



**Regional consultation on the practical implementation of the right to
development: Identifying and Promoting good practices
Commissioner J.B Sibanyoni: SAHRC**

1. The right to development in the South African context

The right to development does not find an explicit reference in the South African Constitution. However, the right to development finds an indirect articulation into other rights contained in the Bill of Rights, more specifically in relation to sustainable development. Article 1 of the United Nations Declaration on the Right to Development states that the right to development is an alienable human right by virtue of which every human person are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development. The right to development is a catalyst for the realisation of all human rights and fundamental freedoms. This highlight the intrinsic link between the right to development and the enjoyment of economic, social and cultural rights, which are essential in ensuring the enhancement of the quality of life of those afflicted by extreme poverty. The South African Constitution by entrenching the economic, social and cultural rights, implicitly recognises the right to development as indispensable to achieving and realising human rights.

The challenge with the indirect articulation of the right to development in human rights norms such as the Bill of Rights is that it can be open to various interpretation and continue to be contested.

2. Integration of a rights-based approach into human development

The democratic government of South Africa, since 1994 has adopted a wide range of policies and laws. These laws and policies have been adopted to give effect to the rights in the Bill of Rights and thereby contribute to human development. The Bill of Rights has served as an important benchmark for the enactment of legislation and has similarly influenced the content of legislation giving effect to the government's human rights commitments.

3. The National Development Plan

In 2012, the South African government adopted the National Development Plan (NDP) which is the country's blueprint to eliminate poverty and reduce inequality by 2030 (Vision 2030) through uniting South Africans, unleashing the energies of its citizens, growing an inclusive economy, building capabilities, enhancing the capability of the state and leaders.

The NDP is founded on the realisation that the country is grappling with the triple challenges of poverty, inequality and unemployment. The high levels of unemployment and the increasing percentage of people reliant on the state's social assistance translates that significant sections of the population are unable to develop to their full potential, realise their life plans and participate as equals in the political, economic, social and cultural spheres of country's democracy.

The National Development Plan ambitiously aims to eliminate poverty and reduce inequality by 2030. South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout society.

Similarly, South Africa's combined report in terms of the African Charter reports on the commitments made by the state vis-à-vis its development trajectory.

Despite this constitutional provision recognising the right to development, and laws and policies in place that aim to give it effect, the South African government continues to violate human rights at the expense of economic development. Mining, for example, remains central to the backbone of the South African economy. However, as noted various civil society organisations, poorly-regulated mining activity remains responsible for air and water pollution, the destruction of arable land and biodiversity loss, violating the rights of hundreds of communities of their constitutionally guaranteed rights to life, health, water, food, culture and a healthy environment. The South African government's inaction in enforcing the relevant environmental and human rights standards has also resulted in the mining industry

alleged to be one of the least transparent in the country. Notwithstanding South Africa's moderate levels of transparency¹ and access to information laws, civil society bemoans that lack of access to basic information essential for communities to embark on informed decision-making processes, and to meaningfully participate in mining approval processes. Consequently, development projects supported by the government and mining industry are implemented in a manner that does not reflect the affected communities' interests and without the requisite support. Moreover, communities do not have access to effective remedies to hold both the government and mining industry accountable for human rights violations.²

It has also become increasingly dangerous to defend environmental justice and human rights in South Africa. Activists are reported to have received death threats for opposing development projects, such as roads and bridges that will aid mining activity. Many have seen their property destroyed and their lives lost, and have been threatened by mining companies with defamation suits, which many believe is a strategy to silence and intimidate activists noting the high costs associated with court processes.³

4. The role of the SAHRC on the realisation of the right to development

The South African Human Rights Commission (SAHRC/Commission) is an independent national human rights institution (NHRI) with an 'A' status established by section 181(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution). Its mandate is further set out in section 184 of the Constitution, to promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic.

The SAHRC has the mandate to investigate, monitor and evaluate, conduct research, educate and secure appropriate redress where there are human rights violations. The SAHRC thus bears a constitutionally embedded legal obligation to promote respect for human rights and to ensure the development and attainment of all human rights. In terms of section 184(3) of the Constitution, the SAHRC is required to annually request information from relevant organs of state on measures that they have taken towards the realisation of

¹ Transparency International ranks South Africa at 64 of the 176 countries measured in its 2016 Corruption Perception Index, see: <https://www.transparency.org/country/ZAF#>.

² Centre for Environmental Rights, et al. *Universal Periodic Review of South Africa 27th Session (March 2017) Joint Stakeholders' Submission on: The threats to human rights from mining and coal-fired production in South Africa*, 5 October 2016.

³ See, for example, K Youens *The dangers of being a defender of environmental justice in South Africa*, BizCommunity, 25 August 2017.

the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

The SAHRC is a relevant institution for ensuring that human rights are fulfilled and corollary thereto – implementation of the right to development. The SAHRC is endowed with strong investigative, promotional and monitoring powers, which it uses to ensure that society is transformed, rights are secured and human dignity is restored.

The SAHRC utilises a number of mechanisms to monitor and assess whether the State is on the right trajectory in fulfilling human rights, which intrinsically translates to contributing to the development of the lives of the people of South Africa. The SAHRC can receive complaints on human rights violations, hold public hearings to deter current or future violations of human rights and can in appropriate circumstances approach a court of law where a violation of human rights is imminent or has occurred. The SAHRC also conducts research which measures the strides the country has made towards promoting, respecting and fulfilling human rights. It can thus be argued that when the SAHRC measures the progress made by the State to fulfil and realise human rights it is in essence, measuring the strides taken by the State towards development.

5. SAHRC work vis-à-vis development

Over the last few years, the work and interventions of the South African Human Rights Commission (the Commission) in the portfolio of Environment, Natural Resources, and Rural Development have focused increasingly on the impact of mining activities on the environment and human rights. The Commission has convened dialogues, workshops, meetings, hearings, and investigations into the environmental, social, and governance issues related to the management of Acid Mine Drainage; business and human rights in the context of extractive industries, particularly mining; public participation in local economic development planning in rural areas; and work related to land reform for improved livelihoods in rural South Africa.

The SAHRC assists in the interpretation of the content and implications of a rights-based approach to development and to create an enabling environment through advocating for access to information for communities. In appropriate circumstances, the SAHRC can carry out own initiative investigations and provide for effective and accessible remedies. Importantly, the SAHRC has an obligation to ensure and monitor the implementation of its recommendations.

6. Section 184 (3) Reports

These highlight the state of progressive realisation of rights (broadly articulating development) and the role of the SAHRC is to interrogate, report and advocate for progressive measures that advance development in an inclusive participatory manner. They are submitted annually by various state departments charged with the progressive realisation on rights. However, reporting has always not been consistent and as such, measuring compliance is limited.

While there may be challenges with implementation, NHRIs have a role to advocate and interrogate models such as the Socio-Economic Impact Assessment System (SEIAS)⁴ introduced by South Africa's Department of Monitoring and Evaluation as a mechanism for balancing development and human rights. This model can be seen as entrenching a due diligence standard in developmental policies.

For instance, as of 16 November 2015, Socio-economic impact assessments have been done for 73 regulatory instruments, i.e. 51 Bills; 9 Regulations and 13 policies. On that basis, NHRIs can play an active part in strengthening a rights-based approach to development.

⁴ "Guidelines for the Socio-Economic Impact Assessment System" 2015