

Chapter 1

Introduction to the Study

1.1 Background

South Africa held its first non-racial election on 27 April 1994. The election was important because it ushered in a non-racial democracy as well as a government that proclaimed its commitment to the economic upliftment of ordinary people. In his inaugural parliamentary address on 24 May 1994, President Nelson Mandela, as he then was, stated:

My government's commitment to create a people-centred society of liberty binds us to the pursuit of the goals of *freedom from want, freedom from hunger, freedom from deprivation, freedom from ignorance, freedom from suppression and freedom from fear*. These freedoms are fundamental to the guarantee of dignity. They will therefore constitute a part of the centrepiece of what the Government will seek to achieve.¹ (Emphasis added.)

In order to deal with the legacy of racial discrimination and to correct the social imbalances it created, the constitution of South Africa:

- Commits the state to "[i]mprove the quality of life of all citizens" ;²
- Obliges the state to respect, promote and fulfil the social and economic rights of the citizens;³
- Assigns the South African Human Rights Commission (SAHRC) the task to monitor whether government departments and other organs of state are introducing any measures towards the realisation of social and economic rights;⁴
- Provides for all spheres of government to contract for goods or services on such a basis that they protect and/or advance persons or categories of persons who have been disadvantaged by unfair discrimination;⁵
- Provides for affirmative action;⁶
- Commits the state to land reform and to bringing "about equitable access to all South Africa's natural resources".⁷

South Africa signed the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) on 3 October 1994.⁸ The ICESCR will be

discussed in due course. Suffice it now merely to state that it is "the major international treaty protecting economic and social rights".⁹ It is clear, therefore, that the government that was ushered in by way of the 1994 election made a commitment to the ideal of Socio-Economic justice.

1.2 Aim of Study

This study seeks to inquire into the articulation of theory and practice in the commitment towards the respect, promotion and realisation of Socio-Economic rights in South Africa. In other words, this study will inquire whether the Socio-Economic rights listed in the Bill of Rights were given effect to in the period considered by

the SAHRC in 1998. It also seeks to understand the processes and procedures followed by the South African Human Rights Commission (SAHRC) in carrying out its constitutional mandate to monitor the implementation of Socio-Economic rights in South Africa.

There is a long-standing reservation about whether Socio-Economic rights are of the same order as civil and political rights. Although there is a move away from the tendency to question the *bona fides* of socio-economic rights, their recognition has tended to be half-hearted. Therefore, in Chapter 2, I shall inquire into what human rights, properly so called, are. I shall use that exercise as a basis, in Chapter 3, for inquiring whether Socio-Economic rights deserve to be approached with circumspection. In Chapter 4, I shall inquire into the methodological strengths and weaknesses of a study conducted by the SAHRC into the implementation of

Socio-Economic rights in South Africa. In Chapter 5, I shall examine the findings of the SAHRC's study and in Chapter 6 I shall draw some conclusions.

In this study I shall:

- Search for, and try and assign meaning to, variations in the texts that I shall be working with;
- Try and be as attentive as possible to detail in the texts that I shall be working with;
- Inquire into the manner in which these texts are designed to undermine alternative views; and
- Try and build up a case for Socio-Economic rights.

1.3 Methodology

The methodology I propose to follow in this study is *meta-analysis*. That is, I propose to analyse the SAHRC's analysis¹⁰ of the data it gathered in 1998. The data were gathered with a view to examining whether, and to what extent the state is fulfilling its constitutional obligation to give effect to Socio-Economic rights in South Africa.

It is, perhaps, necessary to try and justify my choice of meta-analysis as a methodology for this study. There are, I believe, two levels at which it might be necessary to justify my methodological choice. Firstly, what stands to be gained by approaching the study via meta-analysis? And, secondly, one has, perhaps, to justify the appropriateness of the methodology to the study.

Social science has been under attack for its failure to be conclusive on the subjects it studies for many years now.¹¹ The effect of this has been, by and large, to undermine confidence in the social sciences since, in lieu of answering the questions posed at the beginning of the study, social research findings have tended to raise more questions. Not only has this tendency created a lot of confusion: it also brought into question the utility of social research.¹²

Social scientists came to a point where they found the need to try and make sense of the "vast amounts of research findings" at hand, rather than do further primary research.¹³ With reference to the current study, I hope to show that the SAHRC's analysis of the data it worked with had some limitations. I hope to show that these limitations might well have the effect of obfuscating the reality that it was meant to illuminate. Further, in reading a research report, one has to decide whether, and to what extent, one can "invest trust" in what one reads.¹⁴ The question falls to be decided by a variety of factors, including the credentials of the researcher who wrote the report; the way the research was conducted and the

data analysed; the "level of consensus among other scholars in the same field" on the findings; and the independence of the researcher.¹⁵ Therefore I propose to inquire whether the SAHRC's study satisfies the standard of credibility, both at the level of data gathering and data analysis.

The second consideration in respect of which it is necessary to justify my choice of methodology is the appropriateness of meta-analysis to the study. If we say that meta-analysis seeks to make sense of "vast amounts of research findings", to what extent is it still appropriate to the current study? What "vast amounts of research findings" are there in South Africa in order to warrant meta-analysis thereof?

The SAHRC inquiry forming the subject-matter of this study was the first of its kind. There were other studies on the matter, notably by the South African Institute of Race Relations, the Human Rights Committee and Fair Share. Admittedly they were not of the same scope as the SAHRC study, but they traversed more or less the same ground. Their findings were not always the same. I shall argue that, in failing to take them into account, the SAHRC impoverished its analysis of its own data.

I take, moreover, the view that "vast amounts" is an elastic term. It is noteworthy, for instance, that Cook *et al*, previously referred to, write instead about "all the studies relevant to an issue".¹⁶ Locke *et al*, also previously referred to, speak variously of combining "studies that have the same focus" and of "combining the results from independent studies".¹⁷ Therefore, it seems to me, meta-analysis would be appropriate to the current study notwithstanding the fact that it is not yet possible in the context of South Africa to speak about tons of research findings on the state's fulfilment of Socio-Economic rights.

Footnotes

¹ White Paper on Science and Technology, preamble, p. 3. An examination of the Science and Technology white Paper, Reconstruction and Development Programme White Paper, Growth and Development Strategy, Growth, Employment and Redistribution Strategy, White Paper on South African Land Policy, and White Paper on Affirmative Action would confirm that at policy level the government is indeed committed to the sentiments expressed by Mandela.

² Act 108/1996: preamble.

³ Act 108/1996124(b)(iii); 26; 27 & 29.

⁴ Act 108/1996/184(3). It may be noted that section 184(2)(b) of the constitution empowers the SAHRC to "take steps to secure appropriate redress where human rights have been violated". In principle there is no distinction between the rights here under consideration and civil and political rights, insofar as the SAHRC has the right and power to take remedial action. Consequently, the SAHRC has the right to take action where Socio-Economic rights have been violated. It is suggested that the question is more likely to be: **When is a Socio-Economic right violated?** rather than: **Can the SAHRC come to the assistance of the citizen when his/her Socio-Economic rights are violated?** And then it is also important to note that the Human Rights Commission Act, 54/1994/7(e) empowers the SAHRC, in doing its work, to institute proceedings in any competent court or tribunal, in its own name or on behalf of aggrieved persons, where any of the rights here under discussion is infringed.

⁵ Act 108/1996/217(2). Subsection 3 directs Parliament to pass legislation to "prescribe a framework within which the policy referred to in subsection 2 may be implemented".

⁶ Act 108/199619(2).

- 7 Act 108/1996125(4). Subsection (5) directs Parliament to pass legislation "to foster conditions which enable citizens to gain access to land on an equitable basis".
- 8 Department of Foreign Affairs, *Position with Regard to Human Rights Treaties*, n.d., p. 1. (The document was distributed by the Department of Foreign Affairs on the occasion of the 50th anniversary of the UDHR on 10 December 1998.)
- 9 Alston, 1998, p. 2.
- 10 Glass G, cited by Wolf FM, 1986, p. 11.
- 11 Hunter JE & Schmidt FL, 1990, p. 35; Wolf FM, *supra*, pp. 9-10.
- 12 Hunter JE & Schmidt FL, *supra*, pp. 35-37.
- 13 *Ibid*, p. 37; Hunter JE, Schmidt FL & Jackson GB, 1982, p.10; Cook TD et al, 1992, p. 4.
- 14 Locke LF, Silverman SJ & Spirduso WW, 1998, p. 29.
- 15 Locke 1 F, et al, *supra*, pp. 30 & 42; 45-48; 37; 50-51 respectively.
- 16 Cook TD et al, *supra*, p. 5.
- 17 Locke LF et al, *supra*, p. 137.