
Christopher Gerald Thomas

A thesis submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in fulfillment of the requirements for the degree of Doctor of Sociology.

Johannesburg, February 2010
The post-apartheid government of 1994 is a product of the 'Age of Rights'. State-making processes and the exercise of state powers is managed by the rule of law based on a constitution. Constitutionally recognised rights, and rights protection institutions, animate a transition from a legacy of Black political exclusion and underdevelopment. Intensifying class stratification and inequality constrain Black’s formal realisation of citizenship rights, placing great pressure on creative interpretation of constitutionally legitimated claims.

My thesis examines the rights discourse informing the Constitution, particularly issues about the realisation of social and economic rights. I examine the unfolding of discourses on the right to housing between 1994 to 2008, to illustrate of the complexity of the discourse. Episodic housing protests suggest significant degrees of alienation, marginalisation, and disappointment with expectations of citizenship and the non-realisation of social and economic rights. Housing rights is an issue that will affect the democratic consolidation and political stability prospects of the new political order. I examine the interface between macro-economic policies, budgets, and the realisation of housing rights, and assess the impact of an identifiable configuration of forces expected to play important roles in realising a rights culture and broadening the discourse.

My study draws on a spectrum of qualitative, interpretive, and analysis of discourse approaches, using data from: published articles, annual reports and archives, speeches, court proceedings and statements, interviews with persons whose scope of activities impact the unfolding of the concerned rights, namely, representatives of government departments, private sector developers, financing institutions, and civil society formations.

My main findings are that few actors in the configuration support the view that the Constitution should be changed to make explicit the state’s obligations on the realisation of social and economic rights. Nevertheless, there are isolated cases of people expressing an absolute entitlement sense of rights --- the state should deliver when demands are made. My conclusions are that considerable political unrest about non-realisation of these rights will persist, but will not cause a collapse of the post-1994 political institutions and processes. More likely, political actors, legal scholars and jurists, will persistently engage the prevailing rights discourse and the variety of institutions acting towards their realisation, without effecting drastic changes to these, but always invoking positions about how they still are suited for a post-apartheid transformation project yet need critical interrogation and improvisation.

**KEYWORDS:** apartheid, transition, citizenship, rights discourse, Constitution, socio-economic rights, inequality, redistribution, configuration of institutions promoting rights, right of access to adequate housing, qualification of rights, fiscal limits on state capacities, available resources.
Declaration

I declare that this thesis is my own unaided work. It is submitted for the degree of Doctor of Sociology in the University of Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

____________________________________

Christopher G Thomas

__________day of ________________, 2010
Dedication

In memory of my parents, George and Mary, whose tireless struggle to provide their children with a comfortable house and home inspired my values.
Acknowledgments

To Professor Ran Greenstein,
for meticulous supervision through the years.
Abbreviations

AB Afrikaner Broederbond
AHI Afrikaanse Handel Instituut
ANC African National Congress
APF Anti-Privatisation Forum
AZAPO Azanian People’s Organisation
BASA Banking Association of South Africa
BCM Black Consciousness Movement
BESG Built Environment Support Group
CALS Centre for Applied Legal Studies
CASE Community Agency for Social Enquiry
CODESA Convention for a Democratic South Africa
COHRE Centre on Housing Rights and Evictions
COSATU Congress of South African Trade Unions
CSIR Council for Scientific and Industrial Research
DA Democratic Alliance
DBSA Development Bank of South Africa
DP Democratic Party
DPLG Department of Provincial and Local Government
DRC Dutch Reformed Church
FC Final Constitution
GATT General Agreement on Trades and Tariffs
GEAR Growth, Employment and Redistribution
GNU Government of National Unity
HSRC Human Sciences Research Council
IC Interim Constitution
IDT Independent Development Trust
IFP Inkatha Freedom Party
ICCPR International Convention on Civil and Political Rights
ICESCR International Convention on Social and Economic Rights
ICRS Inner City Regeneration Strategy
IMF International Monetary Fund
JMPD Johannesburg Metropolitan Police Department
JOTA Johannesburg Tenants Association
LPM Landless People’s Movement
MEC Member of Executive Committee
MPNF Multi-Party Negotiating Forum
MK Umkhonto we Sizwe
MWT Marxist Workers’ Tendency (of ANC)
NEDLAC National Economic Development and Labour Council
NEM Normative Economic Model
NHBRC National Home Builders Registration Council
NF National Forum
NGO Non-Governmental Organisation
NHF National Housing Forum
NIA National Intelligence Agency
NIMBY ‘not in my back yard’
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>NP</td>
<td>National Party</td>
</tr>
<tr>
<td>PAC</td>
<td>Pan Africanist Congress</td>
</tr>
<tr>
<td>PEBCO</td>
<td>Port Elizabeth Black Civics Organisation</td>
</tr>
<tr>
<td>PIE (Act)</td>
<td>Prevention of Illegal Eviction and Unlawful Occupation of Land Act</td>
</tr>
<tr>
<td>PISA</td>
<td>Prevention of Illegal Squatting Act</td>
</tr>
<tr>
<td>PLANACT</td>
<td>an NGO assisting communities, mostly in Gauteng, adversely affected by apartheid policies</td>
</tr>
<tr>
<td>PRC</td>
<td>Peoples’ Republic of China</td>
</tr>
<tr>
<td>PWV</td>
<td>Pretoria/Witwatersrand/Vereeniging</td>
</tr>
<tr>
<td>RDP</td>
<td>Reconstruction and Development Programme</td>
</tr>
<tr>
<td>RSA</td>
<td>Republic of South Africa</td>
</tr>
<tr>
<td>SAAU</td>
<td>South African Agricultural Union</td>
</tr>
<tr>
<td>SABRA</td>
<td>South African Bureau of Racial Affairs</td>
</tr>
<tr>
<td>SACC</td>
<td>South African Council of Churches</td>
</tr>
<tr>
<td>SACP</td>
<td>South African Communist Party</td>
</tr>
<tr>
<td>SAHRC</td>
<td>South African Human Rights Commission</td>
</tr>
<tr>
<td>SAIRR</td>
<td>South African Institute for Race Relations</td>
</tr>
<tr>
<td>SALC</td>
<td>South African Law Commission</td>
</tr>
<tr>
<td>SANCO</td>
<td>South African Civics Organisation</td>
</tr>
<tr>
<td>SANGOCO</td>
<td>South African National Nongovernmental Organisations Coalition</td>
</tr>
<tr>
<td>SAPs</td>
<td>Structural Adjustment Plans</td>
</tr>
<tr>
<td>SAPS</td>
<td>South African Police Services</td>
</tr>
<tr>
<td>STATSSA</td>
<td>Statistics South Africa</td>
</tr>
<tr>
<td>TRA</td>
<td>Tembisa Residents Association</td>
</tr>
<tr>
<td>TRC</td>
<td>Truth and Reconciliation Commission</td>
</tr>
<tr>
<td>UCDP</td>
<td>United Christian Democratic Party</td>
</tr>
<tr>
<td>UDF</td>
<td>United Democratic Front</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UF</td>
<td>Urban Foundation</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USN</td>
<td>Urban Sector Network</td>
</tr>
<tr>
<td>WOSA</td>
<td>Workers’ Organisation for Socialist Action</td>
</tr>
</tbody>
</table>
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>i</td>
</tr>
<tr>
<td>Keywords</td>
<td>i</td>
</tr>
<tr>
<td>Declaration</td>
<td>ii</td>
</tr>
<tr>
<td>Dedication</td>
<td>iii</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>iv</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>v</td>
</tr>
</tbody>
</table>

### 1 INTRODUCTION

1.1 Introduction

1.2 A synopsis of apartheid, the black housing question, and political transition 3

1.3 Housing in post-apartheid transformation 18

1.4 Rights and consolidating a new democracy 20

1.5 Discourse and Critical Theory approaches to Rights 24

1.6 Conclusion 29

### 2 METHODOLOGY

2.1 Introduction 31

2.2 Specifying the scope of my qualitative data collection 32

2.3 The notion of “discourses” on the realisation of rights 34

2.3.1 Distinguishing between discourse, discourse analysis, discourse theory, and the analysis of discourses 34

2.3.2 Analysis of discourses and sources of data 48

2.4 Sources of quantitative and qualitative data on the realisation of social and economic rights 49

2.4.1 The National Department of Housing annual reports 50

2.4.2 The Gauteng Department of Housing annual reports 51

2.4.3 Studies by the Human Rights Commission 52

2.4.4 Studies of rights and delivery in post-apartheid South Africa 53

2.4.4.1 The study by the Community Agency for Social Enquiry (CASE) 53

2.4.4.2 Studies of the monitoring process 55

2.4.4.3 Journal monitoring and debates 55

2.4.4.4 Miscellaneous publications on housing developments 57

2.4.5 Archives 58

2.4.6 Interviews and interview informants 59

2.4.6.1 The Landless People’s Movement (LPM) 60
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4.6.2</td>
<td>Builders associations / project developers: Wietpro Housing</td>
</tr>
<tr>
<td>2.4.6.3</td>
<td>The South African Human Rights Commission</td>
</tr>
<tr>
<td>2.4.6.4</td>
<td>Gauteng Department of Housing</td>
</tr>
<tr>
<td>2.4.6.5</td>
<td>Financing institutions: First National Bank</td>
</tr>
<tr>
<td>2.4.6.6</td>
<td>Courts and the Constitutional Court</td>
</tr>
<tr>
<td>2.4.7</td>
<td>Research questions used in interviews and in the examination of published sources</td>
</tr>
<tr>
<td>2.4.7.1</td>
<td>Views on budgets and the state of the economy</td>
</tr>
<tr>
<td>2.4.7.2</td>
<td>Standards, quality of housing, understanding of “adequate housing”</td>
</tr>
<tr>
<td>2.4.7.3</td>
<td>The Constitution</td>
</tr>
<tr>
<td>2.4.7.4</td>
<td>Government capacity, management, and the banking institutions</td>
</tr>
<tr>
<td>2.4.7.5</td>
<td>Co-option and exclusion</td>
</tr>
<tr>
<td>2.4.7.6</td>
<td>International forces</td>
</tr>
<tr>
<td>2.4.7.7</td>
<td>Civil society</td>
</tr>
</tbody>
</table>

3 RIGHTS PHILOSOPHY, CONSTITUTIONS, AND STATES 68

3.1 Introduction 68
3.2 Rights: a contested notion 69
3.3 The genesis of Rights philosophy 73
  3.3.1 Rights: ideology or discourse? 74
  3.3.2 The mainstream Natural Rights doctrine 81
  3.3.3 The Utilitarian critique 86
  3.3.4 The collectivistic critique 89
  3.3.5 The Marxist critique 90
  3.3.6 Contemporary pragmatic approaches 95
3.4 Constitutions and the realisation of rights 102
3.5 States and the realisation of rights 104
3.6 Conclusion 109

4 THE ESSENCE OF APARTHEID 110

4.1 Introduction 110
4.2 Rightful claims to an ‘empty land’ 110
4.3 What to do about urban blacks? Segregation and apartheid 115
4.4 Conclusion 128

5 THE TRANSITION TO RIGHTS-BASED TRANSFORMATION INSTITUTIONS 129

5.1 Introduction 129
5.2 From protest and armed struggle to negotiations 129
5.3 Negotiations, elections and an Interim Constitution 140
5.4 Drafting a Final Constitution 150
5.5 Conclusion 154

6 TAKING SOCIO-ECONOMIC RIGHTS SERIOUSLY IN SOUTH AFRICA 155
6.1 Introduction 155
6.2 Incorporating social and economic rights in the Final Constitution 156
6.3 The configuration promoting a rights culture in South Africa 163
   6.3.1 The Constitutional Court 163
      6.3.1.1 Soobramoney: the right of access to health care services 166
      6.3.1.2 Grootboom: the right to have access to adequate housing 171
      6.3.1.3 The Treatment Action Campaign: the right of access to health care services 175
      6.3.1.4 Khosa: the right to have access to social security 176
      6.3.1.5 The Constitutional Court in the larger social structure 178
   6.3.2 The South African Human Rights Commission 189
   6.3.3 International agreements on economic and social rights 183
   6.3.4 Civil society organisations 186
   6.4 Conclusion 193

7 HOUSING POLICY IN SOUTH AFRICA 196
7.1 Introduction 196
7.2 The apartheid years: 1948-1976 197
7.3 Reforms in black housing policy: 1976 to 1994 205
   7.3.1 Shifts in urbanisation policy 206
   7.3.2 Shifts in NP economic policy and its effects on housing policy 208
   7.3.3 The Urban Foundation’s entry into housing provision 209
   7.3.4 State-led initiatives: the ‘Big sale’ 214
   7.3.5 The Independent Development Trust 215
   7.3.6 The World Bank and housing in SA 216
   7.3.7 The de Loor report on housing 217
   7.3.8 The National Housing Forum 219
   7.3.9 The marginalised discourses 221
   7.4 Giving life to the New Constitution’s rights rhetoric: National Housing Policy, 1994 to 2004 222
7.5 Economic forces shaping post-apartheid housing policy

7.5.1 Economic policy beginnings with the RDP

7.5.2 The shift to GEAR

7.5.1 GEAR's breakdown

7.6 Issues developing from housing policy since 1994

7.6.1 The national budget's housing provision

7.6.2 Financial institutions and low-income housing loans

7.6.3 The quality and standards of low-income housing products

7.6.4 Problems about the housing bureaucracy

7.6.5 The urban-rural bias, the availability of land, and housing unrest

7.6.6 The Constitution: Housing rights as entitlements and state obligations

7.7 Conclusion

8 THE RIGHT TO HOUSING IN GAUTENG PROVINCE

8.1 Introduction

8.2 The housing need in Gauteng province

8.3 Issues in the management of the provincial housing budget

8.4 The operation of the subsidy scheme and the allocation of housing to applicants

8.5 Issues in housing quality and size

8.6 Banks and low-income housing

8.7 Housing developments, infrastructure, and service provision

8.8 Housing unrest in Gauteng province

8.9 Challenging hegemonic housing rights discourse: land occupation and squatter evictions

8.9.1 Land occupation in the peri-urban areas

8.9.2 Contestation of inner city evictions

8.9.3 Homelessness, evictions, protest and the law under a transformative constitution

8.10 Conclusion

9 ANALYSIS OF DISCOURSES ON THE RIGHT TO HOUSING

9.1 Introduction

9.2 Assessing the key forces in the unfolding rights discourse and rights-based transformation process

9.2.1 To have rights or not, and how to conceptualise rights

9.2.2 Land claims and realising rights

9.2.3 State resources as an element in realising rights