfully engage on all aspects related to the eviction and the provision of temporary shelter to those who require it, and the absence of any engagement or the unreasonable response of a municipality in the engagement process would weigh heavily against the eventual grant an ejection order.³⁰⁸ On the contrary, the process of meaningful engagement however does not provide a platform for prospective evictees to continuously reject housing offers made by municipalities without just cause.³⁰⁹

The *Joe Slovo* case which has been described at length above, also bears relevance when discussing the concept of meaningful engagement. The CC in *Joe Slovo* laid down five separate concurring judgments which all underscored the importance of meaningful engagement to a determination of the reasonableness of any housing project, especially when relocation or eviction is pursued to facilitate such project. Importantly for the present purposes, the CC provided a detailed meaningful engagement order which included a range of issues on which the government is required to effectively consult occupiers, including detailed standards regarding the nature of the alternative accommodation to be provided.³¹⁰ In addition to this, the CC

³⁰⁷ Chenwi L & Tissington K (2010) 6.

³⁰⁸ *Olivia Road*, para 21.

³⁰⁹ *Baron and Others v Claytile (Pty) Limited and Another* [2017] ZACC 24.

³¹⁰ *Joe Slovo*, para 7.

in the *Abahlali* case further reiterated that no evictions should occur until the results of the proper engagement process are known.³¹¹ Proper engagement would include taking into proper consideration the wishes of the people who are to be evicted; whether the areas where they live may be upgraded, and whether there will be alternative accommodation.³¹² Essentially, those who stand to be evicted, need to be engaged meaningfully on any and all aspects which would have an impact on their living circumstances. The CC also determined that proper engagement would include a comprehensive assessment of the needs of the affected community or group of occupiers.³¹³

The above cases elucidate the importance of the active participation of 'ordinary citizens' in eviction proceedings. As already introduced above, this is akin to one of the key elements of the RTC, which require active participation by citizens of a city. It is however important to reiterate that while 'meaningful engagements' and citizen participation envisaged by the RTC are similar in respect of acknowledging the role of citizens in decision making processes, these processes however differ in the ultimate weight afforded to the role of inhabitants.³¹⁴ Citizen participation emphasises the role of the urban citizen as central to any decision impacting their lives, while the process of 'meaningful engagement' emphasises a balanced, two-way dialogue between all relevant parties.³¹⁵

³¹¹ *Abahlali*, para 69.

³¹² *Abahlali*, para 97.

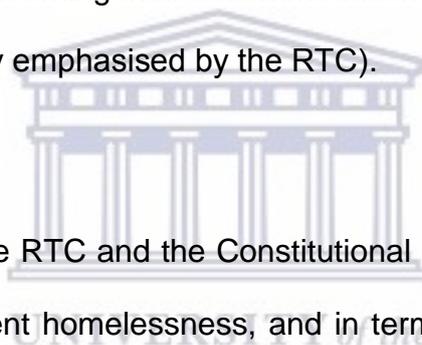
³¹³ *Abahlali*, para 97.

³¹⁴ To this end, the RTC focuses on the central role that citizens are to play in the making of a city. Purcell M (2002) 99-108.

³¹⁵ Purcell M (2002) 99-108.

3. CONCLUSION

Numerous similarities exist between the RTC and the manner in which the courts have developed its interpretation of the right to access to adequate housing in South Africa. The RTC is premised on the recognition of the social function of property/housing, and it is important to note that the South African courts view property/housing in the same manner. In line with this, both the RTC, and the South African courts' interpretation of the right to access to adequate housing confirm the central role that all individuals – specifically including the poor and the marginalised - should play in decisions concerning their accommodation (the concept of 'meaningful engagements' is particularly emphasised by the RTC).



In addition to the above, the RTC and the Constitutional right to access to adequate housing both seek to prevent homelessness, and in terms of the latter, the state is required to provide individuals facing potential homelessness as a consequence of evictions with adequate alternative accommodation. As indicated above, the point of convergence between the RTC and the right to adequate housing specifically concerns the location of housing provided, and the manner in which the courts have addressed the adequacy of the location of housing is therefore particularly relevant in the present instance. This bears specific relevance as residents from areas undergoing gentrification who face relocation to TRAs are increasingly questioning whether they have a right to reside in the inner city, or areas close thereto, in line with a RTC.

Addressing the location of housing specifically, the courts have held that the alternative accommodation provided by the state must be located in close proximity to employment opportunities, and also in close proximity to the area wherein the residents facing eviction previously resided. For inner city inhabitants facing eviction, this could thus be interpreted as a right to stay in, or at least in close proximity to the inner city. The decisions by the courts therefore point towards the existence of a RTC in South Africa. It is however imperative to note that while the courts have endeavoured to ensure that the disruption that displacement poses to the lives of prospective evictees are limited by ordering that municipalities provide accommodation close to the original accommodation of prospective evictees (which are usually closer to employment opportunities), this does not include a demand to live in a location of choice (such as a demand to live in the inner city).

The case law discussed evidence a significant development to the RTC in South Africa. In light of this, Chapter 5 will thus consider what the State's obligations are in terms of this right.

Chapter 5: State responsibilities

'.. the achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization.' -

Principle 6 of the Limburg Principles

1. INTRODUCTION

As discussed in the previous chapter, recent housing and specifically eviction case law have illustrated an increased inclination by the courts to particularly consider the location of housing when deciding on the overall 'adequacy' thereof. It has been argued that the courts have held that prospective evictees from urban areas in need of government housing should be relocated to areas in close proximity to their original accommodation.³¹⁶ The continuous development of the right to access to adequate housing as included in the South African Constitution and the manner in which the courts have interpreted this right therefore arguably provides sufficient scope for an interpretation of a RTC in South Africa.³¹⁷

The RTC seeks to protect the right to adequate housing and aims to act as a legal barrier against forced evictions. The mere existence of a right is however rendered futile without respective role-players tasked with implementing and advancing same, and in this regard, the RTC implies certain responsibilities on both governments and

³¹⁶ The HC in *Rand Properties*, for example interpreted the right to access to adequate housing as a right to live in a location within reasonable distance of employment opportunities.

³¹⁷ Kitching A, Drimie S & Van Donk M 'South Africa and the Right to the City: Exploring the potential for, and limits to, the realisation of progressive urban rights' in *Moving Toward the Implementation of the Right to the City in Latin America and Internationally* (2015) 135-153.

people to claim, defend, and promote this right.³¹⁸ In the South African context specifically, the Constitution contains a complex system of allocation of responsibilities to various spheres of government³¹⁹, and as the RTC developed from the wide interpretation afforded to the right to access to adequate housing, it is imperative to discuss the responsibilities of the State in relation to housing rights generally. In this regard the Constitution prescribes that the State, in the form of national, provincial and local government, is obliged to respect, promote and fulfil the rights contained in the Bill of Rights³²⁰, which places both positive as well as negative obligations on the State³²¹. In the context of housing, this is to be read in conjunction with section 26 of the Constitution which explicitly provides that the State has to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the right to housing.³²²

While the previous chapter focused on the existence of a RTC in South Africa, this chapter will specifically consider the responsibilities of the State as a role-player in relation to the implementation of this right.

2. THE STATE'S DUTY TO RESPECT, PROTECT, PROMOTE AND FULFILL

³¹⁸ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 5.

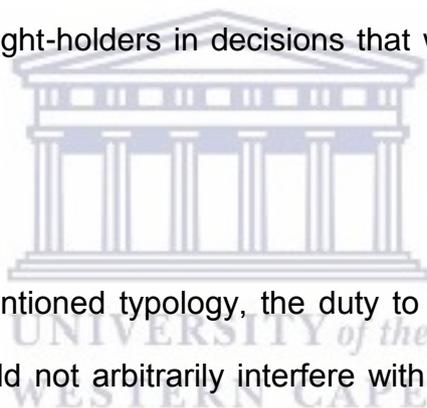
³¹⁹ De Visser J 'A perspective on local government's role in realising the right to housing and the Grootboom judgment' (2005) *Law, Democracy and Development* 202.

³²⁰ The Constitution, section 7(2).

³²¹ The Constitution, section 7(2).

³²² Section 26(2).

The Constitution is clear about the rights and opportunities that all South Africans should be able to claim.³²³ It envisages the transformation of society by addressing inequality in all of its forms and ensuring that all inhabitants are active and equal participants in the development of society.³²⁴ For the purposes of realising this vision, the Constitution dictates that the State is obliged to respect, promote and fulfil the rights contained in the Bill of Rights,³²⁵ and as stated by Henry Shue, the realisation of a right is contingent on the fulfilment of the aforesaid typology of state duties.³²⁶ These duties prevent the State from undermining people's enjoyment of human rights and force the State to take positive steps to protect and advance the realisation of human rights - including the advancement of processes that allow for the active participation of right-holders in decisions that will affect the enjoyment of their rights.³²⁷



In explicating the abovementioned typology, the duty to 'respect' rights specifically means that the State should not arbitrarily interfere with people's rights, or pose a barrier for them to gain access to these rights.³²⁸ This duty constitutes a negative obligation requiring the state to do nothing and to do no harm,³²⁹ and is of particular significance where the individual already enjoys the right, and there is a threat to remove it.³³⁰ Liebenberg has written that a violation of the duty to 'respect' a right 'arises when the state, through legislative or administrative conduct, deprives people

³²³ Isandla Institute *Communique on the Right to the City* (2011) 2.

³²⁴ Mokgoro J Y *First Colloquium Constitution and Law: Ubuntu and the law in the South* (1997) 5.

³²⁵ Section 7(2).

³²⁶ Dafel M 'The negative obligation of the housing right: An analysis of the duties to respect and protect' (2013) 3 *South African Journal on Human Rights* 591.

³²⁷ Khoza S *Community Law Centre: Socio-economic Rights in South Africa* (2007) 35.

³²⁸ Khoza S (2007) 35.

³²⁹ Dafel M (2013) 591.

³³⁰ D Brand & Heyns C.H (eds) *Socio- economic rights in South Africa* (2005) 9.

of the access they enjoy to socio-economic rights'.³³¹ The courts have specifically held that a violation of the duty to 'respect' occurs in instances where the eviction of occupiers from private land took place earlier than the date ordered by the Magistrate and in circumstances that saw squatters' homes bulldozed;³³² where the law allows the sale of housing in order to settle small civil debts in situations that could render people homeless;³³³ and where people are evicted from land they occupied for some time without anyone objecting, without anyone stating that they needed to use the land urgently, and without alternative accommodation being made available to the occupiers.³³⁴ As stated by the CC, 'although the subsection 26(1) does not expressly say so, there is, at the very least, a negative obligation placed upon the state and all other entities and persons to desist from preventing or impairing the right of access to housing.'³³⁵

The duty to 'protect' a right, in turn, requires the State to take measures that prevent third parties such as powerful organisations (including banks, employers and landlords) from interfering with a person's ability to exercise a right.³³⁶ This duty is viewed in international law as a method of imposing liability on the state.³³⁷ It is generally characterized as a positive obligation, and also includes the duty of the state to take affirmative measures³³⁸ and to design laws and social institutions so

³³¹ Liebenberg 'Socio-economic rights' in Chaskalson & Others (ed) *Constitutional Law of South Africa* at 41.

³³² *Grootboom* case.

³³³ *Jaftha v Schoeman* case

³³⁴ *PE Municipality* case

³³⁵ *Grootboom*, para 34.

³³⁶ D Brand & Heyns C.H (eds) (2005) 10.

³³⁷ DM Chirwa 'African Regional Human Rights Systems' in M Langford (ed) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2008) 323 - 328.

³³⁸ *Dafel M* (2013) 591.

that people can fulfil their duties to avoid deprivation.³³⁹ The discharge of this duty may prove difficult as the State has the duty to protect various competing rights such as in the instance of property³⁴⁰, and the State therefore has to carefully construct and enact laws and policies that provide an appropriate balance between different competing interests.³⁴¹ In relation to housing specifically, the State has given effect to the duty to 'protect' through the enactment of statutes which give protection to people whose tenure of their homes is insecure, and who are vulnerable to eviction,³⁴² such as PIE³⁴³ which sets out fair procedures and criteria for eviction.

The duty to 'promote' and the duty to 'fulfil' are closely affiliated, and are often considered concurrently. These duties are both characterized as positive obligations.³⁴⁴ With regards to the former duty, the duty to 'promote' a right means to further it or advance it.³⁴⁵ The duty to 'promote' includes a duty to raise awareness of rights - to bring rights and methods of accessing and enforcing them to the attention

³³⁹ D Brand & Heyns C.H (eds) (2005) 10.

³⁴⁰ As an illustration of competing interests, in the case of *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others (Mukhwevho Intervening)* (CCT 55/00) [2001] ZACC 19; 2001 (3) SA 1151 (CC); 2001 (7) BCLR 652 (CC) (29 May 2001), the CC was faced with residents objecting to the state establishing a temporary settlement camp on land which it owned (the temporary settlement was to aid several hundred people that had been washed away by floods). The objection was based on an assertion by the residents that the value of their property would be adversely affected, and the peaceful environment in which they lived would be affected should the settlement camp be erected. The CC commented that even though the interests of the Kyalami residents may be affected, this case concerns not only their interests, but also the interests of flood victims. The court further went on to state that flood victims have a constitutional right to be given access to housing, and the fact that property values may be affected by low cost housing development on neighbouring land is a factor that is relevant to the housing policies of the government and to the way in which government discharges its duty to provide everyone with access to housing. But it is only a factor and cannot in the circumstances of the present case stand in the way of the constitutional obligation that government has to address the needs of homeless people, and its decision to use its own property for that purpose.' para 108.

³⁴¹ Dafel M (2013) 591.

³⁴² Budlender G 'Justiciability of the Right to Housing' in Leckie S (ed) *National Perspectives on Housing Rights* (2003) 210.

³⁴³ PIE is described in further detail below.

³⁴⁴ Dafel M (2013) 591.

³⁴⁵ Budlender G (2003) 210.

of right holders, and to promote the most effective use of existing human rights.³⁴⁶

The obligation to advance the right to housing clearly places a positive duty on the State to create an enabling environment which will further or advance the realisation of the right to housing.³⁴⁷ The CC in the *Grootboom* case held that the State has to create the conditions for access to adequate housing for people at all levels of our society.³⁴⁸

The duty to 'fulfil' creates a positive obligation by the State to actively take reasonable measures (reasonable legislative, administrative, budgetary, judicial, promotional and other measures) to ensure the effective realisation of rights so that those that do not currently enjoy access to rights are afforded the ability to do so, and so that the existing enjoyment of rights is enhanced.³⁴⁹ A court considering reasonableness will not inquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent – the question will be whether the measures that have been adopted by the State are reasonable.³⁵⁰ The measures taken by the State must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs of individuals, and when local councils seek to evict homeless people, courts increasingly ask the councils what they have done, and what they are going to do.³⁵¹ The duty to 'fulfil' is often considered to be the most contentious by the courts due to the fact that the positive enforcement of socio-

³⁴⁶ D Brand & Heyns C.H (eds) (2005) 10.

³⁴⁷ Budlender G (2003) 212.

³⁴⁸ *Grootboom*, para 35.

³⁴⁹ Budlender G 'Justiciability of socio-economic rights: Some South African experiences' in YP Ghai & J Cottrell (eds) *Economic, social and cultural rights* (2004) 33.

³⁵⁰ Liebenberg S in Langford M *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2008) 84.

³⁵¹ Budlender G (2003) 211.

economic rights poses difficulties for courts regarding their role in the review of state policy.³⁵² These difficulties specifically pertain to the democratic legitimacy of courts to decide matters of socio-economic policy, as well as the competence of the court to decide these matters which may have budgetary implications³⁵³ (for instance, the court may require the state to allocate resources to shelter the homeless and build sustainable homes for people who cannot afford to otherwise do so).³⁵⁴ The court has however made it clear that the fact that socio-economic rights will almost inevitably give rise to budgetary implications does not pose a bar to their justiciability.³⁵⁵

3. LEGISLATIVE AND OTHER MEASURES

As provided above, the duty to 'fulfil' in terms of section 26 requires the State to take 'reasonable legislative and other measures' to achieve the progressive realisation of the right to adequate housing.³⁵⁶ In attainment of this duty specifically, the State has made a number of legislative and other (including policies) efforts towards the advancement of the right to access to adequate housing.³⁵⁷ These measures do not only provide context to the physical form of housing that the State needs to provide in order to discharge of its duty to 'fulfil', but also address other factors such as the necessity of the state to meaningfully engage with inhabitants with regards to

³⁵² Budlender G (2003) 213.

³⁵³ Budlender G (2003) 213.

³⁵⁴ Dafel M (2013) 591.

³⁵⁵ *In Re: Certification of the Constitution of the Republic of South Africa*, 1996 (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996).

³⁵⁶ Budlender G (2003) 211.

³⁵⁷ Budlender G (2003) 211.

housing matters³⁵⁸ (meaningful engagement in the South African context has been discussed in Chapter 4, and is thus not repeated herein). Interestingly therefore, in exercising its duty to 'fulfil' the right to access to adequate housing, the legislature's own interpretation of the aforesaid right and its obligations in relation thereto in itself also strengthen the development of a RTC in South Africa. A few of the State's efforts in relation to housing rights are described in further detail below.

3.1 PIE

PIE came into force during June 1998, and was enacted to protect housing and property rights in an eviction context.³⁵⁹ PIE put in place fair procedures for the eviction of unlawful occupiers who occupy land without permission of the owner or person in charge of such land.³⁶⁰ It requires that the court considers all the relevant circumstances prior to allowing an eviction, which specifically includes the availability and provision of 'suitable alternative accommodation'.³⁶¹ PIE also requires that special consideration be given to the duration of the unlawful occupation, as well as to the rights of the elderly, children, disabled persons, and households headed by women.³⁶² As argued by Strauss, PIE represents a valuable legal platform from which the urban poor can assert their RTC, as it affords the urban poor substantive and procedural safeguards that protect their right to be physically present in the

³⁵⁸ Budlender G (2004) 33.

³⁵⁹ O'Regan C 'No more forced removals? An historical analysis of the Prevention of Illegal Squatting Act' (1989) 5 *South African Journal on Human Rights* 361.

³⁶⁰ PIE, section 4.

³⁶¹ PIE, section 6(2)(c).

³⁶² PIE, section 4.

space of the city, while allowing them the opportunity to participate in decisions that affect the urban space, such as eviction.³⁶³

3.1 The National Housing Act (referred to as the 'Housing Act')³⁶⁴

The Housing Act provides the national framework for housing, including the roles and responsibilities of the three spheres of government.³⁶⁵ In this regard, the Housing Act indicates that all three spheres of government must give priority to the needs of the poor in respect of housing developments, consult meaningfully with individuals and communities affected by housing developments, and ensure that housing developments *inter alia* are economically fiscally, socially and financially affordable and sustainable, and is administered in a transparent, accountable and equitable manner, upholding the practice of good governance.³⁶⁶ The Housing Act prescribes that national government has the overall responsibility for a sustainable housing development process,³⁶⁷ while provincial government must promote and facilitate the provision of adequate housing in its province within the national housing policy framework.³⁶⁸ In this regard, the provincial government is required to determine provincial policy in respect of housing development, take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development, and prepare and maintain a multi-year plan in respect of the execution

³⁶³ Strauss M *A right to the city for South Africa's urban poor* (LLD Dissertation, Stellenbosch University, 2017) 213 – 214.

³⁶⁴ Act 107 of 1997.

³⁶⁵ De Visser J (2005) 205.

³⁶⁶ Housing Act, section 2(1).

³⁶⁷ De Visser J (2005) 205.

³⁶⁸ Housing Act, section 7.

in the province of every national housing program and every provincial housing program.³⁶⁹ Local government has a distinct and very important role with regards to the realisation of the right to access to adequate housing. As part of the municipality's process of integrated development planning, local government is tasked with taking all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure, *inter alia* that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis.³⁷⁰ The specific role of local government in relation to the discharge of its duty to fulfil the right to access to adequate housing will be discussed in further detail in section 5 below. The Housing Act also makes provision for a National Housing Code which sets the underlying policy principles, guidelines, norms and standards which apply to the South African government's various housing assistance programs.³⁷¹



3.2 The Social Housing Act³⁷²

The Social Housing Act is another example of a legislative measure adopted by the State to promote a sustainable housing regime. The Social Housing Act provides that priority should be given to the needs of low and medium income households in respect of social housing developments, and all three spheres of government are required to ensure that their respective housing programs are responsive to local housing demands, with special priority being given to the needs of women, children,

³⁶⁹ Housing Act, section 7.

³⁷⁰ De Visser J (2005) 207.

³⁷¹ *Malan v City of Cape Town* [2014] ZACC 25 para 4.

³⁷² Act 16 of 2008.

child-headed households, persons with disabilities and the elderly.³⁷³ The Social Housing Act supports the economic development of low to medium income communities by requiring that social housing be close to jobs, markets and transport and by stimulating job opportunities to emerging entrepreneurs in the housing services and construction industries.³⁷⁴ The Social Housing Act requires that the State consult with interested individuals, communities and financial institutions in all phases of social housing development; and facilitate the involvement of residents and key stakeholders through consultation, information sharing, education, training and skills transfer, thereby empowering residents.³⁷⁵ The Social Housing Act also stipulates that all three spheres of government promote the social, physical and economic integration of housing development into existing urban and inner-city areas through the creation of quality living environments and promote the suitable location of social housing stock in respect of employment opportunities.³⁷⁶



3.3 Spatial Planning and Land Use Management Act (hereafter referred to as 'SPLUMA')³⁷⁷

SPLUMA inscribes spatial aspects into the right to housing by articulating this as a right to 'equitable spatial patterns and sustainable human settlements'.³⁷⁸ It acknowledges that many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws, and requires the

³⁷³ *Madulamoho Housing Association v Masibi Gaitsewe and Others* (35151 /2012) [2013] ZAGPJHC 49 (11 March 2013) at 10 and 15.

³⁷⁴ Social Housing Act, section 2(1)(b).

³⁷⁵ Social Housing Act, section 2(1)(e).

³⁷⁶ Social Housing Act, section 2(1)(iv).

³⁷⁷ Act 16 of 2013.

³⁷⁸ *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others* [2016] ZACC 2 at 33.

promotion of 'social and economic inclusion' and redress in order to address these past injustices.³⁷⁹ SPLUMA requires that each sphere of government prepare and adopt a spatial development framework which is legally binding, and subject to review every five years.³⁸⁰

3.4 The National Development Plan 2030 (hereafter referred to as the 'NDP')

The South African government launched the 'NDP' as an attempt to eliminate poverty and reduce inequality.³⁸¹ The NDP includes plans to reduce the costs of food, commuter transport and housing for low-income and working-class households,³⁸² and it evidences increased responsibility being placed on local governments (based on the argument that responsibility for housing should shift to the level at which planning is executed – i.e. the municipal level).³⁸³ The NDP also calls for the prioritisation of the upgrading of informal settlements on suitably located land by 2030, including having more people living closer to their places of work, and providing better public transport infrastructure and systems, including the renewal of the commuter rail fleet, supported by enhanced links with road-based services, and more jobs in or close to dense, urban townships.³⁸⁴

³⁷⁹ Act 16 of 2013, Preamble.

³⁸⁰ Act 16 of 2013, chapter 4.

³⁸¹ National Planning Commission *National Development Plan 2030: Our future - Make it Work* (2011)

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³⁸² National Planning Commission *National Development Plan 2030: Our future - Make it Work* (2011)

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³⁸³ National Planning Commission *National Development Plan 2030: Our future - Make it Work* (2011)

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³⁸⁴ National Planning Commission *National Development Plan 2030: Our future - Make it Work* (2011)

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3.5 The Western Cape Five Year Integrated Development Plan 2012 – 2017 (hereafter referred to as the 'WCIDP')

In the WCIDP, the City of Cape Town recognizes its challenge to ensure human settlements and housing to those in need, as well as the its need to provide housing more rapidly in a more integrated and sustainable manner.³⁸⁵ The WCIDP recognises that successful urban restructuring include higher-density housing developments in well-located areas, major improvements in public transport to link fragmented places, higher employment levels in townships and informal settlements, and the upgrading of informal settlements.³⁸⁶ The WCIDP recognises the role of cities by specifically stating that 'cities are important locations of opportunity; for accessing a better life, including shelter, services, health, education, leisure, interaction with diverse cultures, intellectual stimulation and personal growth, and for developing a sense of belonging'.³⁸⁷ From the perspective of creating more resilient cities, it acknowledges that the mechanisms for future housing design, production and delivery may need to be more participative, flexible and responsive to household needs and capacities (including budgets).³⁸⁸

4. LIMITED RESOURCES

³⁸⁵ The Western Cape *Integrated Development Plan 2012 - 2017 - 2016/17 Review and Amendments* (2015) 17.

³⁸⁶ The Western Cape *Integrated Development Plan 2012 - 2017 - 2016/17 Review and Amendments* (2015) 85.

³⁸⁷ The Western Cape *Integrated Development Plan 2012 - 2017 - 2016/17 Review and Amendments* (2015) 17.

³⁸⁸ The Western Cape *Integrated Development Plan 2012 - 2017 - 2016/17 Review and Amendments* (2015) 17.

With regards to the provision of alternative accommodation and especially the criticisms raised against TRAs and social housing developments, one of the primary defences by the State is that it lacks necessary resources and that it is doing all that is possible in the circumstances. It has previously, in Chapter 3, been discussed that the RTC envisages a utopian urban environment for all citizens to live in - a vision which may be particularly difficult to realise in developing countries where there may be a scarcity of available resources.

The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* provide that 'resource scarcity is not a valid argument for lifting a State's minimum obligations' with regards to the implementation of socio-economic rights.³⁸⁹ In line with this, the South African courts have, in respect of housing rights, clarified that the positive obligation to fulfil the right to housing is justiciable even in resource-constrained situations.³⁹⁰ The availability of resources is but one of the factors to be taken into account when deciding whether the State discharged its duties in relation to housing rights,³⁹¹ and as stated by the court in *Grootboom*, there is a balance between goal and means. In this regard, the measures taken by the State must be calculated to attain the goal expeditiously and effectively and the availability of resources is an important factor in determining what is reasonable.³⁹² This notwithstanding, the State has an obligation to at least adopt strategies and low-cost programs to protect vulnerable groups even when it is clear that it does not have

³⁸⁹ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, guideline 10.

³⁹⁰ Budlender G (2003) 217.

³⁹¹ The CC in the *Soobramoney* case stated that the obligations imposed on the State in relation to access to health, food, water and housing are dependent upon the resources available for these purposes. *Soobramoney*, para 11.

³⁹² *Grootboom*, para 47.

sufficient resources to realise the rights fully.³⁹³ Furthermore, while a judgment may not always result in an order for provision of specific benefits to specific individuals immediately, judgements can still have results of a far-reaching and fundamentally important nature in the achievement of the right to housing.³⁹⁴ Given a lack of resources and the significant demands imposed upon the State, the State thus has to utilise its limited resources towards the general advancement of socio-economic rights. This requires the State to adopt a holistic approach to the larger needs rather than to focus on the specific needs of particular individuals.³⁹⁵

5. THE RTC AND THE SPECIFIC ROLE OF LOCAL GOVERNMENT

The RTC developed from the right to adequate housing, and it is therefore expected that the State's responsibilities in terms of the RTC largely emulate the State's obligations in terms of the right to access to adequate housing. While the right to access to adequate housing places obligations on all three spheres of government³⁹⁶, it has however been introduced above that the right to access to adequate housing also places very specific and imperative obligations upon local governments.³⁹⁷ In respect of the duty to 'fulfil', for example, local governments are responsible for the fulfilment of socio-economic rights in terms of taking legislative, administrative or budgetary measures only if the subject matter first, falls within the competencies set out in Schedules 4B and 5B or the Constitution, or second, has

³⁹³ *Grootboom*, para 47.

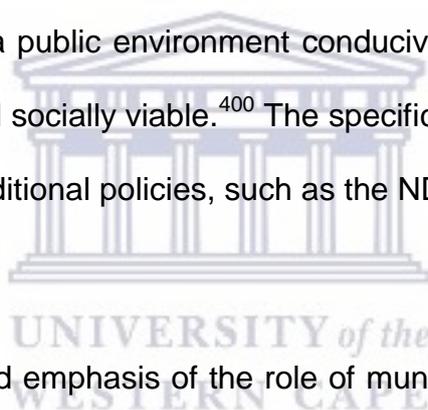
³⁹⁴ Tissington K (2010) 15.

³⁹⁵ Tissington K (2010) 15.

³⁹⁶ De Visser J (2005) 3.

³⁹⁷ De Visser J (2005) 3.

been assigned to local government by national or provincial legislation.³⁹⁸ The Housing Act clearly stipulates that housing development falls squarely within the realm of each municipality's integrated development plan, and municipalities must therefore take all reasonable and necessary steps to enable residents of the municipal area to have access to adequate housing on a progressive basis (thus also preventing or removing conditions that are not conducive to health and safety; and providing a package of water, sanitation, electricity, roads, storm water drainage and transport services in an economically sustainable way).³⁹⁹ In addition to this, municipalities must set housing delivery goals for its area and designate land for housing development, it must plan and manage land use and development, and it must create and maintain a public environment conducive to housing development, which is also financially and socially viable.⁴⁰⁰ The specific role of municipalities have also been highlighted in additional policies, such as the NDP and the WCIDP.



The specific recognition and emphasis of the role of municipalities as per the above legislative documents is in line with the RTC. The RTC unequivocally emphasises the important role of local governments by discussing the elements of the RTC in the context of cities (and thus local authorities) specifically.⁴⁰¹ As per the RTC, the making of a city takes place within governance structures⁴⁰² that contain the policies

³⁹⁸ De Visser J (2005) 3.

³⁹⁹ De Visser J (2005) 3.

⁴⁰⁰ De Visser J (2005) 3.

⁴⁰¹ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

⁴⁰² United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

that guide the city and the legislation that governs the city in ensuring that the making of a city is fair and just for all.⁴⁰³

Further to the above, and in relation to the element of 'participation' specifically, the RTC stresses the necessity of meaningful engagements between the State (and specifically local authorities) and all relevant parties who stand to be affected by decisions that will have an impact on their living conditions. In this regard, the RTC dictates that the success of the city relies on the inter-connection between different stakeholders that exert influence in society, including civil society, para-statal agencies, the private sector, and the different spheres of government which includes a central role for local or metropolitan governments and networking with local stakeholders. While the right to access to adequate housing already requires the consideration of the poor and the marginalised, the RTC further emphasises this, and calls for an increased strategic alliance of key urban actors, including all inhabitants, whether permanent or transitional, living in legal or informal condition, to take place at global, national and local level.⁴⁰⁴ In this manner the RTC present a significant development in the human rights and particularly housing rights regime by enjoining all with the task of collectively shaping and making the city and by recognizing the value of disagreement and debate.⁴⁰⁵ It specifically recognizes the role of inhabitants - particularly the poor and those from disadvantaged groups - in participating to shape the city and in participating in all programs that may affect their

⁴⁰³ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

⁴⁰⁴ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) at 5.

⁴⁰⁵ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) at 6.

quality of life.⁴⁰⁶ This recognition places an increased responsibility on States – and particularly local authorities – that goes beyond just ensuring free and fair government elections, and entails the State creating a platform to allow for the meaningful participation of all relevant parties in the governance processes of a city.⁴⁰⁷ This platform should recognize that not all actors have an equal say in the city, and that some may exert greater influence on the making of the city than others.⁴⁰⁸ In this regard the RTC envisages the creation of effective participation in all city place-making and governance processes through integrating the needs of multiple social actors; embedding participatory and sustainable urban development processes in all governance mechanisms; enabling socially responsible private sector participation; supporting civil society participation (including NGOs, grassroots groups, community-based organizations, etc.); fostering co-responsibility of participating actors; promoting integrated governance and capacity building for key government staff; promoting deliberative urban processes; and prioritizing the needs of vulnerable and marginalized groups.⁴⁰⁹

In respect of the element of ‘citizenship’, it is noted that the RTC can only be realized when structures, processes, and policies created by the State enable all inhabitants as social and political actors to exercise the full content and meaning of citizenship.⁴¹⁰ Specific policies are thus required to ensure that women, as well as

⁴⁰⁶ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) at 6.

⁴⁰⁷ Purcell M (2014) 149.

⁴⁰⁸ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 7.

⁴⁰⁹ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 6.

⁴¹⁰ Purcell M ‘Citizenship and the Right to the Global City: Reimagining the Capitalist World Order’ (2003) 27 *International Journal of Urban and Regional Research* 564.

marginalized groups, have effective access to political agency and access are meaningfully consulted in respect of decisions that affect their urban life.⁴¹¹ This process would allow for a transformation of cities to a standard that fully meets the everyday needs and aspirations of inhabitants, and which is able to confront the challenges faced by settlements.⁴¹² In this way, the significant control exerted by capital and state elites over decisions regarding the organization and management of the city and its spaces are lessened, and urban space, land, and property are reconfigured in a manner that maximizes use-value of cities for all inhabitants.⁴¹³

The success of the RTC also requires transparency and accountability on the part of specifically local authorities in respect of decision-making and the allocation of opportunities and resources.⁴¹⁴ Transparency and accountability in urban processes binds together actors and structures in the city, and the processes that make and shape the city, thus humanizing the city, and enabling its opportunities.⁴¹⁵ In ensuring the aforementioned, local authorities should guard against lack of transparency in financial and political processes; lack of inclusive and participatory strategic urban planning and policy making; lack of an integrated vision among government sectors and actors; a biased policy making; lack of effective monitoring involving urban residents, especially vulnerable and marginalized groups; weak

⁴¹¹ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

⁴¹² United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 6.

⁴¹³ Purcell M (2014) 142.

⁴¹⁴ Habitat International Coalition *Habitat III National Reporting Processes: Locating the Right to the City and the Role of Civil Society* (2015) 1.

⁴¹⁵ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 11.

social demographic evidence-based policy making; and a non-existent national system of social standards.⁴¹⁶

In addition to the elevated cognisance of the role of all relevant parties in decision making processes, the RTC requires that the State (and thus also local authorities) also address the physical characteristics of cities. The management of urban features and the physical form of cities is a central challenge for local governments to ensure social, cultural, and economic inclusion, and protection of common assets for all city inhabitants.⁴¹⁷ Spatial strategies and urban planning practices have a profound impact on people's experiences of city life and on social integration and inclusion. Participatory planning can prioritize environmentally just and socially-inclusive urban development, and respond to the needs for shelter, livelihoods, and urban services of the vulnerable and marginalized people. Local authorities should also allow for improved access to public spaces, transport, and green environments which are able to foster cultural diversity, integration, and urban resilience.⁴¹⁸

Taking the above into consideration, local governments therefore have a central role in the promotion, protection, and guarantee of the RTC.⁴¹⁹

6. CONCLUSION

⁴¹⁶ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 11.

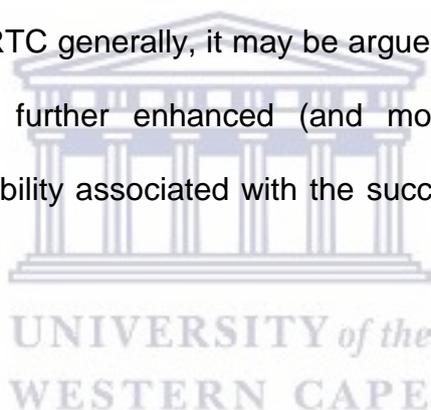
⁴¹⁷ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

⁴¹⁸ United Nations Conference on Housing and Sustainable Development *Habitat III Policy Paper 1 - Right to the City and Cities for All* (2016) 10.

⁴¹⁹ Purcell M (2002) 100.

It has numerous times been reiterated that the RTC developed as a result of the wide interpretation that has been given to the right to adequate housing. This is particularly relevant in the South African context, where there is no express reference to a 'RTC'. This was discussed at length in chapter 4. Important for the present purposes, the Constitution contains a complex system of allocation of responsibilities to various spheres of government with regards to the fulfilment of the Bill of Rights. Due to the nexus between the right to adequate housing and the RTC, it is therefore imperative to note the responsibilities of the State in relation to housing rights generally (when discussing the obligations of the State in relation to the RTC). Further to this, the Constitution prescribes that the State has to respect, protect, promote and fulfil the right to access to adequate housing (this is to ensure that all inhabitants are able to enjoy the rights contained in the Constitution on a progressive basis). In relation to the latter duty specifically, the State has to provide reasonable legislative and other measures towards the fulfilment of the right to access to adequate housing. The State, in discharge of this duty, enacted various legislation and policies to date. These legislation and policies address the physical composition of housing, as well as the overall location of where adequate housing is to be situated. The legislation and policy documents also reiterate the importance of meaningful engagements between all relevant parties. Interestingly, the additional legislation and policies cumulatively favour the recognition of a 'RTC' in South Africa.

In addition to the above, the additional legislation and policies enacted by the State, as well as the RTC both places increased responsibilities on local governments. This includes increased measures upon local governments to further enhance meaningful engagements between the State and all relevant parties. This is to ensure that all city inhabitants play a role in the making of cities – this is central to the RTC. To this end, the RTC can only be realized when structures, processes, and policies created by the State enable all inhabitants as social and political actors to exercise the full content and meaning of citizenship, and particular prioritization should be given to the poor and the marginalized. It is noted that while the responsibilities placed upon the government in South Africa in terms of housing rights, are akin to those prescribed in terms of the RTC generally, it may be argued that the participatory role of inhabitants should be further enhanced (and monitored), as well as the transparency and accountability associated with the successful implementation of a RTC.



Chapter 6: Conclusion (Recommendations and Observations)

*'Often, the poor and the destitute who live in impoverished informal settlements have neither opportunities to influence and affect decision-making processes, nor access to important centres of power within the corporate economy.'*⁴²⁰ - Clarence

Tshitereke

1. OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION

As has been discussed in this study, South Africa has been experiencing an urban housing crisis. One of the primary contributors to this urban housing crisis, particularly in Cape Town, has been gentrification,⁴²¹ and the media, on almost a weekly basis, report on gentrification in areas surrounding the city centre (such as Woodstock, Salt River and Observatory) resulting in the displacement of lower income individuals to TRAs (predominantly 'Blikkiesdorp' and 'Wolwerivier') that are generally located on urban peripheries.⁴²² Residents of these TRAs have often been quoted criticising the location of TRAs, stating that these TRAs are far from a variety

⁴²⁰ Tshitereke C, 'The importance of adequate housing' *Mail and Guardian* 10 October 2008, available at <https://mg.co.za/article/2008-10-10-the-importance-of-adequate-housing> (accessed 15 July 2017).

⁴²¹ Ebenezer O (2010) 6.

⁴²² Maregele B 'Bromwell Street tenants fear relocation to outskirts of Cape Town' *News24.com* 27 January 2017, available at <http://www.news24.com/SouthAfrica/News/bromwell-street-tenants-fear-relocation-to-outskirts-of-cape-town-20170127> (accessed 16 May 2017).

of basic services, employment opportunities and markets, which in turn also has a significant impact on traveling costs.⁴²³

The adverse effects of gentrification, particularly the displacement of lower income individuals, is not a problem unique to Cape Town, and has instead been noted globally.⁴²⁴ The global relocation and displacement of lower income individuals to urban peripheries led to the emergence of the RTC.⁴²⁵ In understanding the RTC, it is important to note that the RTC does not present a new legal right,⁴²⁶ but instead comprises of a collection of an array of human rights that should be protected particularly in the urban context.⁴²⁷

As discussed in this study, due to similarities noted between the RTC and the right to adequate housing specifically, the RTC may also be understood as a strengthened form of the right to access to adequate housing, by stressing certain elements of the aforesaid right. In this regard, the RTC, as initially envisaged by the right to access to adequate housing, prioritizes the use value over the exchange value of cities, and therefore emphasises the social function of housing.⁴²⁸

⁴²³ Raghavan S 'South Africa's poor complain of evictions as country prepares to host World Cup' *The Seattle Times* 10 June 2010, available at <http://www.seattletimes.com/sports/world-cup/south-africas-poor-complain-of-evictions-as-country-prepares-to-host-world-cup/> (accessed 14 May 2017).

⁴²⁴ Kothari M and Chaudry S (2012) 1.

⁴²⁵ UN Habitat *Urban Policies and the Right to the City: Rights, responsibilities and citizenship* (2009).

⁴²⁶ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016)11.

⁴²⁷ Cities Alliance - Global Platform for the Right to the City *The Right to the City Building Another Possible World - Guidelines for its understanding and operationalization* (2016)11

⁴²⁸ Görgens T & Van Donk M (2012) 5.

Further to the above, the main elements of the RTC is defined as a 'right to appropriation'⁴²⁹, and a 'right to participation'.⁴³⁰ The combination of these rights essentially allow all inhabitants of the city to play a central role in the making, occupation and enjoyment of the city.⁴³¹

Even though the South African housing rights framework does not include a direct reference to a RTC, this study illustrated that due to the wide interpretation that the courts (and resultingly also the legislature) afforded to the right to access to adequate housing as contained in the Constitution, the interpretation of the aforesaid right allows sufficient scope for an interpretation of the existence of a RTC in South Africa.⁴³² In eviction matters specifically, the courts have on a number of instances held that residents facing eviction and displacement should be relocated either to alternative accommodation in the same area, or at least in close proximity to the area where they were previously located. It is important to note that the aforesaid pertains to permanent relocation, and not to temporary, emergency housing measures such as TRAs. In this regard the courts in Cape Town have held that TRAs such as Blikkiesdorp and Wolwerivier as reasonable, based on the temporal nature of these TRAs.⁴³³ In addition to this, it is also reiterated that the manner in which the RTC is interpreted in South Africa does not include an outright demand to stay in the inner city itself (or any other location of choice).⁴³⁴ The courts have however sought to lessen the damning effects of eviction and displacement by attempting to prevent the uprooting and disrupting of individuals from their locations

⁴²⁹ Purcell M (2002) 99-108.

⁴³⁰ Purcell M (2002) 99-108.

⁴³¹ Purcell M (2002) 99-108.

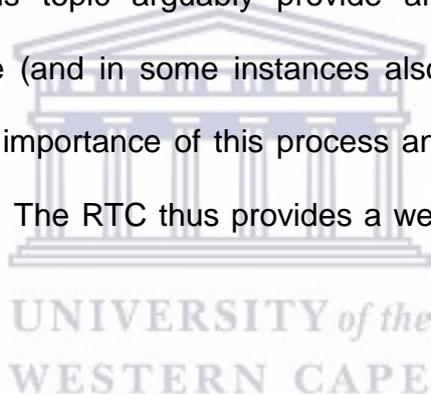
⁴³² Please refer to Chapter 4 for a detailed discussion in this regard.

⁴³³ *Maart* case, para 35.

⁴³⁴ *Rand Properties*, para 44-45.

of residence. In this regard, there is evidence of the courts ordering the relocation of occupiers to alternative accommodation in the same area, or in close proximity to the area where they previously resided, in line with a RTC.⁴³⁵

Perhaps one of the most important developments of the RTC and thus also one of the most significant impacts on the understanding of the right to access to adequate housing, is the increased role of meaningful engagements between all relevant parties in matters that stand to affect the standard of living of inhabitants. While the concept of 'meaningful engagements' is not novel to South African (human rights) law, the case law on this topic arguably provide an indication of a lack of understanding by the state (and in some instances also the courts as discussed below) with regards to the importance of this process and the role that inhabitants should play in this process. The RTC thus provides a welcome development in this regard.



It appears that the existence of a RTC in South Africa has not only been accepted by the courts, but the legislature itself also indirectly bound itself to the further development of a RTC in South Africa. The Constitution requires the state to take reasonable legislative and other measures towards the achievement of the right to access to adequate housing.⁴³⁶ In discharge of this duty, the state has progressively enacted various legislative and policy instruments that not only address the physical composition of housing, but also emphasise that adequate housing should be close to employment opportunities, and that ongoing public participation is an essential

⁴³⁵ Please refer to chapter 4 for further information regarding this.

⁴³⁶ Section 26 of the Constitution.

component of housing laws. The participation of all relevant parties in eviction matters is considered to be particularly important in light of the current emphasis placed on the transformation of society. It is therefore surprising that notwithstanding the international, national, and even local legislative and policy developments regarding the RTC, ongoing gentrification in Cape Town is still evident, still leading to the relocation of individuals to urban peripheries (while TRAs merely provide a temporary solution in order to prevent homelessness, the parameters of the term 'temporary' remains unclear - especially in Cape Town where residents of the Blikkiesdorp TRA still find themselves living in the same dire circumstances years later).

2. THE ROLE OF THE COURTS



Although the present study specifically considered the role of the State in the realisation of the right to access to adequate housing and in turn also a RTC in South Africa, it is imperative that the role of the courts in housing matters is not understated. In terms of the separation of powers doctrine, the judiciary (the courts) is tasked with the very important obligation to interpret the law and administer justice.⁴³⁷ The judiciary in carrying out its constitutional mandate to interpret the Bill of Rights (and any legislation and in developing our common law or customary law), is required in terms of sections 39 and 233 of the Constitution, to: promote the values that underlie an open and democratic society based on human dignity, equality and freedom; promote the spirit, purport and objects of the Bill of Rights; and

⁴³⁷ Mojapelo P M 'The doctrine of separation of powers (a South African perspective) *Forum* (2013) 37.

consider international law (including preferring a reasonable interpretation that is consistent with international law). The court also plays a very important role in monitoring whether the state has indeed acted in terms of its Constitutional obligations.⁴³⁸ The aforesaid role of the courts can result in rendering actions taken by the executive and legislature as invalid if the actions violate principles and rights in the Constitution⁴³⁹. Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy, the state has given effect to its various constitutional obligations, and if it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. This has enabled the courts in some instances to exercise considerable authority that has significantly influenced policy to the extent that power relations between the judiciary and the political arms of government have been threatened.⁴⁴⁰ In this regard, the CC has on numerous occasions decided on the constitutionality of laws; conduct and policy including those pertaining to the realization of constitutionally mandated basic services and the right to access to adequate housing.⁴⁴¹ In the *Grootboom* case, for example, the CC held that the state is obliged by the Constitution to give effect to socio-economic rights provisions in the Bill of Rights and that the CC is mandated by the Constitution, in appropriate circumstances, to enforce the state's constitutional obligations.

⁴³⁸ Mubangizi J.C 'The Constitutional Protection of socio-economic rights in selected African countries: A Comparative Evaluation' *African Journal of Legal Studies* at 1 (2006) 3.

⁴³⁹ Mojapelo P M 'The doctrine of separation of powers (a South African perspective) *Forum* (2013) 37.

⁴⁴⁰ Ngang C. C 'Judicial enforcement of socio-economic rights in South Africa and the separation of powers objection: The obligation to take "other measures"' (2014) 2 *AHRLJ* 32.

⁴⁴¹ Section 26(3) of the Constitution.

The above brief discussion emphasises the important role that the courts, acting through judges, play in the realisation of socio-economic rights. In the current ongoing matter concerning Woodstock residents who face potential eviction to the Wolwerivier TRA, the comments made by the acting High Court judge Leslie Weinkove appear to be contrary to what is expected of the judiciary, and thus also judges, in terms of the Constitution. To this end, in the ongoing Woodstock matter AJ Weinkove questioned why the residents of Woodstock were complaining about there not being transport, health facilities and schools close to Wolwerivier⁴⁴², and further questioned why they were not prepared to join the streams of people in their cars driving to work in the city every day from as far away as Somerset West (indicating a lack of understanding that lower income individuals may not be able to afford excessive public transport costs, and likely do not possess their own vehicles).⁴⁴³ The unsympathetic views expressed by AJ Weinkove arguably indicate a disregard or lack of understanding of the transformative mandate that the judiciary is to uphold in terms of the Constitution (past social injustices are still evidenced in modern society, particular evidenced by the spatial landscape of housing in Cape Town). Due to the very important role of the courts in holding the relevant parties accountable for their decisions and actions, and monitoring the state's fulfilment of its duties in terms of the Constitution and enabling legislation, a lack of understanding by the judiciary in this regard may stifle the fulfilment of the right to access to adequate housing, and in itself lead to a violation of human rights such as the right to dignity (of the poor and the marginalised). The aforementioned goes against the

⁴⁴² Eheridge J 'Judge defends 'kitchen assistant remarks' 18 May 2017 *News24.com* available at <http://www.news24.com/SouthAfrica/News/judge-defends-kitchen-assistant-remarks-20170518> (accessed 15 July 2017).

⁴⁴³ Eheridge J 'Judge defends 'kitchen assistant remarks' 18 May 2017 *News24.com* available at <http://www.news24.com/SouthAfrica/News/judge-defends-kitchen-assistant-remarks-20170518> (accessed 15 July 2017).

spirit of the Constitution, and it is thus important that judicial officers assigned to preside over sensitive human rights matters - such as housing matters possess the necessary expertise, objectivity and empathy that would result in just and reasonable orders. A failure to ensure that appropriately experienced judicial authorities preside over human rights matters may lead to a failure to hold the state accountable should they act in violation of the Constitution.

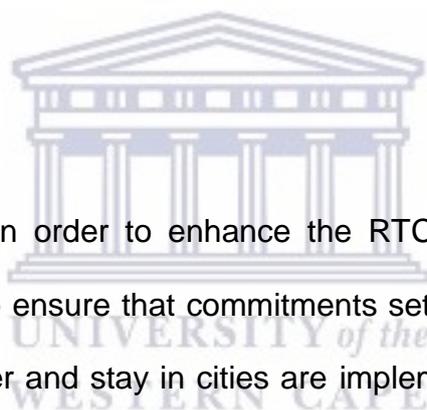
3. THE PROMOTION AND FULFILLMENT OF THE RIGHT TO THE CITY IN SOUTH AFRICA

It has previously been discussed that the State has to respect, promote, protect and fulfil the rights contained in the Bill of Rights.⁴⁴⁴ Focusing on the duty to promote and the duty to fulfil the rights contained in the Bill of Rights, in relation to housing rights and the development of a RTC, the South African legislature has progressively enacted numerous legislation that provide for a RTC by inference.⁴⁴⁵ These legislative and policy measures do not only consider the physical composition of adequate housing, but reiterate that adequate housing should be located close to employment opportunities and other basic services, and also stress the importance of public participation by inhabitants of cities in decisions that ultimately affect them. As the inferences of a RTC is contained in various legislative acts and policy documents in South Africa, it is argued that the current RTC is somewhat fragmented, leading to a reduced understanding and implications of the RTC as a

⁴⁴⁴ The Constitution, section 7.

⁴⁴⁵ Please refer to chapter 5 for a discussion on these legislative instruments.

whole.⁴⁴⁶ In order to strengthen and increase the understanding of the RTC in South Africa, there is thus a strong need in government policy and decision making to pursue a coherent and integrated urban agenda in South Africa that explicitly refers to a RTC and that focuses on the rights, agency and full participation of the urban poor in South African cities.⁴⁴⁷ While there are a variety of ways in which existing legislation and policy can be improved existing policy frameworks offer a number of under-explored opportunities to pursue the RTC approach to development. These require a substantial shift in the mindsets of all stakeholders, particularly away from the existing state-centric norms, increased coordination within the state and with other social partners to pursue common agendas, and clear institutional vehicles to achieve these outcomes.⁴⁴⁸



In addition to the above, in order to enhance the RTC in South Africa concrete actions need to be taken to ensure that commitments set out by the state to enable poor South Africans to enter and stay in cities are implemented, and that resources are devoted to ensure that these settlements become safer, more healthy and more productive places to live in. Further, increased recognition is required of those aspects of South African cities that drive urbanisation – the search for employment or economic opportunities, the ability to easily access public resources and goods (including the use of public transport) and a shifting socio-spatial environment that offers genuine opportunities for social mobility and the chance to live in integrated

⁴⁴⁶ Isandla Institute 'The Right to the City - Realising the Right to the City in the South African Context' (2011) 2.

⁴⁴⁷ Isandla Institute 'The Right to the City - Realising the Right to the City in the South African Context' (2011) 2.

⁴⁴⁸ Isandla Institute 'The Right to the City - Realising the Right to the City in the South African Context' (2011) 2.

and well located neighbourhoods.⁴⁴⁹ While the City of Cape Town has committed itself to the development of mixed income housing units in the inner city and surrounding areas, the aforesaid commitments would be meaningless unless duly implemented. Action is also required in relation to the recognition of the need for the active involvement of all citizens in the transformation of urban space and social patterns – it is only through the active control of ordinary citizens over systems of governance and decision-making that trade-offs and priorities can be genuinely negotiated. All of these need to be able to be realised in the present and the future.

Further to the above and what has been discussed in this study generally, it is clear that the RTC has commendably been developed and applied in South Africa.⁴⁵⁰ The understanding of this 'right' may lead to greater advancement of an array of human rights in the urban context, thus limiting the adverse effects that gentrification has proved to have in South Africa, and specifically Cape Town. Perhaps the question is therefore not whether a RTC exists in South Africa, but whether each relevant party understands its role in relation to the fulfillment of this right, and particularly whether the correct monitoring mechanisms are in place that would ensure that the RTC is duly implemented in South Africa. Should the latter be guaranteed, there may be a resultant lessening of so called 'empty promises' made by state, and an increase of mutually beneficial decisions being made by the state regarding all matters that affect the standard of living of urban inhabitants.

⁴⁴⁹ Isandla Institute 'The Right to the City - Realising the Right to the City in the South African Context' (2011) 2.

⁴⁵⁰ The work of advocacy groups such as 'Ndifuna Ukwazi' and 'Reclaim the City' has also played a very important role in the advancement of the RTC in South Africa.

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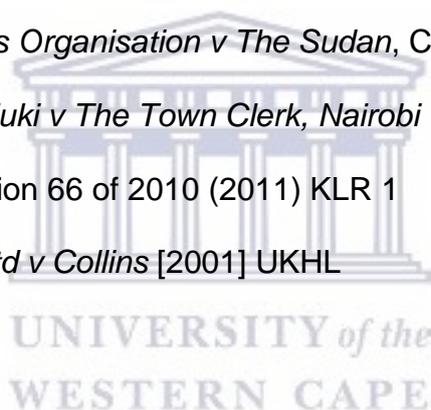
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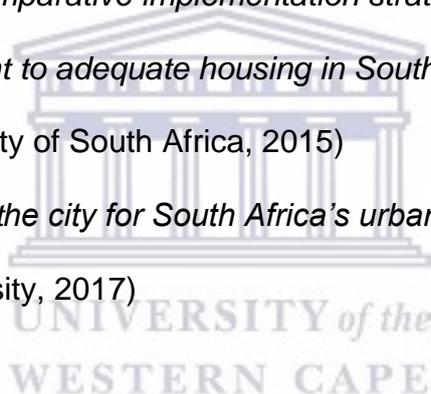
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