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The promise of the right to development: Advocacy as an enabler of the enforcement of the right to development in South Africa

*Mofihli Teleki**
Research Fellow, Department of Mercantile Law, University of the Free State, South Africa
https://orcid.org/0000-0001-9527-3236
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* BA (UNISA) BPA (Hons) MPA PhD (Stellenbosch); mofihli.teleki@gmail.com

Abstract: *In South Africa, the right to development (RtD) is embedded in chapter 2 of the Constitution and supported by sector-specific legislation and policy. Although not expressly recognised as a stand-alone, justiciable right, it is reflected in socio-economic rights and the state's section 7(2) duty to respect, protect, promote and fulfil the Bill of Rights. Realising these rights requires more than constitutional recognition: It demands meaningful engagement between rights holders and the state, guided by the section 195 principles of responsiveness, accountability, transparency and public participation. This chapter examines advocacy and communication as mechanisms for communities to articulate claims, participate in decisions and hold state institutions accountable. It argues that advocacy turns rights awareness into participation, monitoring and enforcement, and proposes partnership among the state, communities, civil society and other non-state actors as a complementary enforcement framework.*

Résumé : *La mise en œuvre du droit au développement en Afrique du Sud s'inscrit dans le cadre constitutionnel, en particulier dans les droits et valeurs énoncés au chapitre 2 de la Constitution de la République d'Afrique du Sud de 1996, et s'appuie sur une législation et des politiques sectorielles spécifiques. Bien que le droit au développement ne soit pas expressément reconnu comme un droit justiciable à part entière, ses dimensions substantielles se reflètent dans les droits socio-économiques et dans l'obligation qui incombe à l'État, en vertu de l'article 7, paragraphe 2, de respecter, protéger, promouvoir et mettre en œuvre les droits énoncés dans la Charte des droits. La réalisation progressive de ces droits exige toutefois davantage qu'une simple reconnaissance constitutionnelle formelle. Elle nécessite un engagement significatif entre les titulaires de droits et l'État, dans le respect des principes de réactivité, de responsabilité, de transparence et de participation publique prévus par l'article 195. Dans ce contexte, le présent chapitre examine le plaidoyer et la communication en tant que mécanismes par lesquels les communautés expriment leurs revendications en matière de développement, participent à la prise de décision et incitent les institutions de l'État à s'acquitter de leurs obligations constitutionnelles. Il soutient que le plaidoyer est un mécanisme important grâce auquel la sensibilisation aux droits peut se traduire par la participation, le suivi, la responsabilité et la mise en œuvre. Le chapitre propose en fin de compte le partenariat comme cadre*

complémentaire pour la mise en œuvre du droit au développement, réunissant les rôles distincts de l'État, des communautés, de la société civile et d'autres acteurs non étatiques. Le partenariat va au-delà d'une conception du développement dans laquelle les citoyens sont simplement consultés ou bénéficient de services, pour s'orienter vers un processus partagé consistant à identifier les priorités en matière de développement, à mettre en œuvre des réponses, à suivre les résultats et à exiger des comptes.

Key words: *right to development; socio-economic rights; advocacy; accountability; public participation; partnership*

1 Introduction

The promise of the right to development (RtD) in South Africa, implicit in the Constitution, legislation and policy, requires participation by both state institutions and intended beneficiaries. As used in this chapter, the right centres on human development and socio-economic rights, including access to healthcare, housing and education.

Although the Constitution does not expressly recognise a stand-alone, justiciable RtD, its substance appears in the Bill of Rights and the commitments to dignity, equality, participation and social justice. The question is how these constitutional and international commitments can produce meaningful outcomes for rights holders.

This chapter proposes partnership as part of the answer. Public participation is constitutionally important, but may be inadequate when communities are consulted without meaningful involvement in setting priorities, monitoring implementation or demanding accountability. Partnership instead treats development as a shared endeavour in which actors perform distinct, complementary roles in identifying needs, articulating rights-based claims, implementing responses, monitoring outcomes and pursuing enforcement.

Effective enforcement begins before a dispute reaches court: with access to information, rights awareness and participation, followed by advocacy, monitoring and accountability. These processes can be strengthened through a partnership model in which state and non-state actors perform complementary functions to realise development-related rights.

2 Conceptualising the right to development

The intellectual foundations of the RtD have historical roots in the African continent. Kéba Mbaye is widely associated with the articulation of the RtD within African legal and scholarly discourse, particularly in the context of rethinking development in the post-colonial era.[1] Post-colonial states challenged colonial models of development, promoting human agency, equality and the equitable distribution of developmental benefits.[2]

The development of this discourse was not confined to Africa. Scholars, including Sen and Sengupta, contributed to approaches that placed human freedom, agency and participation at the centre of development.[3] Sen's capability approach, together with Sengupta's scholarship on the RtD, challenged approaches that treated economic growth or state-led development as sufficient measures of progress.[4] Human development measures progress through improved quality of life and expanded capabilities, rather than economic performance alone.[5] Development must therefore also be considered in relation to the social and material conditions in which people live and their ability to exercise meaningful agency.[6]

Both the RtD and human development prioritise people over economic growth, seeking to address inequality and exclusion through social, economic and political transformation.[7] Human development thus provides an important framework for considering emancipation, democracy, participation and socio-economic advancement.[8]

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1 M Samb 'Fundamental issues and practical challenges of human rights in the context of the African Union' (2009) 15 *Annual Survey of International and Comparative Law* 72.

2 N Udombana 'The Third World and the right to development: Agenda for the next millennium' (2000) 22 *Human Rights Quarterly* 760.

3 B Ghosh *Dependency theory revisited* (2019) 3.

4 T Smith 'The logic of dependency theory revisited' (1981) 35 *International Organization* 756.

5 D Mebratu & M Swilling (eds) *Inclusive and sustainable industrial development for Africa* (2019) 15; C Sneddon and others 'Sustainable development in a post-Brundtland world' (2006) 57 *Ecological Economics* 255.

6 M Hieronymi & D Karimov 'The right to development: BRICS' understanding of the human rights' (2023) 2 *International Journal of Law in a Changing World* 100.

7 J Peck 'Neoliberalizing states: Thin policies/hard outcomes' (2001) 25 *Progress in Human Geography* 455.

8 C Welzel and others 'The theory of human development: A cross-cultural analysis' (2003) 42 *European Journal of Political Research* 341.

The RtD adopts a human rights-based approach that promotes human capabilities and equitable participation in development benefits.[9] Development therefore acquires a substantive rather than exclusively economic meaning, with human agency, empowerment and well-being forming important measures of progress.[10] The RtD gained prominence in international human rights discourse as a means of addressing structural inequalities and promoting equitable distribution of development benefits.[11]

The United Nations (UN) Declaration on the Right to Development (DRtD), adopted by the UN General Assembly by Resolution 41/128 on 4 December 1986, recognises development as an inalienable human right. As a declaration rather than a treaty, it articulates the right and informs the interpretation of international human rights standards.[12]

The African Charter on Human and Peoples' Rights (African Charter) presents a different legal position. South Africa is a state party to the African Charter, having deposited its instrument of ratification in 1996.[13] Article 22 of the African Charter recognises peoples' rights to economic, social and cultural development and imposes corresponding obligations on states, providing a binding regional framework relevant to South Africa. While the DRtD informs international human rights interpretation, the African Charter provides a binding treaty framework for South Africa. Together, they inform the progressive realisation of the

9 K Mechlem 'Food security and the right to food in the discourse of the United Nations' (2004) 10 *European Law Journal* 634; D Gasper *Ethics of development* (2004) 2.

10 DJ Hudler & M Benacchio 'The fundamental human right to development and state interventions of the Brazilian government in business activity in the 20th century' (2020) 11 *Direito e Desenvolvimento* 143; F Pansieri 'A liberdade como direito fundamental ao desenvolvimento' (2018) 38 *Fundamentais & Justica* 240; A Sengupta 'On the theory and practice of the right to development' (2002) 24 *Human Rights Quarterly* 837.

11 S Kamga 'Human rights in Africa: Prospects for the realisation of the right to development under the New Partnership for Africa's Development' PhD thesis, University of Pretoria, 2012 15.

12 J Gupta & K Arts 'Achieving the 1.5°C objective: Just implementation through a right to (sustainable) development approach' (2018) 18 *Politics, Law and Economics* 12.

13 SC Fobosi 'The protection of human rights in South Africa: Unpacking the duty of the state to realise the right to development' (2024) 27 *Potchefstroom Electronic Law Journal* 1; SD Kamga 'The right to development: The missing link in the South African constitutional order after 30 years of democracy' (2025) 40 *Southern African Public Law* 1; J Dugard and others (eds) *Dugard's international law: A South African perspective* (2018) 1.

RtD within South Africa's constitutional order, where it intersects with socio-economic rights, participation, accountability and development policy. These intersections highlight the role of advocacy, communication and partnerships between rights holders, state institutions and non-state actors.

3 Constitutional foundation of the right to development in South Africa

The Constitution provides the principal framework within which substantive dimensions of the RtD are recognised and advanced. Although the RtD is not expressly established as a stand-alone right, the Bill of Rights guarantees access to health care, housing, education and other rights fundamental to human development.[14] These commitments to a large extent correspond with article 8(1) of the DRtD, which identifies equal opportunity in access to basic resources, education, healthcare services, food, housing and employment as dimensions of development.[15] The constitutional framework is complemented by the National Development Plan (NDP) and sector-specific policies concerning housing, health care, education and other areas.[16]

Realising these objectives requires an enabling democratic and institutional environment, with state institutions responsible for protecting and fulfilling development-related rights.[17] However, development cannot be understood exclusively as a function of state action. Participatory democracy creates opportunities through which communities, civil society and other non-state actors can engage with, influence and monitor developmental processes.[18] The NDP illustrates this relationship between constitutional rights and development policy by identifying health care, education and housing as important

14 Constitution of the Republic of South Africa, 1996 secs 26, 27 & 29.
15 United Nations General Assembly Declaration on the Right to Development GA Res 41/128 (4 December 1986) (DRtD) art 8(1).
16 National Planning Commission 'National Development Plan 2030: Our future – Make it work' (2012), https://www.nationalplanningcommission.org.za/National_Development_Plan (accessed 15 July 2026).
17 J de Visser & others (eds) *The role and status of chapter 9 institutions in South Africa* (2017) 5.
18 South African Legislative Sector 'Public participation framework' (June 2013), https://www.sals.gov.za/wp-content/uploads/2023/03/SALS-Public-Participation-Framework.pdf svg (accessed 23 September 2026).

components of South Africa's developmental trajectory.[19] Formal recognition of rights does not guarantee their realisation; rights holders must understand their rights and the state's obligations to claim and monitor them effectively.[20] Rights awareness, therefore, is an important precondition for meaningful rights claiming.

Chapter 9 institutions in South Africa form part of the constitutional architecture supporting democracy and accountability.[21] These institutions have differentiated constitutional and statutory mandates and should not be treated as performing identical functions.[22] Collectively, however, they contribute to rights protection, public awareness, oversight and accountability.[23] Human rights education is particularly important because it facilitates public understanding of rights, responsibilities and the mechanisms through which rights may be claimed.[24]

Institutional oversight and public advocacy complement one another: Chapter 9 institutions act within their mandates, while communities and civil society use advocacy to advance rights claims, participation, monitoring and legal enforcement.[25] Civil society bridges communities and institutions by mobilising communities, generating knowledge, monitoring performance and advancing rights-based claims.[26]

Chapter 2 of the Constitution provides important domestic foundations for the realisation of development-related rights. Section 26 guarantees access to adequate housing, section 27 addresses health care, food, water and social security, and section 29 protects the right to

19 A Cornwall & VS Coelho (eds) *Spaces for change? The politics of citizen participation in new democratic arenas* (2007) 4.
20 National Planning Commission (n 16) 38.
21 C Maimela 'Does the right to access to health care services in terms of section 27 of the Constitution of South Africa, 1996 cater for cancer patients?' (2018) 39 *Obiter* 13.
22 SM Madue 'In the name of ignorance: Trampling on the powers of institutions supporting constitutional democracy in South Africa' (2016) 1 *Journal of Public Administration and Development Alternatives* 2.
23 C Murray 'The Human Rights Commission et al: What is the role of South Africa's Chapter 9 institutions?' (2006) 9 *Potchefstroom Electronic Law Journal* 2.
24 M Rapatsa 'Transformative constitutionalism in South Africa: 20 years of democracy' (2014) 5 *Mediterranean Journal of Social Sciences* 889.
25 B Slade 'The protection mandate of the South African Human Rights Commission' (2025) 58 *De Jure* 54.
26 C Khene and others 'Power participation in digital citizen engagement in South African local government: The case of MobiSAM' (2021) Proceedings of the First Virtual Conference on Implications of Information and Digital Technologies for Development 614-622.

basic education.[27] These rights correspond with the human development dimensions articulated in article 8 of the DRtD.[28]

This convergence reflects shared principles between the DRtD and South Africa's constitutional order, without implying direct domestic incorporation. The DRtD also recognises peoples' right to self-determination and sovereignty over their natural resources.[29] Section 235 of the Constitution similarly recognises the rights of the South African people as a whole, or any part thereof, to self-determination, provided that such determination is consistent with the Constitution.[30] Although the provisions are not identical in scope or legal effect, both connect development with agency and the capacity of people and communities to influence their social, economic and cultural affairs.

Equality is central to the Constitution, as section 9 guarantees equal protection and benefit of the law, while section 9(2) permits measures to advance those disadvantaged by unfair discrimination.[31] A rights-based approach to development goes beyond economic growth to ensure historically excluded groups access opportunities, resources and developmental benefits. Article 10 of the DRtD calls for policies and legislation to progressively realise the RtD.[32] The South African constitutional framework similarly requires legal and institutional measures capable of addressing structural exclusion and facilitating the effective enjoyment of rights.

The constitutional and legislative framework, therefore, establishes important foundations for development. The central challenge lies in implementation: whether these rights, laws and policies are translated into meaningful improvements in the lived conditions of rights holders.

4 Policy framework supporting the right to development

Constitutional rights underpin development, while policies and institutions translate them into action, with human rights mainstreaming

27 Constitution of the Republic of South Africa, 1996 secs 26, 27 & 29.
28 DRtD art 8.
29 DRtD Preamble & art 1.
30 Constitution of the Republic of South Africa, 1996 sec 235.
31 Constitution of the Republic of South Africa, 1996 secs 9(1)-(2).
32 DRtD art 10.

promoting participation in development.[33] Meaningful participation enables individuals and communities to contribute to policy formulation, programme design and decisions concerning resources affecting their lives.[34]

Development involves government and citizens. Communities, non-governmental organisations (NGOs), labour organisations and civil society also help shape development policies and processes.[35] This is consistent with the participatory dimensions contained in the African Charter and DRtD.[36]

Non-state actors may influence developmental policy through research, advocacy, mobilisation, monitoring and representation.[37] Their participation may enable communities to articulate interests, challenge exclusion and seek more equitable representation in decision making.[38] The relationship between participation and accountability is particularly important because it enables rights holders to enter developmental processes, while advocacy and monitoring enable them to scrutinise implementation and challenge failures.

Civil society organisations and social movements may monitor programmes, document inequality, advocate policy reform and draw attention to institutional failures.[39] These functions establish a

33 JW Kuyper, B-O Linnér & H Schroeder 'Non-state actors in hybrid global climate governance: Justice, legitimacy, and effectiveness in a post-Paris era' (2018) 9 *WIREs Climate Change* e497; JJ Paust 'Nonstate actor participation in international law and the pretense of exclusion' (2010) 51 *Virginia Journal of International Law* 978; S Tantivess & G Walt 'The role of state and non-state actors in the policy process: The contribution of policy networks to the scale-up of antiretroviral therapy in Thailand' (2008) 23 *Health Policy and Planning* 329.

34 DRtD art 2(3).

35 P Alston (ed) *Non-state actors and human rights* (2005) 387; A Clapham *Human rights obligations of non-state actors* (2006) 2.

36 African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982) art 13(1); DRtD arts 1, 2(1) & 2(3).

37 M Miyawa 'The right to development and non-state actors: Rethinking the meaning, praxis and potential of accountability of non-state actors in international law' (2016) 3 *Transnational Human Rights Review* 10.

38 JJ Schoenefeld 'Interest groups, NGOs or civil society organisations? The framing of non-state actors in the EU' (2021) 32 *VOLUNTAS: International Journal of Voluntary and Nonprofit Organisations* 586.

39 DRtD arts 1(1) & 6(2); African Charter art 20(1); S O'Leary 'Grassroots accountability promises in rights-based approaches to development: The role of transformative monitoring and evaluation in NGOs' (2017) 63 *Accounting, Organisations and Society* 22; M Pieterse *Rights-based litigation, urban governance and social justice in South Africa: The right to Joburg* (2017) 2.

connection between participation, accountability and enforcement. Non-state actors may also complement public institutions through research, advocacy, oversight and mobilisation.[40]

The importance of this interaction is that development becomes a continuing process involving participation, implementation, monitoring, advocacy, enforcement and accountability. Public participation is therefore important, but the argument of this chapter is that participation should develop into partnership if the constitutional promise of development is to be translated into sustained institutional and social action.

5 Realising the promise of the right to development in South Africa

International human rights instruments establish standards and, where legally binding, impose obligations on state parties while also articulating aspirations concerning human dignity, equality and social justice.[41] These principles are particularly relevant to South Africa because its constitutional order emerged from a history of racial discrimination, dispossession and socio-economic exclusion.[42] The DRtD's concern with apartheid and racism consequently resonates with South Africa's historical and constitutional project.[43] The constitutional promise of development must therefore be understood as a legally structured undertaking to create better conditions in which individuals and communities can participate in, contribute to and benefit from development. This objective is supported by legislation governing health care, education, housing and skills development, including the Health Professions Amendment Act 29 of 2007; Higher Education Act 101 of 1997; Housing Act 107 of 1997; National Health Act 61 of 2003; National Health Amendment Act 12 of 2013; Nursing Act 33 of 2005;

40 Pieterse (n 39) 2; A Scott and others 'Mainstreaming the environment: Exploring pathways and narratives to improve policy and decision-making' (2022) 4 *People and Nature* 207.

41 MA Tadeg 'The prospect of an international binding treaty on the right to development: A gateway to global justice' (2025) 25 *African Human Rights Law Journal* 486.

42 Constitution of the Republic of South Africa, 1996 Preamble & secs 1(a)-(b), 9(2) & 10.

43 DRtD Preamble and art 5.

Rental Housing Act 50 of 1999; Social Housing Act 1 of 2008; Adult Basic Education and Training Act 52 of 2000; Skills Development Act 97 of 1998; and South African Schools Act 84 of 1996.

The above legislation recognises development as multidimensional, requiring the progressive realisation of interdependent rights. However, legal and institutional guarantees must translate into expanded opportunities, reduced structural disadvantage and meaningful participation.

The Constitutional Court's jurisprudence provides an important foundation. For example, in *Government of the Republic of South Africa v Grootboom*, the Court considered the state's obligations concerning housing and emphasised the need for a reasonable and comprehensive programme responsive to those in desperate need.[44] Although *Grootboom* did not establish the RtD as an independently enforceable constitutional right, its reasoning illustrates how existing socio-economic rights can impose concrete obligations upon the state and provide a judicial basis for scrutinising governmental measures.

The promise of development is thus located at the intersection of international human rights norms, constitutional transformation, legislative implementation and judicial enforcement. Development requires an integrated approach combining rights-based legislation, responsive policy, participation and accountability.

6 Importance of the right to development in South Africa

South Africa's socio-economic landscape remains shaped by the historical legacies of colonialism and apartheid, particularly systemic discrimination, dispossession and exclusion.[45] Apartheid legislation and policies, including separate development, structured access to resources, infrastructure, economic opportunity and social services along racial lines.[46] These structures generated inequalities that continue to affect access to economic opportunities and socio-economic rights.

44 *Government of the Republic of South Africa & Others v Grootboom & Others* 2001 (1) SA 46 (CC).

45 S Liebenberg *Socio-economic rights: Adjudication under a transformative constitution* (2010) 5.

46 L Thompson *A history of South Africa* (2014) 4; D Posel *The making of apartheid 1948–1961: Conflict and compromise* (1991) 2.

The transition to constitutional democracy, therefore, required more than political change. It involved the reconstruction of the legal and constitutional order following decades of resistance, political mobilisation and human rights advocacy.[47] The Constitution represents a decisive response to this history and establishes a framework founded on equality, dignity and social justice.[48]

The persistence of socio-economic inequality nevertheless demonstrates the limitations of treating political democratisation as synonymous with substantive transformation.[49] The World Bank's assessment of inequality in Southern Africa illustrates the scale of the continuing challenge.[50] This provides important context for the contemporary mobilisation of civil society around socio-economic justice, accountability and implementation.

Post-apartheid South Africa has consequently experienced sustained activism by political organisations, social movements, NGOs, community-based organisations and other actors.[51] Increasingly, such mobilisation has focused on water, sanitation, housing, electricity, education and health care. These concerns have direct relevance to the RtD because they concern the material conditions necessary for individuals and communities to participate meaningfully in society.[52]

Service delivery activism has frequently emerged from communities themselves, sometimes with subsequent involvement by advocacy organisations and civil society.[53] Service delivery is central to the

47 P Langa 'Transformative constitutionalism' (2006) 17 *Stellenbosch Law Review* 352.

48 Constitution of the Republic of South Africa, 1996 Preamble & sec 1(a); *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & Others* 2004 (4) SA 490 (CC) paras 47-48, 74.

49 Statistics South Africa 'Inequality trends in South Africa: A multidimensional diagnostic of inequality' (2019); World Bank *An incomplete transition: Overcoming the legacy of exclusion in South Africa* (2018).

50 World Bank 'Inequality in Southern Africa: An assessment of the Southern African Customs Union' (2022) 15.

51 A Habib *South Africa's suspended revolution: Hopes and prospects* (2013) 2.

52 DRtD art 8; African Charter art 22; Constitution of the Republic of South Africa, 1996 ch 2; EA Okeng & AC Diala 'Promotion of service delivery in terms of the social contract theory in South Africa's legal framework' (2024) 27 *Potchefstroom Electronic Law Journal* 1.

53 L Botes 'Service delivery protests in South Africa: A case for community development?' in R Meade, M Shaw & S Banks (eds) *Politics, power and community development* (2016) 217-234; HD Morudu 'Service delivery protests in South

enjoyment of several socio-economic rights.[54] At the same time, a service delivery failure should not automatically be equated with a legal violation; the applicable constitutional obligation and circumstances must be assessed in each case.

South Africa's culture of advocacy is rooted in the country's history of resistance to apartheid.[55] Under constitutional democracy, advocacy focuses less on securing formal rights and more on ensuring their implementation, accountability and meaningful enjoyment.[56]

This evolution is reflected in advocacy for health care, HIV treatment, labour rights, land reform, regional demarcation, infrastructure and basic services.[57] Community mobilisation may take the form of demonstrations, petitions, litigation, submissions and collaboration with organisations possessing specialised expertise.[58] Civil society does not operate through one uniform model, as some organisations adopt adversarial approaches to government, while others work collaboratively with public institutions to support service provision and development.[59] NGOs may also monitor public policy, scrutinise institutional performance and promote accountability.[60]

These activities connect communities with institutions responsible for development obligations, highlighting the need for participation,

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African municipalities: An exploration using principal component regression and 2013 data' (2017) 3 *Cogent Social Sciences* 1329106.

54 DM Davis 'Socio-economic rights: Do they deliver the goods?' (2008) 6 *International Journal of Constitutional Law* 687.

55 J Seekings *The UDF: A history of the United Democratic Front in South Africa, 1983-1991* (2000) 2.

56 Liebenberg (n 45) 4.

57 S Friedman & S Mottiar 'A rewarding engagement? The Treatment Action Campaign and the politics of HIV/AIDS' (2005) 33 *Politics & Society* 513; P Alexander 'Rebellion of the poor: South Africa's service delivery protests – A preliminary analysis' (2010) 37 *Review of African political economy* 27; M Pieterse 'Coming to terms with judicial enforcement of socio-economic rights' (2004) 20 *South African Journal on Human Rights* 385; P Alexander 'Rebellion of the poor: South Africa's service delivery protests – A preliminary analysis' (2010) 37 *Review of African Political Economy* 25.

58 T Masiangoako, K Khunou & A Potter 'Fighting for water in South Africa: Public participation, water rights claiming and strengthening governance' (2022) 5 *H2Open Journal* 98.

59 A Habib & R Taylor 'South Africa: Anti-apartheid NGOs in transition' (1999) 10 *VOLUNTAS: International Journal of Voluntary and Nonprofit Organisations* 76.

60 Alexander (n 57) 27; RF Hendrickse 'Governance and financial sustainability of NGOs in South Africa' PhD thesis, University of the Western Cape, 2008 3.

agency and accountability to translate formal rights into tangible outcomes.[61]

7 Role of non-state actors in advancing the right to development

Non-state actors play an important role in advancing development-related rights through public education, mobilisation, policy engagement, monitoring, advocacy and strategic litigation.[62] Their contribution enables communities to claim rights and engage institutions responsible for implementing them.[63]

Advocacy is particularly important because it provides a means through which individuals and organisations communicate and act to advance interests, particularly where affected communities lack sufficient institutional power.[64] In social policy, advocacy facilitates participation and can contribute to social justice.[65] It may empower marginalised communities to articulate concerns, participate in policy processes and hold decision makers accountable.[66]

The historical connection of advocacy with human rights lawyers and marginalised communities illustrates its empowerment function.[67] Advocacy can move beyond expressing grievances by transmitting

61 S van der Berg and others (eds) *The South African Human Development Report 2022: Harnessing opportunities, building capabilities and promoting resilience* (2022) 3.

62 N Malan 'Civil society and the right to have access to social security in South Africa' (2005) 22 *Development Southern Africa* 549.

63 CC Ngang 'Socio-economic rights litigation: A potential strategy in the struggle for social justice in South Africa' PhD thesis, University of Pretoria, 2013; N Stein '"A better life for all": Using socio-economic rights litigation to enforce the principles governing public administration' (2018) 34 *South African Journal on Human Rights* 91.

64 F Wettstein & D Baur 'Why should we care about marriage equality? Political advocacy as a part of corporate responsibility' (2016) 138 *Journal of Business Ethics* 171; L Kirakosyan 'Promoting disability rights for a stronger democracy in Brazil: The role of NGOs' (2016) 45 *Nonprofit and Voluntary Sector Quarterly* 123S.

65 G de Brelàz & M Aquino Alves 'Deliberative democracy and advocacy: Lessons from a comparative perspective' (2011) 28 *Canadian Journal of Administrative Sciences* 203.

66 HN Turner 'Take action in the world! Advocacy and reciprocity as research practices in technical communication' PhD thesis, Michigan State University, 2020 12.

67 De Brelàz & Aquino Alves (n 65) 203.

community experiences into policy, legislative and institutional processes and thereby contributing to social change.[68]

Advocacy may influence public policy by bringing rights holders' experiences into decisions concerning resource allocation, programme design and social and economic regulation.[69] It therefore performs a mediating function between communities and government institutions.[70] Networks of civil society organisations may further provide communities with information, training and knowledge concerning legal and policy frameworks affecting their lives.[71]

Participation is crucial to implementation and enforcement, as recognition of rights in international law, the Constitution or legislation does not guarantee their realisation.[72] States retain primary responsibility for creating the legal, institutional and policy conditions necessary for rights realisation, including appropriate measures, resource mobilisation and remedies.[73]

Non-state actors complement public institutions by identifying implementation gaps, providing expertise, supporting communities and highlighting rights failures, without diminishing state obligations.[74] Partnerships between government and NGOs may support community development, technical assistance, public education and monitoring.[75]

68 M Boykoff & D Oonk 'Evaluating the perils and promises of academic climate advocacy' (2020) 163 *Climatic Change* 29.

69 E Fein & C Rios (eds) *Autism in translation: An intercultural conversation on autism spectrum conditions* (2018) 29; C Stenling & M Sam 'From "passive custodian" to "active advocate": Tracing the emergence and sport-internal transformative effects of sport policy advocacy' (2019) 11 *International Journal of Sport Policy and Politics* 447.

70 I Buccus & J Hicks 'Civil society and participatory policy making in South Africa: Gaps and opportunities' in J Daniel and others (eds) *New South African Review 2: New paths, old compromises?* (2012) 100.

71 F Tréguer & MD de Rosnay 'Community networks and political advocacy' (2018) Institut des Sciences de la Communication du CNRS 5.

72 P Alston & R Goodman *International human rights* (2013) 285.

73 Sengupta (n 10) 840.

74 N Malan 'Civil society and the right to have access to social security in South Africa' (2005) 22 *Development Southern Africa* 549; C Morkel 'The state and civil society in building a capable developmental state: A case of the National Department of Social Development and the non-profit organisations sector in South Africa' (2022) 57 *Journal of Public Administration* 54.

75 DW Brinkerhoff & JM Brinkerhoff 'Public-private partnerships: Perspectives on purposes, publicness, and good governance' (2011) 31 *Public Administration and Development* 2; D Lewis & N Kanji *Non-governmental organizations and development* (2009) 3.

Socio-legal advocacy combines community mobilisation, rights education and legal action to strengthen accountability and drive institutional change.[76] In this way, socio-legal advocacy provides a bridge between community claims and judicial enforcement.[77] Its significance lies partly in addressing power imbalances between public institutions and communities experiencing socio-economic deprivation. By providing information concerning rights and available remedies, socio-legal advocacy strengthens the ability of rights holders to engage public institutions.[78]

South Africa's jurisprudence demonstrates the role of litigation in this process. For example, *Soobramoney v Minister of Health (KwaZulu-Natal)* and *Government of the Republic of South Africa v Grootboom* were foundational cases in the enforcement of socio-economic rights.[79] More recent cases, including *Komape & Others v Minister of Basic Education & Others*, *Thubakgale & Others v Ekurhuleni Metropolitan Municipality & Others* and *Commando & Others v City of Cape Town & Another*, demonstrate the continuing role of litigation in addressing implementation and enforcement questions.[80]

Non-state actors should therefore be understood as participating at multiple stages of development, with the intention to identify needs, generating awareness, contributing to policy debates, monitoring implementation, mobilising communities and pursuing remedies where necessary.[81] Advocacy, public education, monitoring and socio-

76 H Fu 'The July 9th (709) crackdown on human rights lawyers: Legal advocacy in an authoritarian state' (2018) 27 *Journal of Contemporary China* 562; N Amusat 'Disability care in Nigeria: The need for professional advocacy' (2009) 1 *African Journal of Physiotherapy & Rehabilitation Sciences* 31; H Jabareen 'On legal advocacy and legitimation of control' (2012) *Jadal* 3.

77 J Handmaker & T Matthews 'Analysing legal mobilisation's potential to secure equal access to socio-economic justice in South Africa' (2019) 36 *Development Southern Africa* 889; S Stuart & J Dugard 'Forging space for pro-poor change: The Socio-Economic Rights Institute of South Africa' (2019) 45 *South African Journal on Human Rights*.

78 Fu (n 76) 558.

79 *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC); *Grootboom* (n 44).

80 *Komape & Others v Minister of Basic Education & Others* [2019] ZALMPPHC 18; *Thubakgale & Others v Ekurhuleni Metropolitan Municipality & Others* [2021] ZACC 45; *Commando & Others v City of Cape Town & Another* [2024] ZACC 9.

81 UN Human Rights Council Expert Mechanism on the Right to Development 'Duty to cooperate and non-state actors: Thematic study' UN Doc A/HRC/54/84 (5 July 2023).

legal intervention are complementary mechanisms for advancing constitutional development objectives.[82]

The importance of non-state actors lies in their ability to convert development from an abstract policy objective into a participatory and accountable process. Through advocacy, communities can articulate developmental priorities, challenge exclusion and demand responsiveness.[83] The question of how socio-economic rights are to be fulfilled and enforced has remained central to the South African constitutional discourse since the late 1990s.[84] Sunstein's early observation concerning the risks associated with inadequate governmental prioritisation of socio-economic rights remains relevant in this instance.[85] Persistent deficits in access to housing, health care, education and other services constrain human development and participation in economic, social and political life.[86] The enforcement of socio-economic rights is therefore connected to addressing socio-economic wrongs and the historical conditions that produced inequality.[87]

Continuing litigation demonstrates the tension between constitutional commitments and practical implementation.[88] Litigation does not necessarily establish government failure in every instance, but its continuing use demonstrates the importance of enforceability and provides a forum through which rights holders and civil society can challenge governmental measures.[89]

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82 L Chenwi 'Taking the right to social security seriously: A South African perspective' (2009) 10 *ESR Review* 10.

83 Constitution of the Republic of South Africa, 1996 secs 195(1)(e)-(g).

84 S Gutto 'The right to development: An implied right in South Africa's constitutional order. Reflections on democracy and human rights' in South African Human Rights Commission *Reflections on democracy and human rights: A decade of the South African Constitution (Act 108 of 1996)* (2006) 109-118.

85 CR Sunstein 'Social and economic rights? Lessons from South Africa' (1999) 11 *Constitutional Forum* 123.

86 S Liebenberg & B Goldblatt 'The interrelationship between equality and socio-economic rights under South Africa's transformative constitution' (2007) 23 *South African Journal on Human Rights* 337.

87 L Waldorf 'Anticipating the past: Transitional justice and socio-economic wrongs' (2012) 21 *Social & Legal Studies* 175; C Albertyn '(In)equality and the South African Constitution' (2019) 35 *Development Southern Africa* 751.

88 L Waldorf 'Anticipating the past: Transitional justice and socio-economic wrongs' (2012) 21 *Social & Legal Studies* 175.

89 CC Ngang 'Judicial enforcement of socio-economic rights in South Africa and the separation of powers objection: The obligation to take "other measures"' (2014) 14 *African Human Rights Law Journal* 655-656; *Thubakgale & Others v Ekurhuleni Metropolitan Municipality & Others* 2022 (8) BCLR 985 (CC); [2021] ZACC

The promise of the RtD should not, however, be understood as requiring the immediate provision of every socio-economic entitlement regardless of circumstances. Rather, the process of realisation must recognise resource constraints while requiring appropriate and reasonable measures towards fulfilment.[90] Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires state parties to act to the maximum of their available resources, while section 27(2) of the Constitution requires reasonable legislative and other measures within available resources.[91]

The distinction between these formulations raises important questions about resource mobilisation and the extent to which resource constraints may be relied upon in assessing state obligations.[92] Courts must also balance institutional competence in relation to public finance with the need to ensure that rights remain meaningful and enforceable.[93]

These issues become particularly visible at local government level, where communities experience many socio-economic rights through the provision of water, sanitation, electricity, housing and other services.[94] Persistent service delivery backlogs demonstrate that the challenge

45 paras 145, 167; BT Warwick 'Socio-economic rights during economic crises: A changed approach to non-retrogression' (2016) 65 *International & Comparative Law Quarterly* 255.

90 DRtD Preamble, arts 1(1), 2(3), 3(1)-(3), 4(1)-(2) & 10; M Hieronymi & D Karimov 'The right to development: BRICS' understanding of human rights' (2023) 2 *International Journal of Law in a Changing World* 103.

91 International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3 art 2(1) (ICESCR); Constitution of the Republic of South Africa, 1996 sec 27(2).

92 L Chenwi & R Hardowar 'Promoting socio-economic rights in South Africa through the ratification and implementation of the ICESCR and its Optional Protocol' (2010) 11 *ESR Review: Economic and Social Rights in South Africa* 5.

93 S van der Berg 'A capabilities approach to remedies for systemic resource-related socioeconomic rights violations in South Africa' (2019) 19 *African Human Rights Law Journal* 290; *Mazibuko & Others v City of Johannesburg & Others* 2010 (4) SA 1 (CC); [2009] ZACC 28 paras 60-69; *Minister of Health & Others v Treatment Action Campaign & Others (No 2)* 2002 (5) SA 721 (CC); [2002] ZACC 15 paras 37-38, 99-100.

94 Constitution of the Republic of South Africa, 1996 secs 152(1)(b)-(d), 153(a) and 154(1); SM van Baalen, CSL Schutte & K von Leipzig 'Capacity self-assessment as a catalyst for improved municipal service delivery' (2015) 57 *Journal of the South African Institution of Civil Engineering* 2; H Amusa 'The efficiency of public expenditures on basic services: The case of South African municipalities' (2024) 92 *South African Journal of Economics* 183-185.

cannot be reduced to funding alone.[95] Municipalities may experience deficiencies in technological, technical, human and financial resources.[96]

Institutional weaknesses also contribute to service delivery challenges. Koelble and LiPuma identify weaknesses in policy coherence, financial controls, enforcement and technical skills.[97] Nengwekhulu similarly identifies corruption, nepotism, political interference and organisational weaknesses alongside skills shortages.[98] These factors demonstrate that the effective use of resources is as important as the quantum of resources available. Differences in fiscal and institutional capacity between municipalities further complicate equitable access to socio-economic rights.[99] Questions of political and administrative leadership are therefore central to developmental capacity.[100] Accountability and transparency are similarly important to public-sector performance and service delivery.[101]

Citizen and civil society monitoring helps ensure that public resources advance socio-economic rights as intended and identifies institutional failures that hinder implementation.[102] Municipalities are particularly important because many constitutional entitlements become tangible through local service delivery.[103]

95 O Ajayi & M de Vries 'Diagnostic assessment of service delivery health in South Africa: A systematic literature review' (2019) 30 *South African Journal of Industrial Engineering* 24.

96 S Vyas-Doorgapersad 'Exploration of service delivery challenges in South Africa' (2024) 4 *International Journal of Educational Review, Law and Social Sciences* 837.

97 TA Koelble & E LiPuma 'Institutional obstacles to service delivery in South Africa' (2010) 36 *Social Dynamics* 565.

98 RH Nengwekhulu 'Public service delivery challenges facing the South African public service' (2009) 44 *Journal of Public Administration* 341.

99 Koelble & LiPuma (n 97) 565; K Wall 'The 1998 "mini-Constitution" for local government: A review of the assumptions of the White Paper on Local Government' (2022) 29 *Acta Structilia* 260.

100 Koelble & LiPuma (n 97) 565.

101 XG Ngumbela 'The relationship between policy, governance and service delivery in local government in South Africa' (2022) 34 *International Journal of Innovative Technologies in Social Science* 6.

102 Studies in Poverty and Inequality Institute (SPII) & South African Human Rights Commission (SAHRC) 'Budget analysis for advancing socio-economic rights: A guide for state and non-state human rights advocates and researchers (2016); Constitution of the Republic of South Africa, 1996 secs 184(3) & 195(1)(b), (f)-(g).

103 Constitution of the Republic of South Africa, 1996 secs 152(1)(b)-(c) and 153(a); *Joseph & Others v City of Johannesburg & Others* 2010 (4) SA 55 (CC); [2009] ZACC 30 paras 34-35; EA Okeng & AC Diala 'Promotion of service delivery in

The crucial question in this instance is whether institutions are responsive, transparent, capable and accountable in converting those resources into the realisation of socio-economic rights. This reinforces the need for mechanisms connecting information, participation, advocacy, monitoring and enforcement.

8 Advocacy as a mechanism for enforcement of the right to development

Section 195 of the Constitution provides an important foundation for understanding the relationship between public administration, participation, accountability and advocacy. Section 195(1)(e) requires public administration to respond to people's needs and encourages public participation in policy making.[104] Sections 195(1)(f) and (g) further require accountability and transparency through timely, accessible and accurate information.[105]

Together, these principles establish an accountability process linking information, awareness, participation, advocacy and monitoring to enforcement and the realisation of socio-economic rights.[106]

Meaningful participation cannot occur in an information vacuum, because communities require access to accurate and accessible information concerning government policies, budgets, service delivery commitments and institutional responsibilities if they are to assess performance and participate effectively.[107]

Advocacy bridges participation and accountability by enabling communities and civil society to turn information and lived experiences into claims through public engagement, submissions, petitions, monitoring, administrative challenges and litigation.[108]

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terms of the social contract theory in South Africa's legal framework' (2024) 27 *Potchefstroom Electronic Law Journal* 1-34.

104 NM Marawu & R Utete 'Exploring governance challenges in South African public organisations' (2026) 12 *Cogent Social Sciences* Art 2598904 12.

105 Constitution of the Republic of South Africa, 1996 secs 195(1)(f)-(g).

106 Constitution of the Republic of South Africa, 1996 secs 195(1)(e)-(g); Department of Performance Monitoring and Evaluation *Framework for strengthening citizen-government partnerships for monitoring frontline service delivery* (2013) 3-5; Khene and others (n 26) 614.

107 Constitution of the Republic of South Africa, 1996 secs 16-17, 32, 195(1)(e)-(g) & 38; *Doctors for Life International v Speaker of the National Assembly & Others* 2006 (6) SA 416 (CC); [2006] ZACC 11 paras 115-129.

108 Constitution of the Republic of South Africa, 1996 secs 195(1)(f)-(g).

The RtD requires meaningful participation in policies and institutions. Sections 195(1)(e) to (g) promote participation, transparency and accountability, but does not establish an independent right to advocacy or make every communication failure a constitutional violation.

The state and rights holders occupy distinct but complementary positions. Government must ensure responsive, accountable and transparent administration, while communities and civil society use information and participation to engage government, monitor implementation and advocate rights. Litigation may be the final stage of a process beginning with information, awareness, participation and advocacy.

This model is especially relevant to persistent service delivery failures. Information about government duties and resources helps communities identify deficiencies and demand action. If administrative processes fail, advocacy organisations can support monitoring, public interest litigation and other socio-legal interventions.

Advocacy enables citizens and communities to articulate development priorities and hold public institutions accountable, bridging the gap between formal rights and implementation. Enforcement must therefore extend beyond courts to the conditions that enable rights-holders to understand, claim, monitor and enforce their rights.

9 The proposed partnership for the enforcement of the right to development

Enforcement of the RtD extends beyond the state-court relationship, and public participation alone cannot capture the interactions needed to turn constitutional commitments into outcomes. This chapter therefore proposes partnership: a framework recognising the distinct roles of the state, rights holders, civil society, chapter 9 institutions and other non-state actors while preserving the state's primary responsibilities.

Partnership does not transfer state obligations to communities or civil society. The state remains the primary duty bearer, while other actors contribute complementary capacities to development and rights enforcement.

Partnership addresses the limits of formal participation, which may end with consultation or submissions. It requires sustained involvement by affected communities and non-state actors in implementation, monitoring and accountability.

The model has six connected functions, namely, identification; articulation; implementation; monitoring; accountability; and enforcement.

First, communities directly experience service and institutional failures and are therefore well placed to identify needs, set priorities and assess outcomes.

Second, advocacy organisations and civil society translate these needs into rights-based claims through education, research, policy analysis, mobilisation and representation.

Third, the state retains primary responsibility, legal authority and resources for implementation. Partnership must strengthen, not replace, state capacity.

Fourth, communities, civil society and oversight institutions monitor implementation and generate evidence on service delivery, expenditure, performance and rights realisation.

Fifth, accountability addresses identified deficiencies through administrative, political, institutional or legal processes involving chapter 9 institutions, civil society and communities within their mandates.

Finally, persistent failures may require legal remedies, including litigation, with socio-legal advocates helping communities choose and pursue appropriate mechanisms.

Partnership connects rather than replaces participation, advocacy and litigation, allowing them to operate sequentially or simultaneously. Advocacy counters power imbalances; monitoring measures outcomes; accountability preserves answerability; and enforcement addresses non-compliance.

Partnership is both cooperative and rights-based. It coordinates institutions with different mandates and resources without weakening accountability or rights-holders' legal position. In South Africa, affected communities contribute local knowledge; civil society offers research, legal expertise, mobilisation and monitoring; chapter 9 institutions provide oversight and education; and government supplies authority and resources for implementation.

Partnership also reframes advocacy as both collaborative and accountable. Government and communities may jointly identify problems, assess evidence, develop responses and monitor implementation; if collaboration fails, advocacy may become adversarial, including through

litigation. This reflects people's role as agents of development who can hold duty bearers accountable.

Partnership can reinforce section 195 by linking responsiveness to people's needs, participation in policy, institutional accountability and transparent information for scrutiny.

Advocacy organisations can work across the enforcement continuum through constitutional education, evidence generation, community participation, institutional engagement, monitoring and formal remedies. Government, in turn, can use community and civil society knowledge to identify barriers and improve policy delivery.

Safeguards remain essential: Partnership must not conceal power imbalances, shift state duties to communities or civil society, or replace legal remedies. Its purpose is to integrate participation, advocacy, monitoring, accountability and enforcement more effectively.

Enforcement requires both state responsibility and social agency. The state must fulfil its constitutional duties, while rights holders and non-state actors must be able to participate, monitor and demand accountability. Partnership unites existing constitutional elements of socio-economic rights, participation, transparency, accountability, chapter 9 institutions, courts and civil society into a coherent enforcement framework.

10 Conclusion

The constitutional promise of the RtD raises questions about how socio-economic rights are realised, monitored and enforced. South African constitutional jurisprudence confirms their justiciability while highlighting challenges relating to resources, institutional capacity, accountability and effective remedies.

The chapter's central contribution is its conceptualisation of partnership as an accountability framework for strengthening the enforcement of the RtD. It argues that enforcement requires interconnected processes through which constitutional knowledge is translated into awareness, participation, advocacy, monitoring, accountability and, where necessary, judicial remedies. Advocacy connects constitutional guarantees with communities' lived experiences, enabling rights holders to influence decisions and demand accountability.

Partnership connects the distinct but complementary roles of the state as primary duty bearer, communities as rights holders and agents of development, civil society organisations as advocates and monitors,

chapter 9 institutions as oversight bodies, and courts as providers of authoritative adjudication and remedies. It does not replace state obligations or judicial enforcement but strengthens the relationships between these mechanisms. Where advocacy and engagement fail to secure compliance, litigation remains an essential safeguard.

This framework is particularly relevant in South Africa, where constitutional commitments coexist with persistent socio-economic inequality and unequal access to essential services. The challenge extends beyond recognising rights to establishing participatory and accountable processes that translate constitutional commitments into substantive improvements in people's lives.

The chapter advances partnership as a means of connecting rights, advocacy and enforcement while preserving the state's primary responsibility and the courts' remedial role. Partnership is therefore not a substitute for enforcement, but a framework for making the realisation of the RtD more informed, participatory and accountable.

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