"No Time For Dreams"

THE CHALLENGES IN REALISING SOCIO-ECONOMIC RIGHTS IN CONTEMPORARY SOUTH AFRICA

A Research Paper presented by:

Thandiwe Matthews

South Africa

in partial fulfilment of the requirements for obtaining the degree of
MASTERS OF ARTS IN DEVELOPMENT STUDIES

Specialization:

Human Rights, Development and Social Justice

(HDS)

Members of the Examining Committee:

Dr. J. Handmaker

Dr. C. Biekart

The Hague, The Netherlands
December 2012

Acknowledgments

Firstly, I would like to thank my parents, without whom this opportunity would not be possible and for always reminding me that I stand tall on the shoulders of others, and to my brothers, Che, Aziz and Rory, for consistently providing light and laughter to my life. To my grandparents, whose wisdom and knowledge, and contributions to the struggle against Apartheid inspired the writing of this research. To my grandfather James Matthews, who inspired the title of this paper, and whose book *Cry Rage,* became the first collection of poetry to be banned by the Apartheid state. To my uncle Dr. Aadil Moerat, whose memory continues to inspire me to contribute toward the upliftment of my society.

I would like to thank my supervisors, Dr. Jeff Handmaker and Dr. Cees Biekart, for their consistent guidance and support in developing this work. And to the Oppenheimer Memorial Trust for its financial contribution toward my studies. To my close-knit group of ISS girlfriends – thank you for your laughter and encouragement through very challenging times, and the broader ISS family with whom I hope to remain in contact. And to my friends back home for keeping me rooted.

And last but not least, to all South Africans, who sacrificed their lives for me to be free and who continue to face the bullet in the fight for the realisation of a society based on justice, equality and freedom. Aluta continua!

We have been offered
Pie in the sky

But never smelled it

Neither will it appease

Our hunger for rights

That are rightfully ours

We watch through the window

As they sit feasting

At a table loaded with equality

And grow frantic at its flavour

How long can we contain the rumble

Of hunger in our belly

(James Matthews, *Cry Rage*, 1972)

Contents

List of Acronyms

ANC   African National Congress
ANCYL   African National Congress Youth League
BC   Black Consciousness
BCM   Black Consciousness Movement
DA   Democratic Alliance
DHS   Department of Human Settlements
DPME   Department of Performance Monitoring and Evaluation
DWA   Department of Water Affairs
GEAR   Growth, Employment and Redistribution
NGO   Non-Governmental Organisation
NP   National Party
SAHRC   South African Human Rights Commission
SAIRR   South African Institute of Race Relations
SJC   Social Justice Coalition
UDF   United Democratic Front
UDHR   Universal Declaration of Human Rights
UISP   Upgrading Informal Settlements Programme
UNDP   United Nations Development Programme

Abstract

Despite the South African Constitution guaranteeing socio-economic rights and explicitly recognising that everyone has inherent dignity, every day, millions of South Africans are denied constitutionally guaranteed rights through ineffective service delivery by the state. The objective of this research was to therefore explore the factors that limit the realisation of socio-economic rights, focussing on the implementation of a basic sanitation policy in the informal settlement of Makhaza, Khayelitsha, Cape Town, as an example exposing these limitations. While the right to basic sanitation is not explicitly mentioned in the South African Constitution, due to its personal nature it is intrinsically linked to the right to dignity. This research has sought to argue that a multi-dimensional approach should be adopted when analysing the challenges that inhibit the realisation of such rights. A three-tiered approach was adopted to analyse the Makhaza case-study: namely, a socio-legal approach, theories of citizenship and Black Consciousness. The research has further sought to argue that factors that inhibit the realisation of this right include aspects of power politics, and a lack of engagement between actors including politicians and civil society, which impacts on both policy implementation and the claiming of rights. The principal conclusion drawn was that successful judgments confirming socio-economic rights alone are not enough to ensure that citizens receive the rights they are entitled to – making use of both the courts as well as grassroots strategies outside of the court arena are required to realise rights. Further, communities are calling for policy-implementers to include them in decision-making processes that directly affect them, in addition to meeting their basic needs as a matter of urgency. A failure to achieve constructive civil-state engagement will result in the values embodied in the Constitution remaining but a dream.

Relevance to Development Studies

The shock and outrage expressed both locally and internationally as a result of the police brutality towards striking workers at Marikana on 16 August 2012, which left more than 40 people dead, has been described by many as a turning point in South Africa's history. South Africa, once widely admired for its smooth transition from apartheid to democracy without having submerged itself in civil war and celebrated for having one of the world's most progressive constitutions, has in recent years witnessed an escalation in protest action, which have become increasingly violent. Notwithstanding the laudable achievements the country has made, since the fall of apartheid, it has witnessed growing inequality between rich and poor, and constitutionally guaranteed rights are yet to be realised. Consequently, constitutional promises that all South Africans are entitled to a life with dignity have not been met. Thus, the ensuing frustration expressed by the country's poor majority who, continue to struggle to have their basic needs realised by the state as guaranteed in the Constitution, have been met with increasing state resistance through a militarised police force. Yet, despite the challenges that these civil-state confronta-

tions present, perhaps as a legacy of apartheid-era liberation movements, poor South Africans continue in their struggle to make their voices relevant in participatory democratic processes. As such, South Africa remains relevant to development studies as an example of how such civil-state interaction and confrontation can redefine, and somewhat deepen, democratic parameters through constant contestation, in the quest for realising a society based on human dignity, equality and freedom.

Keywords

Chapter 1
Introduction

1.1 Background

According to the United Nations Development Programme (UNDP), since its democratic transition, South Africa "has experienced remarkable social and political transformation that has ushered in participatory democracy, refinement of democratic institutions and improvement in inclusive social services. It is one of the few African countries experiencing smooth, less rancorous and less violent political transition in recent times" (UNDP Country Overview, 2012).

However, since the early 2000's the country has witnessed an upsurge in protest action, which has become increasingly violent, particularly in light of the government's perceived failure in providing basic services (Bienart, 2001; Roodt, 2011). According to Tissington (2011:14), in reference to the state of basic sanitation as an example of the complexities of service delivery in South Africa, by 2010, 77% of all households had access to basic sanitation, the sanitation backlog was reduced to 21%, as opposed to 52% in 1994 and total national access to basic sanitation was 70%. However, while these statistics seem impressive, "as of 2010, 2.5 million households were using an unventilated pit latrine, 110 000 households were using the bucket system and 727 000 households had no toilet at all". According to the most recent national census (2011), 60.1% of South African households have flush toilets with access to a sewage system, 8.8% are using ventilated pit latrines, 19.3% are using unventilated pit latrines, 2.5% are using chemical toilets and 2.1% are using the bucket system. Further, the number of households without toilets decreased from 13.6% to 5.2% between 2001 and 2011 (Statistics South Africa, 2012:72).

It is against this background that this research will address the complexities of realising socio-economic rights in post-apartheid South Africa, and the subsequent impact it has in realising the right to dignity, by analysing a case of flush toilet installation in the informal settlement of Makhaza, Khayelitsha, Cape Town. During 2007, the provincial government of the City of Cape Town (City), implemented a project to provide single flush toilets to each household in Makhaza. In order to increase the number of toilets that could be installed within the allocated budget, it was alleged by the City that the community was informed that it would have to cover the cost of having the toilets enclosed. The alleged agreement would be a temporary measure until houses were built (ANCYL v City of Cape Town, 2010). However, in 2010, this "temporary measure" was still in place and of the 1 316 toilets that were installed, 1 265 had been enclosed by the residents, while the remaining 51 were left unenclosed. The 51 unenclosed toilets became subject of contention between the residents and the City, and the matter was subsequently referred to the South African Human Rights Commission (SAHRC) and appealed to the High Court

of the Western Cape (High Court) to determine whether steps taken by the City were unconstitutional (Beja *et al* v Premier of the Western Cape, 2010).

Initially, the government's target for access to universal basic sanitation was 2010, but this target has been pushed back to 2014, which the country's Millennium Development Goals report still considers too ambitious, although the country has met its targets (Tissington, 2011). This warning was echoed in a recent report delivered by the Department of Water Affairs (DWA), Department of Human Settlements (DHS) and Department of Performance Monitoring and Evaluation (DPME), which indicated that while the target of achieving universal basic sanitation by 2014 has been set, in all likelihood, this will not be met at the current delivery of 300 000 household units per annum. Furthermore, while access to sanitation has increased, approximately 28% of households are at risk of service delivery failure or are experiencing service delivery breakdowns (DWA, 2010).

At a provincial level, in the Western Cape 91.1% of households have access to a functioning basic sanitation facility, while the remainder are using sub-standard sanitation facilities, with 3.7% of households using the bucket system and 3.1% of households with no sanitation facilities at all (Statistics South Africa, 2012). The province also received 19 "green drop awards" in 2011, the highest in the country, and receiving a rating of 90% or above for waste water management from the DWA (Lebone, 2011:636). However, for the same period, in terms of racial categories, 65.5% of the African population had access to functioning and hygienic sanitation facilities, while 34.5% were using substandard toilet facilities. This is in contrast to the 94.1% of the Coloured population, 99.4% of the Indian/Asian population and 98.4% of the white population with access to functioning and hygienic sanitation facilities, with the overall majority of these households (87% and above) having access to a flush toilet connected to a public sewage system (Lebone, 2011: 633). Sanitation has therefore become the subject of various service delivery protests and an electioneering tool used by political parties.

Although it has been acknowledged that the country has made significant strides in reducing extreme poverty and has enjoyed a growing economy, levels of inequality remain high, with the gap between rich and poor steadily increasing since the fall of apartheid. In 2008, World Bank rated South Africa's measure of inequality at 0.7, the highest in the world at the time, citing as reasons the inability of the South African economy to create sufficient jobs (unemployment is currently at 29.8%) as well as the perpetuation of apartheid-era spatial inequality causing division and exclusion. Approximately 40% of the population reside in informal settlements and the former 'homelands'. In addition, service delivery to poor communities has been weak, and while increase in public spending on basic services has been substantial, outcomes have been uneven and of poor quality, the disappointment of which has been demonstrated in the increase of citizen protests (World Bank Country Overview, 2012). Notwithstanding these statistics, President Zuma insists that "no country could have produced the delivery we made in 18 years" (Sowetan, 2012).

Socio-economic rights form an integral part of an individual's right to dignity, universally recognised in the Universal Declaration of Human Rights (UDHR). Yet despite the right to dignity being explicitly recognised in the South African Constitution, the government continues to demonstrate its failure in realising and implementing constitutionally guaranteed rights. This apparent conundrum constituted the basis of formulating the main question that this research paper aims to answer, namely: Why is realising the right to dignity, in relation to socio-economic rights and particularly through the provision of basic services such as sanitation, so challenging in contemporary South Africa?

It will be argued that claiming rights through the legal system with reference to the Constitution continues to play an important role in not only holding the government accountable in terms of its mandate but also to develop the South African constitutional jurisprudence. At the same time, in light of the growing dissatisfaction in the delivery of basic services (and by virtue the non-fulfilment of socio-economic rights) community mobilisation in conjunction with active community engagement by policy-implementers and politicians prioritising community needs is necessary. As such, the combination of utilising democratic state institutions, while at the same time moving around these institutions to voice dissatisfaction with and resistance against the state, is essential in ensuring that marginalised voices are consistently considered by power-holders. Failing to consider such voices, especially in matters that affect the most personal aspects of people's lives, can lead to feelings of marginalisation and result in conflict within poor communities, as well as between communities and the state. Consequently, guaranteed rights written on paper will effectively not be translated to create a society based on justice, equality and freedom as envisioned by the South African Constitution.

1.2 Justification for Research

The Makhaza case is not only an example of the state's failure in realising constitutionally guaranteed rights thus impacting on its failure in realising the right to dignity, but further demonstrates the inadequacy of its legal system, albeit a robustly democratic one, in effectively protecting those who require it most. In order to answer the main question posed above and to better understand this evident inconsistency led me to formulate the following sub-question: Why is the realisation of socio-economic rights relevant to living a life with dignity?

The case also highlights how the state has become both the guarantor and violator of socio-economic rights and the struggle that exists between citizens wanting the state to provide more in the face of growing state resistance, thus forming the basis of the second sub-question: How are notions of 'citizenship' and 'democracy' understood and contested in contemporary South Africa?

In addition, political power dynamics that exist within the South African context, many of which are remnants of apartheid, such as race and class, remain significant factors that distinguish the "haves" from the "have-nots". Thus, despite the demise of apartheid, race and apartheid ideologies still play an important role in claiming rights, as well as the realisation thereof, in post-apartheid South Africa. Consequently, a third sub-question was formulated: How do race and class, as remnants of apartheid ideologies, continue to impact on the claiming and realisation of socio-economic rights in post-apartheid South Africa?

However, while the Constitution has in some cases failed poor communities in that it has yet to translate into a living reality, when invoked creatively and taking into account the context of marginalised communities, the Constitution has also been an effective tool inspiring communities to mobilise to claim rights. In such cases, the combination of rights awareness generated by citizens and non-governmental organisations (NGO's) within marginalised communities, while at the same time making use of available legal remedies, continues to be the more popular strategy adopted in attempting to make rights real in the South African context. Still, despite the delivery of precedent-setting Constitutional Court judgments guaranteeing the right to dignity, a large portion of South Africa's poor continue to have their dignity denied on a daily basis.

1.3 Research Rationale and Objective

Hailing from an activist background, with parents and close family members who were actively involved in the United Democratic Front (UDF) in Cape Town and the struggle against apartheid and many of whom were incarcerated facing persecution by the apartheid state, the democratic dispensation's continued disregard for basic rights envisioned in the Constitution for which they fought has left me slightly disillusioned with the status of democracy in contemporary South Africa. The objective of this research is to therefore explore and understand the factors that limit the realisation of socio-economic rights, using the right to basic sanitation as an example exposing these limitations. While the right to basic sanitation is not explicitly mentioned in the South African Constitution, due to its personal nature it is intrinsically linked to the right to dignity. It will be argued that factors that inhibit the realisation of this right include aspects of power politics, and a lack of engagement between a variety of actors including politicians, bureaucrats, and civil society[1], which impacts on both policy implementation and the claiming of rights. It will also explore how citizens move beyond these structural limitations to realise rights, and the subsequent challenges that they are confronted with when voicing resistance. I hope to provide some insight into the feelings of marginalisa-

---

[1] The term 'civil society' is a contested one. Here, 'civil society' refers to a political space where citizens gather to deliberate on the circumstances of their collective life. In terms of this understanding, "civil society activities are an enactment of citizenship" and are rooted in struggles to challenge the manner in which power is acquired, distributed and exercised (Scholte, 2007:16-17).

tion currently being experienced by South Africa's poor, and the mechanisms that are utilised by poor people where even though their access to formal institutions may be limited, are still able to influence the realisation of constitutionally guaranteed rights, notwithstanding the increasing state resistance that such civil-state confrontation presents.

1.4 Research Methodology, Methods and Sources of Data

The provision of basic sanitation to the community of Makhaza was selected as a unit of analysis because of the outrage that implementation of the basic sanitation policy in that community caused, which resulted in broader public attention being drawn to the ineffectiveness of service delivery by the state to poor communities, and the ensuing conflict that emerges between poor communities and the state. While ineffective service delivery to poor communities is occurring throughout South Africa, I chose an informal settlement in Cape Town because according to statistics its local government has been at the forefront of service delivery in the country, yet has also experienced a high number of service delivery protests, as further elaborated below.

A three-tiered approach was used to analyse the Makhaza case-study. Due to its personal nature, the ineffective delivery by the state of this particular service, basic sanitation, is a direct affront to an individual's dignity, a right that is protected in the South African Constitution and constitutes the first approach of analysis. Although the courts have reinforced the right to dignity, the slow implementation of socio-economic rights by government has not been declared unlawful by the courts for ideological reasons further explained below. Thus, the Constitution does not adequately address feelings of humiliation and marginalisation stemming from the slow realisation of socio-economic rights, which further results in citizenship mobilisation, the second approach, and deeper understood through the lens of Black Consciousness (BC), the third approach.

I have used a socio-legal approach to explore the gaps that exist between legislation and policy implementation, and a broad application of theories of citizenship to understand the roles of various civic actors in realising socio-economic rights, focussing on sanitation specifically, through legal and other strategic processes.

Though the courts continue to play an important symbolic role in displaying their commitment to delivering positive socio-economic judgments, the South African government persists in failing to implement such decisions effectively, primarily resulting from bad management. Still, notwithstanding the non-materialisation of court victories in the daily lives of poor people, right discourse is used creatively by citizens to legitimise their claims. Theories of citizenship therefore provides a lens to understand how citizens voice their daily struggles and convey their understanding of what notions of 'citizenship' and

'democracy' mean to them, holding the government accountable to deliver on their promises. As noted by Kollapen (2006:98):

> "…we must be careful not to allow the courts to be substituted for what is in essence the best guarantor for democracy: the ability for ordinary citizens to hold their government accountable…While the court has an important role to play, its primary objective is not to hold the government accountable but to ensure that the provisions of the Constitution are adhered to."

The essence of the arguments presented in this paper are therefore in line with that posed by Greenstein (2003:36):

> "Neither the legal discourse of rights nor popular mobilisation could provide on their own a strong challenge to the political primacy of state officials. This can only be done when the two are articulated in a critique of state power simultaneously from above and from below. The combination of legal-constitutional mechanisms and grassroots organisation is the best guarantee for a successful challenge to the state-centred politics as usual, which tends to leave citizens as subjects relying on the state for their survival. An alliance between forces in civil society and critical forces within other sectors…can facilitate such a challenge".

However, in the South African context, notions of citizenship go beyond the normative understanding of citizenship being assigned to an individual by virtue of a constitution, but is further rooted in one's race as a legacy of the country's apartheid history. I will further argue that despite the democratic Constitution guaranteeing equal citizenship to all South Africans irrespective of their race, the majority of African people continue to be excluded and marginalised from formal institutions. The BC philosophy, which emerged during the apartheid era, provides a lens to analyse this continued marginalisation of African people and its impact on mobilising citizens to voice their resistance and challenge the liberal democratic framework that continues to exclude them.

To answer the questions posed above, I conducted five semi-structured interviews with key informants, comprising of two public interest litigation lawyers and two researchers from well-established NGO's, and one politician (Appendix 1). Working in the NGO sector prior to conducting research, and relying on existing social networks, enabled me to contact lawyers and researchers working within the field of socio-economic rights relatively easily. The structure of the interviews allowed space for broader issues other than those assumed by me to be revealed, thus bringing to the fore more issues that may have not been identified. The interviews focussed on the institutional limitations that exist in legal, institutional and social structures that inhibit the realisation of rights.

In addition, the use of secondary data including journal articles, reports, online newspaper articles, documentaries, websites and blogs provided further substantiation to all conclusions drawn.

It must be noted that reference made to racial categories 'African', 'Coloured' and 'White' are based on definitions as per Appendix 2, while 'black' refers to all non-white South Africans.

1.5 Scope and Limitations

The scope of this research is limited to the provision of basic sanitation to the community of Makhaza, which forms part of the informal settlement of Khayelitsha, situated approximately 40 kilometers from the centre of Cape Town. As stated above, the implementation of a basic sanitation policy in this specific community resulted in conflict between the community and the local government of Cape Town. The ensuing litigation and conflict it caused constitutes the basis of the case study that will be analysed for the purpose of answering the questions posed in this research paper. The basic sanitation policy itself was not analysed for purposes of this research.

While those interviewed for my research are employed by renowned NGO's (aside from the politician interviewed), and as such are considered by me to be credible sources of information, because I did not go to Cape Town to conduct my research I was unable to contact the affected community directly. Consequently, the conclusions drawn from this research are centred largely around the information received through these individuals.

1.6 Structure of Paper

Briefly, the outline of the paper is as follows: Chapter 2 provides contextual background to the development of the informal settlement of Khayelitsha, which includes the community of Makhaza; Chapter 3 presents a framework for analysing the case study which forms the basis of this research, namely the implementation of a basic sanitation policy in Makhaza, analysed further in Chapter 4. Chapter 5 provides a set of conclusions drawn from conducting the research.

Chapter 2
South Africa in Context: The systematic construction of a nation unequal and torn

The purpose of this chapter is to illustrate that the socio-economic challenges currently being experienced in Makhaza, Khayelitsha finds its roots in apartheid and urban influx control. Thus, the chapter begins by providing a brief historical overview of apartheid. It then explores the nature of urban influx control and the origins of the development of informal settlements. Finally, it introduces the informal settlement of Khayelitsha, its origins and development, and its current conditions that gave rise to the right to basic sanitation being challenged in a legal forum, which constitutes the focus of this research.

2.1 Apartheid, urban influx control and the development of informal settlements

In 1948, the nationalist Afrikaner party, the National Party, became South Africa's ruling party and with it, already established state controls over the African labour market were restructured and intensified. The introduction of a national labour bureau in the 1950's to control African employment and the implementation of various discriminatory laws placed severe restrictions on primarily the African population. By the 1960's, the majority of South Africans were denied full citizenship in the country of their birth and were forcibly removed from their homes to make way for the development of 'whites-only' areas (Posel, 1991).

Posel (1991:7) argues further that the labour needs of white (largely Afrikaner) commercial farmers was central to the design of apartheid, because had farmers needed to compete for African labour in an open market with manufacturing and commerce, agricultural costs would have been increased to compensate for the payment of competitive wages. Thus, the ensuing influx control policies were implemented to prevent this supposedly unequal distribution of labour between rural and urban areas, and avert the collective resistance of the African, Coloured and Indian labour force to white domination in urban centres (Posel, 1991).

According to Hindson (1985:402), influx control was rooted in the intention of the apartheid state to force all Africans to reside in ethnically segregated *bantustans*, which would be developed into self-sustaining economic and political units. However, while the transition was being made into full territorial apartheid, urbanised Africans would be given temporary residence rights, on condition that they remain capable of performing work, restricting their legal status to "politically rightless temporary visitors". The aim of these policies was to therefore detract Africans from urban areas and instead look to the *bantustans* for housing and employment opportunities (Hindson, 1985).

Influx control, however, fulfilled a further purpose. According to Maylam (1990a:1), it was to alleviate the fears and paranoia of the urban white middle class who had "health and safety concerns" because of the presence of large numbers of the black "underclasses". Understanding influx control and segregation therefore cannot be reduced to economic motives alone, but rather, these policies should be understood in relation to the collective mentality of the white middle class at the time, associating the presence of Africans to the problems of crime, disease and disorder (Maylam, 1990a).

However, as further argued by Maylam (1990b), a major contradiction existed in the objectives of urban segregation policies and influx control in attempting to secure black labour to the extent that it was required but minimizing their presence as visible people in order to protect white people from the supposed dangers of African presence. Thus, the introduction of the Group Areas Act, 1950, and forced segregation resulted in bigger African townships being established to house the growing population of urban Africans, placing them as far as possible from white residential areas but close enough to industrial centers.

2.2 "Poverty is my cross; my colour binds me to it"[2]: The informal settlement of Khayelitsha

According to Maylam (1990b), the dominant interests of the various urban centers determined the trajectory of how African urbanization has taken place. Cape Town, for example, was primarily a commercial center, administrative capital and headquarters for military, with minimal industrial production. At the turn of the 20th century, there was a need for unskilled labour, resulting in thousands of Africans migrating to the city. This marked the start of residential segregation in Cape Town. Further, the bubonic plague which swept the city in 1901 was attributed to increasing African presence. As such, responding to calls from white residents demanding the development of a location to house Africans under "controlled and sanitary conditions" (Maylam, 1990b:61), the informal settlement of Ndabeni was established.

The implementation of the 'Coloured' Labour Preference policy in 1955, which required white employers to apply to a labour bureau to employ an African labourer after proving that a Coloured labourer was not available, had the implication that African people had no right of permanent residence. Moreover, from 1966 the state's aim was to reduce the number of African employees in Cape Town by 5% per annum. This did not deter African people from migrating to the city, and in March 1983, the township of Khayelitsha was established to house all African people in the Cape Town metropolitan, although it was only intended for 250 000 residents, and situated 39km from the city centre (Cook, 1985).

---

[2] James Matthews, *Cry Rage,* 1972

Cook (1985) argues further that in accordance with township policy of the time, it was not intended for Khayelitsha to become a viable town, with the closest industrial area being 15km away and major public transport interchange 23km away. Although initial plans showed intensive development, in reality, these plans would not improve the quality of life of the township residents, thus serving to reinforce the subordination of African people in Cape Town.

Today, notwithstanding South Africa's democratic transition and Constitution guaranteeing socio-economic rights, policies aimed to address the inequalities inherited from apartheid have been largely ineffective. According to the local government of the City of Cape Town[3], the current population of Khayelitsha is 329 000, with a growth rate of 5.3% per annum. Nearly 80% of the population is living on less than R1 600 per month (approx. 145 euro), 51% are unemployed, and 65% are living in self-erected shacks. In slight contradiction, the report also states that "most households (65.1%) have a flush or chemical toilet" (City of Cape Town, 2005), despite the housing shortages that currently exist.

2.3 Broken promises and compromises: The Makhaza "toilet saga"[4]

Since 2001, roughly 190 000 people moved to Cape Town, the majority of whom migrated to the city from the Eastern Cape (coincidently the province in which the former *bantustans,* Transkei and Ciskei, closest to the city are located) (Small, 2008:4). Due to the constant migration of people from rural to urban areas dating back to apartheid, municipalities throughout the country have been unable to provide basic services to cope with the influx of people to these communities, including a lack of adequate sanitation services. As such, people have had to resort to using buckets to relieve themselves, commonly referred to as the "bucket system" (Tissington, 2011)

In 2006, the then Minister of Water Affairs stated that it was the intention of the South African government to eradicate the "bucket system" by December 2007 (Hawker, 2011). As mentioned previously, during 2007, in an attempt to meet this deadline and go beyond the national policy requirement of providing 1 toilet to every 5 households, the City implemented a project to provide an increased number of single flush toilets to each household in Makhaza. Such implementation was on the basis of an alleged agreement concluded between the City and the community that the residents would cover the costs of enclosing the toilets provided (ANCYL v City of Cape Town, 2010).

---

[3] Statistics are based on the 2001 national census. The last national census was conducted in 2011 and national results were published at the time of finalizing this research. Provincial breakdowns are yet to be published.

[4] As the case was referred to in South African media.

However, three years after the initial installation of 1 316 toilets, 51 were left unenclosed. According to the residents, they could not afford the enclosure costs and were of the view that it should be the responsibility of the City. While the matter was being investigated by the SAHRC to determine whether the City's actions were unconstitutional and amidst wide media coverage, the City attempted to enclose the toilets with corrugated metal sheets but these were subsequently removed by the residents. Furthermore, some toilets themselves were removed by members of the community and residents were forced to use communal toilets (Beja *et al* v Premier of the Western Cape, 2010).

Still, notwithstanding the unlawful damage to public property, it was decided by the High Court that while the City's intention to install an increased number of flush toilets was laudable, the agreement concluded with the community was unlawful and the manner in which the project was implemented violated the right to dignity (Beja *et al* v Premier of the Western Cape, 2010).

However, despite the positive outcome of the *Beja* judgment and promises made by the City as recently as May 2012, that communal flush toilets would be cleaned daily, those not working would be repaired and community education provided on the importance of clean sanitation, according to the Social Justice Coalition (SJC), an NGO based in Khayelitsha, the City's janitorial services remain unsatisfactory (See Appendix 3). Janitors have either not attended the area to clean the toilets and those that do have not been provided with basic protective gear, tools or training to repair faulty toilets; some toilets do not have doors; and in some cases residents do not know who to contact to report faults such as blocked toilets. Furthermore, the affected communities have not been provided with information on how the service would function (SJC, 2012).

2.4 Concluding Thoughts

This chapter has sought to illustrate that the socio-economic challenges currently being experienced in Khayelitsha has a history dating back to apartheid and urban influx control. At the very outset of its development, the necessary infrastructure to sustain its inhabitants was not developed, and as a result neither the City nor the settlement is presently equipped to adequately provide a dignified life to the residents of Khayelitsha. Continuous urban migration has further exacerbated these challenges. Further, as illustrated in the *Beja* judgment and the City's subsequent unfulfilled promises, the social exclusion previously experienced by African inhabitants of Makhaza by virtue of their race has been perpetuated due to the legacy of apartheid being one of the key contributors to poverty in a liberal democracy. Consequently, poverty has prevented the residents of this community from living a life as guaranteed in the Constitution by not having their basic needs met by the government, with their dignity being affronted on a daily basis in the most personal of circumstances every time they use the toilet.

Chapter 3
The Law and Citizenship

In order to effectively realise rights, a multi-faceted approach must be adopted. A three-tiered approach of analysis allows for various complexities to be revealed and acknowledges that the interaction between top-down and bottom-up approaches is required to address the multitude of factors that may prevent the realisation of rights. While the courts have played a significant role in developing legal principles and testing the boundaries of socio-economic rights, there have been various ideological and institutional limitations in enforcing decisions. Theories of citizenship thus provides a lens to analyse how citizens move beyond these institutional limitations to realise rights. Further, BC provides a lens to analyse the marginalisation of poor African people, not so much because of their race but more so because of their class, and its influence in challenging the normative democratic framework that continues to exclude them.

This chapter presents a framework of analysis by first introducing the development of the right to dignity and its interpretation in the international and South African contexts. The aim is not to provide an in-depth philosophical analysis of dignity but rather to provide an understanding of the relationship between dignity and socio-economic rights. The chapter then provides explanations of 'citizenship' and 'democracy', and how understanding these concepts impact on the implementation of socio-economic rights. It lastly introduces the concept of BC and the role that it played in identity formation and race politics during apartheid, and why it continues to be relevant in contemporary South Africa in the struggle to realise rights.

3.1 "More law, less justice[5]": Approaches to the right to dignity, constitutionalism and the implementation of socio-economic rights in South Africa

While the concept of dignity has been widely referred to in international legal frameworks and incorporated in various national constitutions, including South Africa's, there is yet to be a definition of what the term actually means. However, there is consensus that human dignity is closely related to the concept of human rights (Gan, 2009).

As explained by Gan (2009:372),

"the idea that man possesses dignity that cannot be infringed upon for any reason is a core tenet of modern global civilisation. It lays a spiritual

---

[5] Marcus Tullius Cicero

foundation, upon which human beings can coexist peacefully…This idea is a great achievement of human beings through a history of struggle for liberty, justice and humanism."

Thus, when making claims based on the violation of socio-economic rights, dignity is often referred to providing a moral basis for the claim. In the African context, terms such as "*ubuntu*", "*umundu*", "*bumuntu*", "*vumuntu*" and "*gimuntu*" are multi-dimensional concepts that refer to the core values of African society which entails "respect for any human being, for human dignity and for human life, collective sharedness, obedience, humility, solidarity, caring, interdependence…" and is a measure by which members of communities can evaluate their "humanness" (Kamwangamalu, 1999:26, Mokgoro, 1998). Although such notions of humanism have existed in various cultures, the term dignity was first recognised internationally as a legal concept in The Charter of the United Nations and UDHR, as an attempt to remind the Western world of the horrors of inhumanity committed during World War II (Gan, 2009).

Definitions of dignity differ. One proffered by Gan (2009:381), with which I agree, is that dignity is linked to insult. As such, when a person does not suffer insult, she enjoys dignity. It is this desire to keep away from insult that drives people to fight for their dignity, which is recognisable only when it is at risk. Another alternative is that dignity is linked to ideas of concern and respect for the autonomy of individuals (Bagaric and Allan, 2006).

Although it is generally accepted that a violation of dignity can be identified even if the term itself cannot be defined, without a concrete definition of the term it becomes difficult to identify specific consequences for its violation (Schachter, 1983). Bagaric and Allan (2006:260) would even go as far as to say that "the concept of dignity itself is vacuous….instead it is a notion that can be used by academics, judges and legislators when rational justifications have been exhausted….The notion of dignity should be discarded as a potential foundation for rights claims unless…its source, nature, relevance and meaning are determined".

In the South African context, though lacking a concrete definition with clear boundaries, dignity has been understood as:

> "The Constitution of the Republic of South Africa has as its primary objective the protection and the restoration of human dignity; it means simply that human beings must be treated as human beings. We have a duty.. to promote human dignity... A failure to do this diminishes us all." (Beja *et al* v Premier of the Western Cape, 2010: 2).

According to Sachs (1992), the emergence of democracy in South Africa was not due external intervention but because it embodies the values of the society that those who fought against apartheid envisioned for themselves. While liberal democracy places emphasis on individual freedom and political pluralism, underpinned by legal mechanisms curbing state abuse, oppression in

apartheid South Africa did not result because of state intervention but rather because of state neglect. Political freedom is therefore meaningless if it does not correspond with a dignified existence for all. The intention of the drafters of the Constitution was to thus achieve "collective self-determination, in overcoming the effects of colonial-type domination of the majority... [achieving] minimum rights of social welfare and a decent existence for all" (Sachs, 1992:193). Consequently, the inclusion of socio-economic rights into the Constitution was to provide a mechanism to achieve a dignified existence for all South Africans.

According to Sunstein (2001), questions have been raised about the role of democratic constitutions in protecting socio-economic rights and whether their inclusion promotes democratic decision-making principles, particularly in respect to the separation of powers between government and the courts. In line with the liberal democratic framework, constitutionally guaranteed rights are often viewed with the purpose of emphasising "negative" rights protecting individuals from state interference rather than "positive" rights compelling the state to fulfil individual entitlements, based on the premise that negative rights cost the state less to realise than what positive entitlements do. Furthermore, courts do not possess the tools to enforce such rights, and doing so places them in a managerial bureaucratic position, rather than judicial. However, as advocated by Sunstein, for people to act as citizens and to be counted as such, they need the independence that comes as a result of having their basic needs met. Furthermore, the basic needs that socio-economic rights aim to protect are at "systematic risk in political life, especially because those who benefit from them lack political power" (Sunstein, 2001:124).

These ideological challenges highlighted by Sunstein (2001) were brought to the fore in the landmark *Grootboom* judgment, the first case in which the South African Constitutional Court was confronted with the question of how socio-economic rights were to be protected in relation to the right to housing. It was held by the court that while the right itself was not absolute, what is required is implementation of a reasonable programme in attempting to realise the right, ensuring reasonable priority setting and attention being paid to the needs of the most vulnerable segments in society. This is particularly relevant in developing societies with limited budgets, where the approach of the Court was to assess claims of constitutional violations without requiring more than existing resources will allow (Sunstein, 2001).

However, notwithstanding the symbolic significance of the positive outcome of *Grootboom* providing a basis for future socio-economic claims, such decisions are only valuable if they make a tangible difference in the lives of the poor. For Liebenberg (2001:252), the "progressive realisation" of socio-economic rights is "both a sword and a shield: it imposes an obligation on the state to take steps towards the constitutional goal of effectively meeting the basic needs of all in our society... At the same time it allows the state a degree of temporal latitude."

Providing a critique on the approach adopted in *Grootboom*, which focussed on the 'reasonableness' of the state's action rather than providing a 'minimum core' by which the state was to comply with, which would have the effect of prioritising certain rights over others as more urgent, according to Wesson (2004), the justification for not adopting the 'minimum core' approach is that it is too inflexible and the structural implications of apartheid has meant that the needs of poor people are diverse. Limiting the state's flexibility would have long-term implications. Further, it would be impossible for the state to attend to core basic services for everyone.

The adoption of a liberal democratic framework in South Africa has, however, highlighted the tensions discussed by Sunstein (2001) above. Contrary to Sachs' (2009:2) optimism that the democratic constitution would result in "the grand abstract phases of the legal text books united with and embrac[ing] the palpable passion for justice of the disenfranchised", with the law no longer being a barrier to justice but rather a "primary instrument for accomplishing peaceful revolution", instead the constitutional framework has protected the interests of the elite by not placing excessive pressure on the state to fulfil individual entitlements.

The above notwithstanding, I agree with the views expressed by Goldewijk (2002), "whereas human dignity is the core and foundation of human rights, it is through the operationalisation of rights that dignity is protected." (Goldewijk, 2002:6). Thus, despite of the criticism proffered by Bagaric and Allan (2006) of 'dignity' lacking clear definition, human rights offers a normative framework to protect human dignity of all individuals, and through the realization of socio-economic rights, human rights are transformed from abstract ideas in documents to a social reality. Further, in the pursuit of realizing socio-economic rights, the human rights framework becomes an instrument for political transformation.

However, while the South African Constitution may have been progressive in attempting to place socio-economic rights on equal footing with civil-political rights, by making socio-economic rights justiciable rather than mere policy decisions (Liebenberg, 2001), in allowing the state to only progressively realise socio-economic rights, it keeps within its liberal framework by not placing excessive pressure on the state to provide individual entitlements. Consequently, power struggles that occur within communities are not taken into account as the Constitution assumes that all individuals are equal. Thus, theories of citizenship become relevant to challenge these institutional frameworks.

3.2 Citizenship and Claiming Rights

According to Vandenberg (2000:3) "citizenship and democracy have been central to modern concepts of mass society and the nation-state." However, as will be illustrated in this research, notions of 'citizenship' and 'democracy' are contested concepts.

While 'citizenship' and 'democracy' are universally accepted terms, there is uncertainty as to what people understand them to be, particularly those who are marginalised in society. As explained by Kabeer (2005), because of social exclusion, although all citizens of a state should be treated as equals, some citizens experience a lesser state of citizenship than others. While in terms of classical liberal theory, individuals enjoy rights by virtue of their citizenship, in particular civil-political rights, this traditional view has been challenged by the advent of neo-liberal[6] ideologies, which considers rights as being 'earned' and dependent on whether its corresponding duties have been fulfilled by the individual, especially as basic services become privatised. From this perspective, emphasis is placed on duties preceding rights (such as basic service delivery being dependent on the payment of the service delivered) and a system of social welfare providing for the basic needs of citizens is perceived as creating an individual dependant on the state rather than making an effort to participate in the market. It is therefore those who actively participate in the market and enjoy economic prosperity that ordinarily consider themselves to possess full citizenship (Kabeer, 2005).

Although legal documents may define what citizenship embodies, how people actually experience citizenship is informed by their daily experiences, which in turn shapes how rights are prioritised and claimed. Despite the formal equality that may exist by virtue of one's citizenship, policy does not assist all citizens equally, nor does it acknowledge hierarchies of power that exist within society, and as such can reinforce these existing hierarchies from the perspective of marginalised groups (Newell and Wheeler, 2006). Through the expression of these daily struggles, coupled with the use of existing legalistic frameworks, which although are abstract, power inequalities are challenged (Nyambu-Musembi, 2005). Thus, I agree with Nyambu-Musembi (2005:45) who states that "struggles have transformed the pre-defined normative parameters of human rights, questioned established categories, expanded the range of claims that could be characterised as rights, and in some cases altered institutional structures".

As argued by Schatten *et al* (2010), in societies with relatively strong democratic institutional structures, such as South Africa, the strength of democracy is not only dependent on strong political institutions or development interventions attempting to address concerns regarding justice and equality alone, but citizen mobilisation voicing concerns of citizens can also promote democratic change and pressure states to be accountable. From this perspective of "deepening democracy", citizenship comprises the building of broad networks and community mobilisation with potential to frame new agendas in order to counterbalance state power, by encouraging citizens to voice their demands and continue to ensure that their governments deliver what they have promised, as well as being involved in decision making processes on policy and political issues that directly affect them (Schatten *et al*, 2010). As such, accountability should be viewed as a process of continuous engagement between citizens and

---

[6] Defined by Bond (2000:1) as "the adherence to free-market economic principles."

institutions because even if there is an increase in rights awareness, marginal-ised groups are unlikely to consider themselves as true citizens if they are una-ble to access basic resources and entitlements (Newell and Wheeler, 2006).

In the context of South Africa, apartheid deprived the majority of the population full citizenship, which was only granted indiscriminately with the implementation of the 1996 Constitution (Dorward, 2000). However, as noted by Dorward (2000:229) "no Bill of Rights, no Constitution, can guarantee rights and freedoms. They must be constantly defended and upheld if they are to remain more than hollow phrases". Citizen mobilisation is therefore not only about holding government to account but also exercising the full right to citizenship and public participation, thereby challenging existing structures of power, denied to the vast majority of South Africans for almost a century. However, as a result of apartheid's racial exclusionary policies, South African experiences of 'citizenship' and 'democracy' are largely determined by race, and consequently class divisions, which have been reinforced since the advent of neo-liberalism.

3.3 Beyond Rights - Race Politics and Black Consciousness in South Africa

According to Kubow (2009:43), lived experiences in social systems are understood through various cultural lenses and "since knowledge is expressed through language, dominant discourses of identity politics and nation-building are an exercise in power and help fashion a citizen's sense of understanding reality". Further, "identity is understood as the frame within which people can determine where they stand on questions of what is good, or worthwhile, or admirable, or of value".

Part of the machinery of apartheid was not only to divide the country's population into bizarre racial categories, but also created a society where one's race determined the perception of oneself in relation to others. Spinner (1994:17) defines race as "an imposed identity for members of subordinate races. They are 'defined from without' as having distinct… characteristics to justify feelings of superiority by dominant groups over sub-ordinate." While race, ethnicity and nationality are social constructions that are created by peo-ple and can therefore be changed, change is not always easy as social construc-tions are deeply embedded in society. Further, liberal notions placing emphasis on the individual to self-create their identity ignores the fact that although many parts of one's identity can be easily changed, people also have a variety of characteristics that are linked to social constraints thus limiting one's ability to change. Thus, even though discriminatory legislation may disappear, the effect of institutional discrimination will linger on in society as racial groups also be-come cultural groups (Spinner, 1994).

BC therefore attempted to counter-act the psychological impact of apart-heid on the self-perceived identity of black people, with the Black Conscious-ness Movement (BCM) viewing itself as a way of preparing black South Afri-

17

cans for "equal participation in a transformed society that reflected the outlook of the majority" (Moodley, 1991:243).

> Quoting key BCM leader, Steve Biko (1978:100):
>
> "…Black Consciousness refers itself to the black man and to his situation…he is first of all oppressed by an external world through institutionalized machinery, through laws that restrict him from doing certain things, through heavy work conditions, through poor pay, through very difficult living conditions, through poor education, these are all external to him, and secondly, … the black man in himself has developed a certain state of alienation, he rejects himself, precisely because he attaches the meaning white to all that is good."

The BCM was grounded in race politics and the belief that to challenge racial discrimination, it first required black people themselves to understand the meaning of their blackness according to their own values. Race was also linked to class, viewing apartheid as entrenching both racial segregation and white capitalism. Resistance thus gained prominence amongst the working class (Hirschmann, 1990; Ballard, 2005).

Although the BCM has been criticized for comprising of a small group of elite black intellectuals, its exclusion of white people regardless of their stance on apartheid, and its declining importance in the 1980's with many supporters joining the UDF, its philosophy remains important in post-apartheid South Africa (Hirschmann, 1990). Despite its emancipatory intentions, the liberal democratic constitutional framework continues to marginalize black people. Indeed, at the time of considering the inclusion of a Bill of Rights in the Constitution, there were opposing views as to whether its inclusion would protect the interests of the white minority. According to Sachs (1990:5), these views were that:

> "a Bill of Rights is necessary because if you grant the legitimate rights to the black majority you must also give reasonable protection to the rights of the white minority, or a Bill of Rights is a reactionary device designed to preserve the interests of whites and to prevent any effective redistribution of wealth and power in South Africa".

Disagreements around the inclusion of the Bill of Rights thus centered around not only which clauses should be included in it, but also the manner in which it would be enforced. Consequently, while the "goal of a race-free society would not be negotiable,…the means of getting there, and…, the time-table and method of transferring power from a racial minority to the people as a whole, would be" (Sachs, 1990:31).

As noted by Nzonogola-Ntalaja (2006:71-72), presenting a line of argument with which I agree, a failure to meet basic needs reinforces poverty and exposes people to greater social deprivation. In examining the challenges confronting the post-colonial African state, what must be considered are the ex-

pectations that ordinary people had of independence, which consisted of the need to expand the space of fundamental rights and liberties long violated by the colonialists, on the one hand, and social progress in terms of a better standard of living, on the other. Quoting esteemed African intellectual Amilcar Cabral:

> "Always remember that the people do not struggle for ideas, for things in the heads of individuals. The people struggle and accept the sacrifices demanded by the struggle, but in order to gain material advantages, to be able to live a better life in peace, to see their lives progress and to ensure their children's future…it is useless to liberate an area, if the people of that area are left without the basic necessities of life" (Nzonogola-Ntalaja, 2006:73).

The above statement could not bear more truth when analysing post-apartheid South Africa. The ideology of BC therefore remains relevant in challenging the normative framework because while institutionalized laws excluded black people on the basis of their race during apartheid, today, class inequalities that arise from the adoption of a neo-liberal economic framework excludes poor people, the majority of whom are black, from attaining a dignified life. Despite the Bill of Rights guaranteeing socio-economic rights, due to its inclusion forming part of a negotiated process with no time limits being set for the realization of such rights or for the distribution of wealth from the white minority to the black majority, the fears expressed above at the time of drafting the Constitution still bear relevance. Furthermore, the constitutional framework, placing emphasis on individual freedoms, does not take into account the external factors that confine poor people to their circumstances. The result is that it fails to address the realization of socio-economic rights with a matter of urgency required for poor black South Africans to live a life with dignity exacerbating feelings of continued exclusion and marginalisation.

3.4 Concluding Thoughts

This chapter, in presenting a multi-dimensional framework of analysis, has sought to firstly provide an understanding of the relationship between the concept of dignity and socio-economic rights, emphasising the idea that through the operationalisation and realisation of socio-economic rights, dignity is protected. It then provides an explanation of the inclusion of socio-economic rights into South Africa's democratic constitution. However, although the Constitution is laudable in that it allows for the justiciablity of socio-economic rights, thus attempting to place it on equal footing with civil-political rights, it remains restricted within its liberal framework by not placing excessive pressure on the state to provide individual entitlements. Consequently, by treating all individuals as equal, it ignores the power inequalities that exist at community level. Theories of citizenship therefore become relevant to challenge the limitations presented by liberal institutional frameworks. However, notions of 'citizenship' and 'democracy' are contested terms, which meanings differ depending on context, and in the South African context, it is largely determined on the basis of race and class. The discussion on BC derived from apartheid explores how 'race and class-consciousness' can be powerful tools in mobilising citizens to challenge exclusionary institutional frameworks, which remains relevant in

democratic South Africa based on a neo-liberal economy that fosters exclusion on the basis of class.

Chapter 4
Beyond the Law - the politics of claiming rights in South Africa

Using the Makhaza "toilet saga" as a case study to analyse the challenges that emerge in realising socio-economic rights, this chapter begins with providing an understanding as to why the realisation of socio-economic rights, and specifically basic sanitation, is relevant to living a life with dignity. It explores the use of the courts as a political forum, as one tool amongst a range of others to draw media, public and state institutional attention to the lack of realisation of such rights. It focuses on both the gains to be made, and the challenges presented when using the 'law as activism', utilising the courts to frame and legitimise claims in addition to highlighting the failure of the government in implementing effective policies to realise socio-economic rights. It will argue that while the law continues to play an important role in realising rights, various ideological and institutional limitations inhibit the realisation of such rights.

The chapter then proceeds to analyse the role of civil society in generating rights awareness and how notions of 'citizenship' and 'democracy' are contested in South African society. It aims to address how such contestation culminates in claiming rights outside of the court arena and the conflict that ensues between citizens and the state, primarily in the form of protest action, which in recent years has become more violent particularly in respect to 'service delivery' protests. It will argue that understandings of 'citizenship' and 'democracy' are rooted in daily living experiences as citizens struggle to have their voices incorporated into decision-making processes that directly affect the most intimate aspects of their lives, such as using the toilet.

Lastly, through the lens of Black Consciousness, the chapter will address how race and class, as remnants of apartheid ideologies, continue to impact on the claiming and realisation of socio-economic rights in post-apartheid South Africa. It analyses the continued marginalisation of African people, who were previously legally excluded from formal structures by virtue of their race during the apartheid era, and argues that African people continue to be excluded in the democratic era partially because of the racial inequality as a legacy of apartheid, but primarily due to their poverty.

4.1 Law as Activism – strategic use of the law to effectively realise rights

A socio-legal approach to realizing socio-economic rights proposes using the normative framework provided by human rights as a measure of assessing the correct form of action in a particular set of circumstances, while at the same time acknowledging that how rights are interpreted and implemented is dependent on the contextual political, legal and social factors in a society. As highlighted by Banaker (2010:36) "…law cannot function satisfactorily, effi-

ciently and reliably without anchoring its operations in the *experience* of justice…"

The realization of socio-economic rights is thus an ongoing process and effective implementation of law is dependent on all actors involved (Govender, 2002), taking into account the socio-political factors of the society in which it is to operate. However, due to weak political support for the courts by senior politicians in South Africa, bureaucratic officials do not feel compelled to implement successful judgments nor do they face consequences for failing to comply. As stated by Jacob van Garderen, National Director, Lawyers for Human Rights (interview, 2012):

> "Much emphasis has been placed on the courts to not undermine the separation of powers doctrine in dictating to the government how to implement socio-economic rights, but … in not implementing judgments and bringing about frivolous appeals as a delay tactic, thereby undermining the judgment, it is in fact the government that undermines the principle of co-operative governance."

In addition, according to attorney Louise Du Plessis,

> "There exists a situation where municipality councillors do not understand the law and are not all on the same page in terms of policy…. Politicians are more interested in scoring political points than actual delivery to alleviate poverty… there's no real commitment to do the right thing, especially at a municipality level where delivery should be taking place." (interview, 2012)

Subsequently, once a victory is achieved at court, legal mobilisation is converted to political mobilisation to ensure that judgments are complied with thus combating the institutional challenges that prevent successful implementation of judgments (Amit, 2011). In referring to Michael McCann, Amit (2011:34) notes that the impact of litigation is not from the court victory itself but rather from the resulting framework within which activists can voice their demands. Activists therefore use courts to "raise awareness, frame the issue, and increase public involvement".

Legal mobilisation that entails further political mobilisation due to the attention generated from the case becomes more necessary in an environment where the courts have adopted an unpredictable approach to socio-economic cases, thereby resulting in the law not only constituting a 'sword' in assisting citizens in framing claims but also a 'shield' protecting the state from excessive pressure to fulfil individual entitlements (Liebenberg, 2001). However, as argued by Dugard and Langford (2011:39), public interest litigation still has the potential for social change if a more "expansive, contextualized and responsive framework" is adopted in order to assess the impact and effect of litigation. Thus, the authors prefer to view litigation as a platform for social movements to exercise 'politics by other means' (a term coined by Richard Abel, 1995), by politicizing issues and having a more profound and lasting impact beyond the mere issuing of a judgment, whether successful or not. As expressed by van Garderen (interview, 2012):

"While litigation should only be used as a measure of last resort, it continues to play a crucial role as a tool to not only secure judgments but also as a process tool to compel different actors to take the correct procedural steps thereby ensuring that they consult [with communities] in a proper manner. Engagement therefore becomes meaningful and done in a way that decision makers give due regard to community views".

Notwithstanding the visible platform that pursuing a case in court provides, various challenges, such as the costs associated with litigation, prevent the access of poor people to the justice system (Banaker, 2010; Cote and van Garderen, 2011; Pieterse, 2008; Dugard, 2006, 2008), reinforcing the idea that law is only one of a range of tools to be utilized in transforming South African society. For Dugard (2006, 2008) and others, accessing the courts as state institutions is key in claiming rights for the poor, while for Cote and van Garderen (2011) the reluctance in implementation of socio-economic judgments on the part of government is not necessarily because it resists litigation but more because litigation interferes with policy planning.

Further, as highlighted by Sunstein (2001) and Liebenberg (2001) above, the courts' insistence on complying with the doctrine of separation of powers by only requiring the government to demonstrate that it has developed a plan to progressively realize socio-economic rights has proven to be problematic in instances where there has been a disregard for implementing judgments. Contrary to Wesson's (2004) concern that having the courts dictate to the government on how to prioritise rights would limit government's flexibility in implementing policies to effectively realise rights, this leeway provided by the courts has in some cases allowed the government to disregard judgments altogether, or implement it in a manner and pace determined by those with political power. This is especially problematic where there is a lack of understanding of implementing socio-economic rights as a matter of urgency because they speak to the basic needs of people required for them to live a life with dignity to which they are entitled as per the Constitution, and not as a favour to the community in order to score political points. As noted by du Plessis (interview, 2012):

"We are trying to persuade courts to move away from [a] "reasonable plan" approach [adopted] in Grootboom because either [a] plan is not drafted, or if it is, it isn't implemented…[we want] to encourage courts to play supervisory role overseeing local government and ensuring they implement the plan. [We] don't expect courts to be managers by deciding specificities but at least list clear deliverables, for example, report back by a certain date to show what has been done to realize the right."

Yet, despite the various institutional challenges that inhibit effective implementation of judgments securing socio-economic rights and the differing views that exist between lawyers in how best to move around the lack of implementation, using the existing legal framework is certainly not redundant in changing the lives of poor people in South Africa.

"Although the government has defaulted in implementing judgments, this is not a general trend. With the exception of a few 'delinquent' departments who blatantly refuse to implement judgments, we are not talking about a …

23

situation where there's just a complete disregard for the judiciary….government is not homogenous in its opposition to the Constitution or what the law requires them to do." Further, "the use of litigation is not always ineffective ... Systemic change is possible if using law in conjunction with other strategies. Litigation remains useful in highlighting not just the specific issue being litigated but the broader problems of governance, which may have been overlooked had it not been for the litigation. The significant support for the issue being litigated over … makes it very difficult for government to ignore and continue to act in a non-democratic manner." (van Garderen, interview, 2012)

The necessary structural change therefore requires consistent engagement between civil society and the state, which is largely dependent on a politicized citizenry. Successful judgments alone are not enough to make the necessary structural changes or to disable social power relations preventing the implementation of judgments (Dugard, 2006, 2008), reinforcing Abel's (1995) argument that the legal system can be used as a political tool to make a statement about society but on its own cannot provide the solutions necessary to realize socio-economic rights.

The Makhaza 'toilet saga' is a case in point. The media attention that the case drew, particularly because of its highly politicized nature and the role that the African National Congress Youth League (ANCYL) played in filing the initial complaint on behalf of the Makhaza community at the SAHRC against the Democratic Alliance (DA) (the ruling party of the Western Cape and the African National Congress's (ANC) official opposition), resulted in increased awareness and mobilization around the issue of the lack of basic sanitation in the township of Khayelitsha. The SJC, at the forefront of the campaign for the delivery of safe and clean toilets to the residents of Khayelitsha, through various online and alternative media platforms, consistently released statements highlighting the actual issue in dispute in an attempt to counter the mainstream coverage of the political spats that ensued as a result of the litigation (Silber, 2010).

As a result of the public outrage the case caused, the courtroom became a stage to express frustration, which in turn influenced policy at a national level. Consequently, as part of its Human Rights Day commemorations on 21 March 2012, SAHRC Commissioner Pregs Govender highlighted the dire state of sanitation in South Africa (Govender, 2012). The SAHRC subsequently launched a road show of national hearings of water and sanitation, in order to address the lack of inter-governmental co-operation and meaningful public participation that inhibits the delivery of basic rights. Acknowledging the interdependency of rights, it further noted that "policy-makers often develop implementation strategies that are fragmented, short-term and unsustainable and ignore the inter-dependence, indivisibility and universality of rights" (SAHRC, 2012:2), highlighting a lack of a rights-based approach to service delivery.

The SAHRC has further committed to holding a series of provincial hearings between July 2012 and January 2013, enabling local communities to voice their experiences of access to water and sanitation, report on the delivery of these rights, reflect on the impact of non-delivery of these services on other issues such as gender-based violence and gender equality, engage with local and national government representatives, and also understand the role that business plays in terms of the use and pollution of water. A complete report of the SAHRC's findings is due to be delivered to Parliament in March 2013 (SAHRC, 2012).

The case has also brought to the fore the challenges that exist at a policy level that inhibit the realisation of rights. In a report compiled by the government of the Western Cape on sanitation, it highlights that in the Western Cape, there are roughly 233 informal settlements. The City of Cape Town has adopted a sanitation implementation policy on the ratio of 1 toilet for every five households. It states that it aims to meet the target of providing a "basic rudimentary level of sanitation to all by 2014", that the needs have been identified, and subsequent consultations will occur at a municipal level to determine the priorities of informal settlements to be upgraded, with funding to municipalities re-prioritised. However, it also identifies a myriad of challenges affecting sanitation implementation, particularly, a lack in land availability for housing, an unavailability of funding for bulk services, and a lack of ownership by beneficiary communities for facilities provided, community cohesion and leadership issues (Tshangana, 2011).

However, as argued by Tissington (2011), the focus on constructing toilets that meet political targets to deliver, rather than focussing on the impact of intervention, is often at the expense of community consultation and participation. This is evident in the number of toilets that have been constructed across the country that are not being used. Thus, statistics and data on sanitation are unreliable, which impacts directly on acquiring up-to-date information on backlogs required to develop a working infrastructure and the effective planning ability of all spheres of government. While policy guidelines in government documents are provided, approaches vary in implementation between municipalities and provinces, and in some cases, local municipality knowledge of policy is practically non-existent. As such, policy gaps emerge in relation to densely populated informal settlements and the inclusion of marginalised groups, with a lack of compulsory standards in order to meet the constitutional requirement of basic sanitation for all (Tissington, 2011).

Further, the departmental shift at national level from the DWA to the DHS as the body responsible for sanitation has adversely affected policy implementation. The devolving of responsibility of service delivery to local government and the lack of national monitoring has resulted in municipalities failing to perform, affecting service delivery. There are also numerous challenges in terms of infrastructure and technology options available to deliver basic sanitation. Furthermore, the effect of stalled housing projects due to a lack of an integrated and planned approach to housing has further inhibited the implementation of basic sanitation (Tissington, 2011).

Thus, notwithstanding the gains that were made by pursuing the case and contesting local government in court, subsequent challenges have emerged that further inhibit the realisation of rights. More specifically, such challenges include the hesitance of policy-implementers from engaging with communities in order to establish and prioritise community needs fearing that such engagement may result in an agreement concluded between the government and the community being considered unconstitutional, resulting in the government potentially being sued by the community. As stated by the Minister of Human Settlements for the Western Cape:

> "It is unfortunate because the consequences of what happened means that officials will not be innovative in future… As a result of Makhaza [case], officials will now stick to the book, which is not always the best option because it has its own shortcomings, mainly that some people will have to wait for services longer than others". (Madikizela, interview, 2012)

The above view was reiterated by researcher Tristan Gorgens, who was of the view that:

> "The case is a real sadness because what I imagine it does because is send a signal to local governments across the country that you don't want to establish informal partnerships with communities…because this is what happens if you don't watch it very carefully - you can get your fingers burned" (Gorgens, interview, 2012).

The ensuing result is that despite Sachs' (1992) argument that the inclusion of the Bill of Rights aiming to protect citizens from state neglect as was the case during apartheid, state neglect continues due to policy implementers concentrating on fulfilling the bare minimum of their constitutional mandates to avoid being hauled to court for constitutional failures. It also demonstrates a lack of understanding at policy level that all rights listed in the Bill of Rights are rights that citizens are entitled to claim, and are interdependent and essential to realise in order for citizens to live a life with dignity, although it was explicitly mentioned in both the SAHRC findings and the High Court *Beja* judgment.

Further, although the standard of 'reasonableness' is assessed on the basis of priority-setting taking into account those most vulnerable in society (Sunstein, 2001), thus compelling the state to act positively in realising rights but doing so within their available resources and on terms determined by the government, there is very little regard for the urgency by which socio-economic rights need to be realised because it forms the foundation of living a decent life. Furthermore, the position adopted by the courts to only adjudicate disputes rather than managing bureaucratic policy, and the devolvement of responsibility from national to local level for implementing service delivery, results in a lack of state authority monitoring the implementation and maintenance of basic services. Moreover, such responsibility is further delegated to communities to assume ownership over the maintenance of services being delivered to it, thus absolving the state of full responsibility for service

maintenance, even though such services embody socio-economic rights to which citizens are entitled and are not earned.

Citizens subsequently lose faith in state institutions and feelings of exclusion and marginalisation begin to emerge. If dignity is linked to insult as argued by Gan (2009), it could not be a better linkage as when having to use a toilet every day that is either not enclosed in full view of the public or not in a decent enough condition to be used, causing feelings of humiliation and neglect. Thus, citizens turn to further protest action as a means of venting their frustrations.

4.2 Rights Consciousness and Civil Society in South Africa

According to Greenstein (2003:15), in a democracy, civil society can play a role in holding the government accountable beyond mere elections, providing a channel for citizens to voice their daily concerns thus creating mechanisms for popular participation in governance. As argued by Ballard *et al* (2006), in 1994, former anti-apartheid activists acquired political power, with expectations that the adversarial social struggle against the state had ended. This expectation informed civil society relationships for a period after 1994 and engagements between the state and civil society were largely collaborative, thus stifling social struggles for a short period.

However, shortly after South Africa's transition to democracy, social struggles started to re-emerge, mostly coinciding with the presidency of Thabo Mbeki and the implementation of GEAR, a policy decision to pursue economic growth and employment through trade liberalization, thus supporting neoliberal economic policies in exchange for (white) capital's acceptance of affirmative action and black economic empowerment (Ballard *et al,* 2006). In contrast to apartheid-era social movements that were united in their cause, namely overthrowing the apartheid state, contemporary social movements[7] are diverse in their objectives, with campaigns ranging from anti-eviction and land redistribution to the anti-privitsation of basic services (Ballard *et al,* 2006).

While authors such as Ballard (2005) have pointed to a vacuum of civil society for not having any 'legitimate' activists for reasons explained above, although this may have been the case in the 1990's, to hold this view now implies that contemporary social movements, constituting citizen mobilisation in the form of protest action, are not considered to be legitimate voices. Feelings of exclusion and marginalisation[8] are thus reinforced, as citizens struggle to have

---

[7] Defined as "politically and/or socially directed collectives, often involving multiple organisations and networks, focused on changing one or more elements of the social, political and economic system within which they are located" (Ballard *et al*, 2006:3)

[8] Marginalisation encompasses "the disadvantages of individuals, households, social groupings, or spatial areas, in terms of some social, economic, cultural or political activities or processes",

their voices heard in order to convey understandings to political power-holders of what notions of 'citizenship' and 'democracy' mean to them, which extends beyond the normative definition provided in the Constitution. Thus, as earlier argued by Kabeer (2005), although the Constitution may state that all citizens are equal, this is invariably not the case as poor people fight to have their voices considered in matters that affect their daily lives. As stated by the Minister:

> "the quality and calibre of civil society organisations and leaders that we have is very, very poor. And this is because the majority of the people who were very strong at civil society level either became politicians or they joined government in various capacities, and this has left a huge vacuum, and this vacuum is exploited by the people who have their own agendas, who are claiming to be representatives of the community…" (Madikizela, interview, 2012)

Further, "popular participation is invariably seen…as a way of bolstering the state under ANC leadership, rather than as potentially contradicting, challenging or forcing the state to re-think it policies and practices" (Greenstein, 2003:15).

However, with the ANC's increasingly neo-liberal policies (and the DA's market-oriented position as official opposition), it is citizens that provide a critical opposition to promote the needs of poor people (Ballard *et al*, 2005). Thus following the argument posed by Nyambu-Musembi (2005) above, citizen mobilisation is extremely vital in helping shape policy that effectively assist the poor.

The above notwithstanding, popular discourse on the nature of protests in contemporary South Africa has been problematic, reducing the cause of protest action to a lack of service delivery and resources rather than understanding it "as a struggle for the right of community residents to participate in decision-making about the kinds of resources and services that are appropriate to their needs" (Dawson, 2010:108).

Dawson (2010) goes further to argue that by over-simplifying the issue to only service delivery demands, it runs the risk of solutions being short-lived and not identifying the root cause of the dissatisfaction. However, if a narrow focus is adopted to the issue of participant decision-making, it runs the risk of assuming that once communities feel comfortable that they have been given the chance to be heard, communities will be satisfied, regardless of whether or not their needs are met with urgency. This approach therefore assumes that communities are more concerned with higher-level abstract policy planning rather than having their basic needs met, resulting in further oversights. Thus, a balanced approach needs to be adopted in order to ensure that citizens partici-

---

and is linked to "a lack of material resources and poverty and associated with powerlessness and a lack of representation and freedom" (Ballard *et al*, 2006:10)

pate in decision-making processes while at the same time having their needs met with a certain degree of urgency.

As highlighted by Gorgens (interview, 2012):

"The key challenge at a local government level affecting community engagement is changing the 'compliance mindset', which is deeply entrenched and focussed on pursuing compliance in a narrow sense for 2 reasons…political reasons in terms of achieving targets and legal compliance to meet constitutional obligations. This has the effect of eliminating collaboration with communities in the process beyond just calling a community meeting and holding a register in terms of the constitutional obligations… The challenge is therefore to draw officials out of the compliance mindset in order to avoid missed opportunities and implement policy in a way that does effectively realise rights".

Further,

"This 'compliance mindset' focuses on individual families as recipients, which is not leading to integrated service delivery that can benefit entire communities; it focuses on whether individuals meet requirements to get assistance rather than addressing the broader social system, and thus progressively realising rights cannot be achieved" (Gorgens, interview, 2012).

Thus, there is an apparent lack of understanding that policy does not assist all citizens equally (Newell and Wheeler, 2006) and that active engagement between the state and civil society is required in order to identify the root causes of dissatisfaction that lead to citizen mobilisation in the form of protest action.

The Makhaza case further highlighted the tension that exists between local government attempting to fulfil political objectives in compliance with constitutional requirements but failing to take into account or understand the real needs of the communities whom these policy decisions will affect. As stated by researcher Kate Tissington (interview, 2012):

"Communities are calling for flexibility and support in terms of realising rights themselves…the overly regulated top-down policy implementation can have detrimental effects".

Thus, notwithstanding the emphasis that development policies such as the Upgrading Informal Settlements Programme (UISP) place on community participation intending that citizens playing an active role in the development of their communities, policy implementers do not seem to have an understanding of the substantive intentions of the policy beyond fulfilling their constitutional mandates. For example, in the Makhaza case, the City attempted to argue that the agreement concluded between it and the community, in respect of the community taking responsibility for erecting enclosures around the toilets in order for the City to provide more toilet structures, was reasonable. However, only 60 people had agreed to this arrangement, representing the interests of approximately 6000 residents (Beja *et al* v Premier of the Western Cape, 2010). Thus, even though the City fulfilled its mandate by holding a community meet-

ing, it is apparent that there was no substantive engagement with the intention of understanding community needs or prioritising the needs of the most vulnerable segment of the population, which in this case were women, children, elderly and disabled people.

The ensuing destruction of the enclosures, erected by the City after being advised to do so by the court, was a further expression of community frustration with not only the lack of consultation but also the City not attending to their most basic needs as a matter of urgency (Silber, 2010). Furthermore, in spite of the *Beja* judgment placing emphasis on the importance of meaningful community engagement, the City persists in its failure to engage with the affected community. According to the SJC (2012), while the City announced the implementation of a janitorial service to service toilets in Makhaza in May 2012, which would include community education regarding the use of the service, by September 2012, the City had not implemented an effective janitorial service nor had it released an official policy document or had any meaningful engagement with the community as to how the service would function (SJC, 2012). This lack of engagement has exacerbated community frustration, which instead gets reduced to politically motivated protest action.

Thus, while post-apartheid popular politics may demonstrate a fluidity that represents a healthy sign to democracy by constantly challenging the state and broadening concepts of citizenship and democratization (Ballard, *et l*, 2005), the rise in the number of protests, which have increasingly been met with violence and state repression, is also a sign of mounting dissatisfaction with the state's failure to deliver on its mandate. As such, when the state fails to implement policy in a meaningful way that effectively addresses the needs of affected communities, and instead formulates policies that it deems appropriate without understanding such community needs, it gives rise to feelings of disregard, frustration and anger. The equal citizenship afforded to citizens by virtue of the Constitution becomes meaningless as citizens do not experience such equality in their daily lives. Thus, following the argument presented by Schatten *et al* (2010) above, holding the state accountable does not only occur from above through use of the courts demonstrating the strength of democratic state institutions but continues to occur from below in order to maintain pressure on the state to deliver.

Furthermore these feelings of anger and neglect have been experienced more so by the African segment of the population. As noted by Bond (2004:52), referencing a survey conducted in 2002, "the number of black people who believe that life was better under the apartheid regime is growing." Ten years later, these feelings of exclusion and marginalization remain unabated and misunderstood, as was highlighted by Minister Madikizela (interview, 2012):

> "The assumption is that people protest because of lack of service delivery; actually the opposite is true…. I can tell you that almost all of those people protesting come from areas where the Department is very much involved in terms of service delivery. And what we often hear from those people is that they are complaining because they feel marginalised because other people are

getting priority instead of them…so that's still something that we need to understand…"

4.3 "Black Voices Shout!"[9]: Notions of contested citizenship

As argued by Bond (2004), the dawn of democracy in South Africa brought with it the introduction of increasingly neo-liberal economic policies, which had the effect of reinforcing race, class and gender inequalities inherited from apartheid. As noted by Gelb (2006:3), "the timing, sequence and management of the processes putting these monetary, fiscal and financial market policies in place was wrong, even disastrous, from the perspective of economic growth." The aim of these policies was to persuade foreign and domestic investors that the ANC would not reverse its stance on policy once they had committed to investing in South Africa, thus protecting the interests of capital (Gelb, 2006).

According to Habib (2006:13), while some black people have benefited from neo-liberal economic policies, the vast majority of black people have been its victims of inequality, thus reinforcing the race and class categories inherited from apartheid. This is further illustrated by political analyst, Liepollo Pheko:

> "You have the accumulation of a massive amount of wealth by a new black upper class elite colluding with old white capital and old white oligarchy…so all of this is very confusing in the minds of many people on the ground" (Al-Jazeera, 2012).

As a consequence, protecting the interests of investors and an elite minority has led to feelings of marginalisation amongst South Africa's poor majority. As explained by Sipho Jantjie, a member of the social movement Anti-Privatisation Forum:

> "They [the government] are there for themselves and not for us…things are not fine in South Africa, people are still suffering" (presstvlondon, 2010).

Due to its apartheid legacy, poverty in South Africa and the marginalisation experienced as a result thereof is still to a large extent defined along racial lines, worst affecting the African population. This is particularly evident in provinces such as the Western Cape, where in contrast to the rest of the country, the African segment of the population is 35% (Small, 2008), and is the only province governed by the DA.

The DA, a liberal party that places emphasis on the protection of individual rights, finds its roots in an alliance between the former NP and the former

---

[9] James Matthews, *Black Voices Shout*, 1974.

liberal Democratic Party. Although it secured roughly only 17% of the vote in the country's last national elections in 2009, it holds the position as the country's official opposition to the ANC and won 51% of the vote in the Western Cape Province. Having absorbed a large number of former NP supporters, in an attempt to market its image as non-racial, the party views itself as a home for all 'minority' groups in South Africa, namely the white, Coloured and Indian aspects of the population, which "each harboured fears of being excluded in a country that showed signs of increasing Africanisation" (Southern, 2011:283). The party also views policies such as Affirmative Action and Black Economic Empowerment as divisive, forming "the basis of an Africanisation programme that had an unnerving impact on minority groups" (Southern, 2011:285). However, unemployment amongst the African population in 2007 was almost 40%, practically double that of the Coloured population at 21.8%, and in stark contrast to the 9.6% of the Indian and 4.4% of the white segments of the population that are unemployed (Small, 2008).

In a study conducted with DA members on their perceptions of voting trends, quoting one member, Southern (2011:291) further states:

"Helen Zille [party leader] has showed both white and coloured voters in Cape Town that the DA in collation with other minority parties can deliver clean, efficient services in Cape Town".

However, the same view is not held amongst African people living in Cape Town. According to Williams (2005) racist attitudes and practices continue to influence the planning process and implementation of policy programmes. Referring to the issue of housing in the Cape Town area, Williams (2005) notes that racist policies implemented in the Apartheid era favoured the 'coloured' population, which led to freeze in state provision of resources, including housing, for African people. Consequently, despite the inclusive nature of the Constitution, urban development planning does not take racial issues into consideration and continues to operate within the restrictive parameters of apartheid era town planning. As such, there is still a battle for meaningful citizenship by the country's historically marginalized groups against racially entrenched structures run by bureaucrats who hail from the apartheid era, thus making equal access to basic rights problematic (Williams, 2005). Thus, in reference to Spinner (1994) above, while race and poverty may be social constructions which are capable of change, various social constraints such as institutional discrimination limits an individual's influence over such change.

Despite these institutional failures and clear indicators of poverty, leading to feelings of marginalization by African people in Cape Town, the ensuing increase in protest action that has arisen in the area (as it has throughout the country), has been reduced to political trouble-making by DA politicians. As stated by the Minister interviewed:

"…service delivery protests are as a result of people who are flexing their muscles because they understand that elections are around the corner…because they want to project themselves as the messiahs and healers of the community…the irony is that a number of independent agencies have

rated this province as the best performing province in all respects…but is also the province with the most service delivery protests…I mean that should tell you that there is more to it than meets the eye" (Madikizela, interview, 2012).

Indeed, as the Minister claims, there is 'more than meets the eye'. According to Sacks (2012) for most of the past winter in 2012, residents of informal settlements in Cape Town engaged in what could be considered to be some of the most active civil-disobedience protests in South Africa since 1994. However, instead of focusing on the issues of a lack of service delivery and meaningful engagement, which formed the basis of the protest action, it was reduced to political bickering. The Mayor of Cape Town has alluded to protests being spurred and organised by members of the ANCYL, despite communities confirming that members of the ANCYL are not always present in these protests, primarily because the protests are not only against the City, and its DA government, but also against the local ANC ward councillors who are not conveying the communities' demands to local government. Protests are largely about the affront on their dignity experienced by members of these communities, which include voters of the DA, who are aware of the contradiction of their actions. Civil disobedience, including the destruction of public property, is therefore viewed as the only way to get the attention of politicians to address community grievances (Sacks, 2012).

Further, as pointed out by Silber (2012), in Cape Town, roughly one million people live in informal or inadequate housing with approximately half having no access to basic sanitation facilities. Basic services in these communities are inadequate largely due to a lack of planning, monitoring, maladministration and corruption. Yet, roughly 40 kilometers away, the city center and its surrounding suburbs compare to some of the most-developed cities in the world. Further, although crime in the city has decreased by 90%, levels of crime have increased in Khayelitsha, with residents of the view that the police do not keep them safe, nor have the courts provided them with justice. Furthermore, due to the floods experienced in this area every winter, thousands of residents have either been displaced or have had to experience running sewerage in their homes. As such, Khayelitsha is the only area in Cape Town where levels of dissatisfaction with the government has decreased between 2008 and 2012 (Silber, 2012).

According to Thompson and Nleya (2010), in an analysis of a survey on perceptions of governance and service delivery in Khayelitsha in 2007, the authors argue that communities in Khayelitsha are very aware of the political structures available to them and the power they yield through protest action. However, although the Constitution envisions a higher level of citizen participation beyond elections, with each community having a ward councillor to encourage greater participation, knowledge of representatives is low despite high levels of participation in elections. The study therefore indicated that people have faith in the system of democracy but lack faith in their representatives (Thompson and Nleya, 2010).

Notwithstanding the conclusion drawn above, supported in a recent report released by the South African Institute of Race Relations (SAIRR), which stated that while the amount of violent protests have increased in size and number, most protests remain peaceful. However peaceful gatherings were generally linked to labour demands, while violence largely occurred in service delivery protests (Roodt, 2011). Indeed, as stated by a resident of Khayelitsha interviewed by Silber (2012):

> "Only when you spend weeks in a shack with freezing water up to your ankles will you understand why people turn to violent protest".

The attitude of local governments focusing on meeting political targets rather than understanding the needs of communities, which could assist in improving priority setting further exacerbates feelings of marginalization. As stated by the Minister in reference to the Makhaza toilet saga,

> "To prove that we were on the right track, more than 90% of the people indeed enclosed their toilets…and only less than 10%, or around 5% of the community members failed to enclose their toilets and caused this whole hulla-baloo" (interview, 2012).

Although the government of the Western Cape has indeed been more successful than other provinces in achieving policy objectives in respect to service delivery, which is evident in being awarded the highest number of "green drop" awards by the DWA in the country for 2011, the high number of protests in Cape Town speaks to feelings of marginalisation and alienation experienced by African citizens who live in informal settlements. By reducing these voices to power plays between political parties further heightens frustration, reinforcing feelings of exclusion. As noted by Gorgens (interview, 2012):

> "Political changes in leadership of the province between the DA and ANC over the years has made it difficult to plan – both parties have engaged in 'dirty' politics, and in the process it has had the effect of pushing people deeper into the trenches just to score a political victory".

> Further,

> "As a result of South Africa's history there is a fear or hesitance to engage beyond the racial and community boundaries to understand context. This is evident in the Western Cape, which is still battling with structural and cultural boundaries that do not allow people to communicate openly without predicting an outcome before engagement has even begun" (Gorgens, interview, 2012).

The current approach to service delivery thus tends to lack the understanding that communities are not homogenous in their needs, and that whether community development projects are successful is dependent on a myriad of factors that exist beyond the normative policy framework. Formal exclusion of the African community has its roots in colonialism, which was further entrenched during apartheid. However, despite the demise of apartheid and the non-discriminate citizenship of the African population afforded to them by virtue of the Constitution, neo-liberal economic policies adopted by the demo-

cratic state has reinforced the exclusion inherited from apartheid because of the inequality the economy has generated leading to further poverty.

If, according to Kubow (2009), identity is a frame by which people can determine what is of value, then growing up in an environment where the state does not acknowledge one's voice because one is poor and is consequently deemed insignificant enough to use a sub-standard toilet, it must have an impact on that individual's sense of self-worth. Biko's BC philosophy thus remains relevant not only to alert African people to their continued exclusion from institutions on the basis of their race as an evil remnant of the apartheid regime, but also in making African people aware that such exclusion is compounded because they are poor.

Further, as highlighted by Spinner (1994), liberal notions of democracy places emphasis on individuals making use of the freedoms guaranteed to them in constitutions to change their circumstances. However, as was demonstrated in the Makhaza case, despite formal policy encouraging active engagement by policy implementers with communities, and notwithstanding the guidelines that were provided in the subsequent *Beja* judgment with factors to consider when implementing development policies that affect most personal aspects of an individual's life, the state persists in failing to plan effectively to overcome the various challenges that prevent the realization of rights.

If the state is going to contribute to the realization of the overarching goal of the Constitution, namely, that each South African is entitled to live a life with dignity, then as noted by Tissington (interview, 2012):

> "Whatever the processes are, dignity has to be at the forefront of those policies. It also needs to be borne in mind that communities are not homogenous and want different things – some informal settlements do not mind having temporary portable toilets as an interim measure, whereas others want communal sanitation blocks. These views also often depend on who's speaking on behalf of the community; women's voices are unfortunately conspicuously absent. Thus understanding local politics and power dynamics becomes essential in realising rights, especially because of the myriad competing agendas that exist within communities."

Nzongola-Ntalaja (2006) notes that in failing to meet basic needs, poverty is reinforced and the expectations that ordinary people had of democracy providing a space for fundamental rights to be realised, long violated for decades by discriminatory laws and practices, remain but a dream. The student uprisings of 1976 saw a re-emergence of black resistance, which became more sustainable and broad-based, largely a result of the BCM. Almost 40 years later, Biko's philosophy of encouraging poor black people to not define themselves by their circumstances, in spite of their exclusion, and to be militant in their approach to resistance when claiming rights forcing those in power to listen, remains relevant in contemporary South Africa.

4.4 Concluding Thoughts

Through analysing the implementation of the basic sanitation policy in Makhaza, this chapter has sought to highlight a variety of factors that ought to be considered when realising rights. The High Court was used as a political platform to highlight the daily struggles that the people of Makhaza are confronted with regarding their basic sanitation needs, while the successful judgment has also served as a process tool providing much-needed guidelines such as which social factors to consider when implementing policy or how to effectively engage with communities, to local government in its quest to realise rights, which are currently lacking in policy. The *Beja* judgment further highlighted the challenges that exist at a policy level, such as the state's focus on meeting political targets, which has resulted in laudable institutional initiatives to rectify these institutional shortcomings. However, notwithstanding these positive outcomes, taking the local government to task through the courts has presented its drawbacks. Politicians are reluctant to engage with communities on matters that directly affect them in future, in fear of being sued or because they do not want to tamper with policy plans. Thus, due to inadequate political support of the successful judgment, policy-implementers insist on concentrating on fulfilling their constitutional mandate rather than comprehending community needs or that realising basic needs such as sanitation is essential to living a life with dignity.

Consequently, citizens are marginalized from the processes of participatory democracy and subsequently voice their frustration through protest action. However, the Makhaza case also highlighted that protestors are not deemed by politicians to be 'legitimate' voices representing community needs and are instead labelled as troublemakers with a political agenda. Further, popular discourse on protest action in South Africa has reduced the issues as relating to service delivery only but fail to understand that such frustration incorporates a combination of not participating in decision-making processes and not having basic needs met as a matter of urgency. This lack of understanding further compounds feelings of marginalisation.

Moreover, in the context of Cape Town, African people experience the brunt of such marginalization, firstly because of apartheid, the legacy of which continues to linger in South African society and institutions, and secondly, because they are poor. The effect of naming the increased number of protests in the area as 'service delivery' protests, has had the effect of the local government pointing to statistics to counter this argument, thereby reducing such action to being politically motivated, and thus overlooking the continued expressions of marginalistion felt by African people in Cape Town. Moreover, by placing emphasis on the community to take responsibility for the services being delivered to it, it absolves the state of full responsibility for service maintenance, even though such services embody socio-economic rights to which citizens are entitled and are not earned.

In failing to meet the basic needs of African people in Makhaza through the provision of basic sanitation, poverty is reinforced reducing the perceived

36

self-worth that individuals in this community may have of themselves. Consequently, the expectations that ordinary people had of democracy are not met, and the values embodied in the Constitution remain illusory.

Chapter 5
Conclusions

This research has sought to provide a deeper understanding of why realising socio-economic rights in contemporary South Africa is fraught with challenges that inhibit its translation from abstract legal documents to a living reality for the poor, thus limiting the overarching goal of the country's democratic Constitution, namely, that every South African is entitled to a life with dignity. It has argued that the current socio-economic difficulties being experienced in poor communities such as Makhaza, Khayelitsha, has its roots in apartheid policies, which has led to continued social exclusion as a result of apartheid being one of the key contributors to poverty in its current liberal democracy.

The research paper has aimed to argue that a multi-facted approach must be adopted to analysing contemporary challenges to realising socio-economic rights. In order to address why the realisation of socio-economic rights is relevant to living a life with dignity, it has emphasised the idea that through the operationalisation and realisation of socio-economic rights as provided for in the Constitution, dignity is protected. However, notwithstanding the inclusion of socio-economic rights in the Constitution allowing for its justiciability, the Constitution remains restricted within its framework by not placing excessive pressure on the state to provide individual entitlements. It consequently assumes that all individuals are equal thus ignoring power struggles that exist within communities.

Theories of citizenship therefore provide a lens to analyse how citizens move around the state institutional challenges that they are regularly confronted with. However, notions of 'citizenship' and 'democracy' are contested terms, which meanings differ according to context, and are rooted in daily experiences and interactions with the state. In the South African context, due to its apartheid legacy, such state interactions are still largely determined by one's race but more so by one's class. Black Consciousness, although derived from the apartheid era in reference to 'race consciousness', thus provides a lens to analyse how 'class consciousness' encourages poor black people to move beyond their circumstances and be militant in their approach to resisting state repression when claiming rights, despite their social exclusion from formal institutions on the basis of their poverty.

A deeper analysis of the Makhaza "toilet saga" highlights the various factors that ought to be considered when realising rights. While claiming rights through the courts in reference to the Constitution remains symbolically significant particularly as a process tool to develop constitutional jurisprudence, and more so as a political tool to highlight the daily struggles of South Africa's poor, successful judgments alone are not enough to ensure that citizens receive the rights they are entitled to. Moreover, adopting a legal approach to realising rights has presented its challenges, such as policy-implementers reluctance to

engage with communities on matters that affect them, in fear of being sued for unconstitutional behaviour. Poor citizens thus bear the consequences and are further neglected, despite the entitlements guaranteed in the Constitution .

Consequently, feelings of marginalisation experienced largely by poor Africans are exacerbated by their exclusion from participatory democratic processes, the frustration of which is voiced through protest action. Notwithstanding the Constitution guaranteeing equal citizenship irrespective of one's class or race, protestors are not deemed by politicians as 'legitimate' voices representing community needs and are instead labelled as troublemakers with a political agenda. Furthermore, popular discourse on protest action has failed to consider that such frustration embodies the exclusion of poor people from decision-making processes about matters that directly affect them on the one hand, in addition to not having their most basic needs met as a matter of urgency, on the other. Such over-simplification of the issues being raised has resulted in politicians resorting to statistics as an indicator of fulfilling their constitutional mandates, resulting in further state neglect, and subsequent feelings of anger.

I have further aimed to argue in line with the argument posed by Greenstein (2003:36) that "[n]either the legal discourse of rights nor popular mobilisation could provide on their own a strong challenge to the political primacy of state officials" but rather "[t]he combination of legal-constitutional mechanisms and grassroots organisation is the best guarantee for a successful challenge to the state-centred politics..." While social movement theorists may argue that making use of state institutions brings with it the risk of co-option, thus prioritising state agendas at the expense of the movement's objectives(Ballard *et al*, 2006), it is my view that such an approach ignores the structural gains to be made by effective civil-state interaction, as was highlighted in the Makhaza case. The Mkahaza case is an example of how movements from 'below', through making use of existing rights discourse and institutions, are in fact able to influence policy and change structures 'above'. As such, movements do not necessarily challenge state power with the sole priority of overthrowing the state, by replacing one system of domination with another (Ballard *et al*, 2006), but rather to maintain state attention in realising their needs.

However, as argued by Dugard and Langford (2011:39), when evaluating the implementation of successful court judgments, focus should not only be on whether there has been a material change in the conditions of the affected community or changes to law and policy, but also on the lasting impact of the judgment such as changes to social behaviour. As stated by Tissington (interview, 2012):

> "When you're at that nexus between rights, law, policy, communities it can get quite messy and it's a lot about strategy and tactics and power. Generally it's a case of people telling you: 'we don't have water' and then you try to figure out how to make it happen, trying to negotiate as you go along, within [frameworks] that are available - legislation, regulations, rights - to try and find a way to assist the community. And it's different for everyone…and I think that's the reality…"

Although institutions such as the SAIRR may argue that though there has been an increase in protests, the majority remain peaceful, indicating that South Africans still respect the current institutions of democracy, the increase in violent protests may indicate differently. Protestors are being met with increasing state suppression through a militarized police force, forcing citizens to resort to violent resistance as the only means of having their voice heard.

The recent shooting of protestors by the police at Marikana has been dubbed a "massacre" by South African media reminiscent of the Sharpeville massacre of 1960, where 69 people were killed by police in a protest condemning the requirement of the apartheid regime forcing African people to carry a 'pass book'. As argued by journalist Richard Stupart (2012):

> "The state is at war with the poor majority, and until now we have been able to ignore it. As Sharpeville represented a tear in the fabric of white denial about the costs of their privilege, so might Marikana perform similar work as the moment of modern South Africa's sheltered classes learn to confront the costs of their privilege."

It is hoped that this tragic incident in South Africa's recent history will urge political leaders to rethink their strategy, especially in light of the upcoming ANC leadership conference to be held in Mangaung in December 2012. As expressed by the founding General Secretary of the Confederation of South African Trade Unions (COSATU):

> "Our people, Mr President, are exhausted by the excuses given by our leaders. They want solutions and not more task teams, policy statements and conferences. They want action that improves the day-to-day lives, that delivers water and textbooks, ARV's and medicines to our clinics…we must engage in a healthy open and frank debate. The alternative is too ghastly to contemplate" (Naidoo, 2012).

Indeed, as the title of this paper suggests, the time for dreams has come to an end.

References

Abel, Richard (1995) "Politics by other means?" in R. Abel (ed), *Politics by Other Means: Law in the Struggle Against Apartheid, 1980-94*, New York: Routledge, pp. 7-19

Al-Jazeera (2012) "South African youth 18 years later", available at www.youtube.com (last accessed on 28/10/2012)

African National Congress Youth League Dullar Omar Region obo Ward 95 Makhaza Residents v City of Cape Town, 2010 (case number: WC/2010/0029).

Amit, R (2011) "Winning isn't everything: Courts, context, and the barriers to effecting change through public interest litigation", *South African Journal on Human Rights*, 27(1), 8-38

Bagaric, M and Allan, J (2006) "The Vacuous concept of Dignity", *Journal of Human Rights,* 5, 257 – 270.

Ballard, R (2005) "Social Movements in Post Apartheid South Africa: An introduction" in P. Jones & K. Stokke (eds) *Democratising Development: The Politics of Socio-economic Rights in South Africa*, Martinus Nijhoff Publishers: Leiden, 1 – 20.

Ballard, R, A Habib, I Valodia and E Zuern (2005) "Globalisation, Marginalisation ad Contemporary Social Movements in South Africa", *African Affairs*, 104 (417), 615-634.

Ballard, R, A Habib, I Valodia & E. Zuern (2006) *Voices of Protest: Social Movements in Post-apartheid South Africa,* R Ballard, A Habib & I Valodia (eds), University of KwaZulu-Natal Press:Pietermaritzburg.

Banaker, R (2010) "Law, Rights and Justice in Late Modern Society: A Tentative Theoretical Framework" in R. Banaker (ed) *Rights in Context: Law, Rights and Justice in Late Modern Society*, Ashgate: Surrey, Burlington, 19 – 40

Beja, N, A. Lili & A. Ncani v Premier of the Western Cape, Mayor of the City of Cape Town, MEC for Human Settlements, Western Cape, South African Human Rights Commission, The Minister of Human Settlements & The Minister of Water and Environmental Affairs, 2010 (case number: 21332/2010).

Bienart, W (2001) "Popular politics and resistance movements in South Africa. 1970 – 2008" in W. Bienart and M.C. Dawson *Popular Politics and Resistance Movements in South Africa*, Wits University Press: Johannesburg, 1 – 30.

Biko, S (1978) "I write what I like", (ed) A. Stubbs, Heinemann Publishing: United Kingdom.

Bond, P (2004) "From racial to class Apartheid – South Africa's frustrating decade of freedom", *Monthly Review*, 45-59.

City of Cape Town (2005) "A population profile of Khayelitsha- socio-economic information from the 2001 census", *Information and Knowledge Management Department*, available at http://www.capetown.gov.za (last accessed on 22/10/2012).

Cook, G. (1985) "Khayelitsha – Policy change or crisis response?", *Transactions of the Institute of British Geographers*, New Series, 11(1), 57-66.

Cote, D and J. van Garderen (2011) "Challenges to public interest litigation in South Africa: External and internal challenges to determining the public interest", *South African Journal on Human Rights*, 27(1), 167 - 182

Dawson, M (2010) "Resistance and Repression: Policing protest in post-apartheid South Africa" in J. Handmaker & R. Berkhout (eds) *Mobilising Social Justice in South Africa: Perspectives from Researchers and Advocates*, Pretoria: Pretoria University Law Press, 101-136.

Dorward, D (2000) "South Africa: Democracy and Citizenship in a plural society" in in A. Vandenberg (ed) *Citizenship and Democracy in a Global Era*, MacMillan Press: Houndsmills-Basingstoke-Hampshire-London, 218 – 230.

DWA, DHS, DPME (2012) "Sanitation Services – Quality of Sanitation in South Africa, Report on the status of sanitation services in South Africa: Executive Summary".

Dugard, J (2006) "Court of first instance? Towards a pro-poor jurisdiction for the South African Constitutional Court", *South African Journal on Human Rights*, 22, 261 – 282

Dugard, J (2008) "Courts and the poor in South Africa: A critique of systematic judicial failures to advance transformative justice", *South African Journal on Human Rights*, 24, 214 - 238.

Dugard, J and M Langford (2011) "Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism", *South African Journal on Human Rights*, 27(1), 39-64.

Gan, S (2009) "Human dignity as a right", *Frontiers of Philosophers in China*, 4(3), 370 – 384.

Gelb, S (2006) "The RDP, GEAR and all that: reflections ten years later", *Transformation: Critical Perspectives on Southern Africa*, 62, 1-8

Greenstein, R (2003) "State, Civil Society and the Reconfiguration of Power in Post-apartheid South Africa", *Centre for Civil Society Research Report 8*, University of the Witwatersrand, 1-48.

Goldewijk, B.K. (2002) "From Seattle to Porto Alegre: Emergence of a new focus on dignity and the implementation of economic, social and cultural rights" in B.K. _Goldewijk, A.C. Baspineiro & P.C. Carbonari (eds) *Dignity and Human Rights: the implementation of economic, social and cultural rights*, Intersentia: Antwerp-Oxford-New York, p3-13

Govender, V. (2002) "Economic, social and cultural rights in South Africa: entitlements, not mere policy options" in *Dignity and Human Rights: the implementation of economic, social and cultural rights,* (eds) B.K. Goldewijk, A.C. Baspineiro & P.C. Carbonari, p 75 – 90

Govender, P (2012) "Water is Life, Sanitation is Dignity", speech delivered on 21 March 2012 (available at www.sahrc.org.za, last accessed on 15 August 2012).

Hawker, D. (2011) "Cape Town told to enclose toilets" *Independent Online*, 3 May.

Hindson, D (1985) "Orderly urbanization and influx control: From territorial apartheid to regional spatial ordering in South Africa", *Cahiers d'Etudes Africaines*, 25, 401-432

Hirschmann, D (1990) "The Black Consciousness Movement in South Africa", *The Journal of Modern African Studies*, 28(1), 1 – 22.

Kabeer, N (2005) "The search for inclusive citizenship: Meanings ad expressions in an interconnected world" in N. Kabeer (ed) *Inclusive Citizenship*, Zed Books: London & New York, 1 – 30

Kamwangamalu, N (1999) "Ubuntu in South Africa: a Sociolinguistic Perspective to a Pan-African Concept", *Critical Arts: South-North Cultural and Media Studies,* 13(2), 24-41.

Kollapen, J (2006) "Closing Remarks" in J. Klaaren (ed.) *A Delicate Balance: The place of the Judiciary in a Constitutional Democracy*, SiberInk: Cape Town, 98 – 100.

Kubow, P (2009) "Democracy, Identity and Citizenship Education in South Africa: Defining a Nation in a Postcolonial and Global Era in J. Zajda, H. Daun, L. Saha (eds) *Nation-Building, Identity and Citizenship Education – Cross Cultural Perspectives*, Springer: Australia, 43 -54.

Lebone, K (2011) "South Africa Survey 2010/2011: Living conditions and Communications", South African Institute of Race Relations, 633-639.

Liebenberg, S (2001) "The Right to Social Assistance: The Implications of Grootboom for Policy Reform in South Africa", *South African Journal on Human Rights*, 17, 232 – 257

Maylam, P (1990a) "The local evolution of urban apartheid: influx control and segregation in Durban, 1900-1951", paper presented at History Workshop, University of the Witwatersrand, Johannesburg (6-10 February)

Maylam, P (1990b) "The Rise and Decline of Urban Apartheid in South Africa", *African Affairs*, 89 (354), 57-84

Mokgoro, JY (1998) "*Ubuntu* and the Law in South Africa", paper delivered at Colloquium Constitution and Law, Potchefstroom, 31 October 1997, 1-11

Moodley, K (1991) "The Continued Impact of Black Consciousness in South Africa", *The Journal of Modern Africa Studies*, 29(2), 237 – 251

Naidoo, J (2012) "Can you hear the thunder?", *Daily Maverick,* available at www.dailymaverick.co.za (last accessed on 29/10/2012).

Newell, P & Wheeler, J (2006) "Rights, resources and the politics of accountability: an introduction" in P Newell & J Wheeler (eds) *Rights, resources and the politics of accountability*, 1 – 36

Nyambu-Musembi, C (2005) "Towards an actor-oriented perspective on human rights" in N. Kabeer (ed) *Inclusive Citizenship*, Zed Books: London & New York, 31 – 49

Nzongola-Ntalaja, G (2006) "Challenges to state building in Africa", *African Identities*, 4(1), 71-88

Pieterse, M (2008) "Health, Social Movements and Rights-based Litigation in South Africa", *Journal of Law and Society,* 35(3), 364-388.

Posel, D (1991) *The Making of Apartheid 1948 – 1961: Conflict and Compromise*, Clarendon Press: Oxford.

Presstvlondon (2012) "South African poverty", available at www.youtube.com (last accessed on 28/10/2012).

Roodt, M (2011) "Violent protests growing in size and number but most protests are peaceful", South African Institute of Race Relations (press release: 27 January 2011)

SAHRC (2012) "Concept Note on SAHRC Provincial Hearings – National Hearings on Water and Sanitation".

Sachs, A (1990) "The constitutional position of whites in a democratic South Africa", *Protecting Human Rights in a New South Africa*, Oxford University Press: Cape Town, 149 – 174.

Sachs, A (1992) "Human Rights in Africa" in *Advancing Human Rights in South Africa*, Oxford University Press: Cape Town, 188 – 194

Sachs, A (2009) *The Strange Alchemy of Life and Law*, Oxford University Press: : New York, 1-8.

Sacks, J (2012) "Apolitical truth about civil disobedience", *Mail & Guardian*, available at www.mg.co.za (last accessed on 28/10/2012).

Schachter, O (1983) "Human Dignity as a Normative Concept", *The American Journal of International Law*, 77(4), 848 – 854.

Schattan, V, P.Coelho & B. von Lieres (2010) "Mobilising for Democracy: citizen engagement and the politics of public participation" in V. Schattan, P.Coelho & B. von Lieres (eds) *Mobilising for Democracy – Citizen action and the politics of public participation*, Zed Books: New York, 1-22

Scholte, J. (2007) "Global civil society – Opportunity or obstacle for democracy?", *Development Dialogue*, 14-27

Silber, G (2010) "The Khayelitsha toilet scandal: the way forward", *Politicsweb*, available at www.politicsweb.co.za (last accessed on 26/10/2012)

Silber, G (2012) "Why Cape Town has erupted and what we can do about it", *GroundUp*, available at goundup.org.za (last accessed on 28/10/2012).

Small, K (2008) "Demographic and socio-economic trends for Cape Town: 1996-2007", *Strategic Development Information and GIS Department*, *City of Cape Town*, 1-7.

Social Justice Coalition (2012) "Monitoring of the City of Cape Town's Janitorial Service for Communal Flush Toilets in Informal Settlements, Khayelitsha: July-September, 2012", available at www.sjc.org.za (last accessed on 23/10/2012)

Southern, N (2011) "Political opposition and the challenges of a dominant party system: The Democratic Alliance in South Africa, *Journal of Contemporary African Studies*, 29(3), 281-298

Spinner, J (1994) "The Formation of Identity" in *The Boundaries of Citizenship*, The Johns Hopkins University Press: Baltimore, London, 14-32

Statistics South Africa (2012) "The South Africa I know, the home I understand", available at www.statssa.gov.za (last accessed on 13/11/2012)

Stupart, R (2012) "Why Marikana is our Sharpeville", available at africanscene.co.za (last accessed on 14/10/2012).

Sunstein, C.R. (2001) "Social and Economic Rights? Lessons from South Africa", *Constitutional Forum*, 11(4), 123 – 132.

Sowetan (2012) "Service delivery in SA exceptional – Zuma", available at sowetanlive.co.za (last accessed on 22/10/2012).

Thompson, L and N. Nleya (2010) "Passivity or protest? Understanding the dimensions of mobilization on rights to services in Khayelitsha, Cape Town" in V. Schattan, P. Coelho & B. von Lieres (eds) *Mobilising for Democracy – Citizen action and the politics of public participation",* Zed Books: New York, 223 – 242

Tissington, K. (2011) "Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice", Socio-Economic Rights Institute of South Africa (SERI).

Stupart, R (2012) "Why Marikana is our Sharpeville", available at africanscene.co.za (last accessed on 13/11/2012)

Tshangana (2011) "Presentation to Select Committee for the Public Service – The Sanitation Programme in the Western Cape", *Western Cape Government: Human Settlements.*

UNDP (2012) "Country Overview", available at www.undp.org.za (last accessed on 14/10/2012)

Vandenberg, A (2000) "Contesting Citizenship and Democracy in a Global Era" in A. Vandenberg (ed) *Citizenship and Democracy in a Global Era*, MacMillan Press: Houndsmills-Basingstoke-Hampshire-London, 3-17

Wesson, M (2004) "*Grootboom* and beyond: Reassessing the socio-economic jurisprudence of the South African Constitutional Court", *South African Journal on Human Rights*, 20, 284 – 308.

Williams, J (2005) "The Grootboom case and its constitutional right to housing: - the politics of planning in post-apartheid South Africa" in N. Kabeer (ed) *Inclusive Citizenship – Meanings and Expressions*, Zed Books: New York, 219 – 234.

World Bank (2012) "South Africa Overview", available at www.worldbank.org/en/country/southafrica/overview (last accessed on 14/10/2012).

Appendices

Appendix 1 – Table of Interviews

Name	Organisation	Position	Date Interviewed
Jacob van Garderen	Lawyers for Human Rights	National Director	14 August 2012 (Skype)
Louise du Plessis	Community Law	Director	14 August 2012 (Skype)
Tristan Gorgens	Isandla Institute	Researcher: Land Policy	6 August 2012 (Skype)
Kate Tissington	Socio-Economic Rights Institute, South Africa	Senior Research & Advocacy Officer	2 August 2012 (Skype)
Bonginkosi Madikizela	Local Government, City of Cape Town	Minister: Human Settlements	14 September 2012 (Skype)

Appendix 2 – Racial Categories, Population Registration Act, 1950

"**native**" means a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa (referred to in this research paper as 'African').

"**coloured person**" means a person who is not a white person or a native.

"**white person**" means a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person.

Appendix 3 – Unserviced Toilets, Makhaza, Khayelitsha

(Source: Western Cape News, 2010, available at www.westcapenews.com, last accessed 11/12/2012)
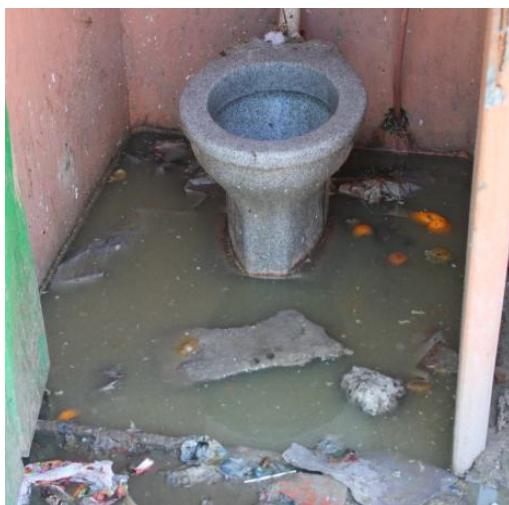
(Source: Social Justice Coalition, 2012)

(Source: Social Justice Coalition, 2012)