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Limitations to Justice: The Right to Housing and Prescription in the Seraleng Community

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Limitations to Justice: The Right to Housing and prescription in the Seraleng Community

ABSTRACT

This paper argues that access to socio-economic rights is vital for the realization of justice, especially for the previously disadvantaged people of South Africa. The right to housing as envisaged in the Constitution of South Africa is a basic human right that the democratic government of South Africa codified after the exclusion of Black people from accessing the right in the past Apartheid era. This paper looks at the right to adequate housing, considering the Seraleng community. The Seraleng community is a mining community in the Northwest province of South Africa whose rights to housing have been unfairly limited by the multinational corporation Anglo-American. The right to adequate housing means that the houses that the states build for people are in a habitable state. This paper then looks at the failed promise of the state to provide adequate housing in the Seraleng community in line with their constitutional obligations. This failure is because the houses that the government and Anglo-Americans built, over time, started showing cracks and are slowly becoming uninhabitable. Neither the municipality nor the Anglo are providing any recourse for the community. The justice system is also not able to assist, as the matter is said to have prescribed in court. This paper then argues that the prescription of the matter and the inaction from Anglo-America or the municipality infringe on the community's right to housing and hinder the community from accessing justice. This infringement is further not in the spirit of the development of the village, as housing plays a crucial role in development.

KEYWORDS

Social Justice, Housing, Prescription, Constitution

1. INTRODUCTION

Colonialism and subsequently Apartheid legacies in South Africa has stripped a majority of South Africans of their right to justice which has translated to lack of development as commonly referred to in the sustainable development goals.[1] Rights play a crucial role is the ascertainment of the 17 sustainable development goals. One such right is the right to housing as envisaged by the Constitution of the Republic of

[1] United Nations 'The 17 Goals' https://sdgs.un.org/goals (accessed 27 June 2025).

South Africa.[2] The right to housing is a fundamental right which guarantees the right to dignity. A person who is without shelter is a person denied of their dignity and as a result, one will explore every way possible to provide themselves with housing that they consider adequate and satisfactory. The government also have an obligation to make sure that everyone has adequate shelter and takes all steps necessary to guarantee this right.

The paper looks at the right to housing as is relates to development. It further looks at the hindrances to the right to housing. The right is understood in relation to the Seraleng community which is a community in the Northwest province of South Africa. One identified hindrance that is discussed in this paper is the law of prescription. The paper argues that the law of prescription is a law foreign to the people of Seraleng and as such, it has played a significant role in them suffering injustice in relation to the Seraleng housing project.

The paper sets out the history of the Seraleng housing project as it relates to the right to housing. It locates the right to housing in different legislation to further ascertain this right as a human right and if not guaranteed a miscarriage of justice. The paper then investigates development as it relates to law. This is done to illustrate how without effective, reflective laws of indigenous people, we cannot speak of development. Lastly, the paper will provide analysis of the law of prescription and how it curtails people from accessing justice.

2. BACKGROUND OF THE SERALENG COMMUNITY HOUSING GRIEVANCES

The history of the Seraleng housing project seeks to show the injustices that the community have encountered over years. It will set out the events that has led to the writing of this paper which serves as a form of advocacy for the community. It will do by showing the timeline of the events that have led to this paper.

2.1 A Relationship based in Public-Private Partnership

The Seraleng housing project is bred out of a private-public partnership. In about 2008, the Rustenburg Local Municipality ("the Municipality") initiated an integrated housing development in Seraleng, near Rustenburg, and invited three mining companies to partner with it. The aim of the partnership was for Anglo to provide houses for its employees. This agreement is in line with the progressive realisation of the right to housing as mentioned above. In this way, the government would work

[2] Section 26 of the Constitution of the Republic of South Africa, 1996.

with a private company to the realisation of the right to housing of the people in Seraleng. This agreement is further in line with government objectives. This is because the Constitution provides that: 'the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to housing'.[3]

In April 2009 it was reported that Anglo-American Platinum Mine Limited ("Anglo") and the Northwest provincial government had signed a memorandum of understanding ("MOU") which provided for the construction of 1000 houses for mineworkers in Rustenburg, referred to as the Seraleng Integrated Human Settlement Development Project. The investment made was stated as being R2.4 billion. The partnership was intended to deliver and provide 20,000 houses for Anglo's employees in the Northwest and Limpopo to benefit more than 120,000 people in the next 5 to 10 years (from 2009). That same month, a Public-Private Partnership ("PPP") agreement was concluded between Anglo and the Municipality, in terms of which Anglo would construct 1000 low-cost housing units for its employees on land which it owned in the Rustenburg area.

It was reported that the head of Anglo Plats, Mr Dlamini, said that Anglo would spend R137 million towards land and service to benefit 20,000 households as part of its contribution to assist government eradicating informal settlements by 2014. Subsidies over 10 years would be over R87 million. It was apparently intended that employees could buy the housing units with the help of a government subsidy and homeownership allowance, presumably the Finance Linked Individual Subsidy Programme ("FLISP"), which had been introduced by the Department of Human Settlements in 2012. In this manner, government brings in the money to subsidise the house purchase, provided that prospective purchases meet all the other criteria set out. Anglo contributes money and the land for constructing the units. The employee buys from the "turnkey developer" and the employee repays the loan portion to the bank.

The relationship between government and Anglo was thus intended to make home-ownership easier. The houses which were built in around February 2010, Anglo contracted Toro Ya Africa (Pty) Limited ("Toro"), a construction company, to build the housing units as part of the development project. Toro in turn subcontracted other developers. Rustenburg Platinum Mines Limited, being Anglo, is the seller reflected on both the Offer to Purchase and Title Deed documents. However, Toro is reflected as the owner of the property on a certificate of occupation dated 20 April 2011, and an NHBRC certificate dated 2010 states that

[3] Section 26(2) of the Constitution of the Republic of South Africa, 1996.

Toro "has enrolled" the units for sale.

The first houses were built on property owned by Anglo in 2009, and ultimately only 343 units were built. Anglo then approached individuals comprising current and former employees of Anglo, and their families ("the community"), in about 2010 with proposals that they either purchase or rent the units. The community members rented the units from Anglo, alternatively entered into rent-to-buy agreements with Anglo, or further alternatively applied for home loans to finance the purchase of the units. Some home loan applications were pre-approved between September and November 2010. Certificates of compliance for various aspects of the build were issued between 2010 and 2011. The first community members took occupation of their units in 2011, with the last houses having their initial occupation by 2015.

2.2 Defects in the houses built

The community began moving into the houses in 2011, and this is when they experienced issues with the houses and their construction. The houses began failing. Some of the damages include cracked walls, falling ceilings, damp walls, cracked tiling, roof tiles falling off and pavements separating from the houses. Some of the units were built on an air pressure pipeline, which has severely compromised the integrity of those structures. The storm drainage system throughout Seraleng Extension 1 is also of poor quality, and many of the units' flood when it rains. The community directed such complaints to Anglo's Housing Development department to which in turn Toro responded to these complaints by attending at Seraleng Extension 1 and undertaking repair work to the defective houses. In addition, Toro asked the community to compile a list of all such defects across the housing settlement, which the community members compiled and transmitted to Toro.

2.3 Cancellation of the housing project

In about 2013, and once only about 350 of the intended 1000 houses had been built, Toro disappeared from the building project in Seraleng. The community believes that Toro was fired by Anglo in August or September 2013.It appears that a forensic investigation was conducted into Toro at some stage. Anglo claims that the housing project was cancelled in 2012 due to strikes in the area, which strikes culminated in the Marikana Massacre. It appears that many employees were unable to obtain the home loans with which to purchase the homes, which was the apparent intention of the housing project. This appears to be the real reason behind the cancellation of the housing project.

When Toro left, it took all the documents containing the community's

complaints about defects in the houses with them. As Toro was no longer present, the community then issued further complaints about defects in the houses to Anglo directly. Direct engagements between the community and Anglo were conducted from about December 2013, when representatives of the community sent a letter to Anglo's CEO and Directors to complain about the defects in the houses. Anglo responded in about 2014. In December 2016, the community invited Anglo to a consultation to discuss their grievances. Six meetings were held between the community and Anglo until July 2017. In 2017, Anglo fixed a leaking roof in one of the houses. Anglo thereafter asked the community for a list of all defects in the houses. The community provided this list. Anglo's maintenance department then fixed these issues.

In a letter from Anglo dated 21 July 2017, Anglo recorded that the engagements with the community were unproductive and hostile, and that its Housing Management Team would consequently not have any further interactions with representatives of the community as Anglo "regard[s] this matter as closed". The community sought assistance in remedying the defects in their houses from various fora, including lodging a complaint with the Public Protector in about 2016. In February 2017, the Public Protector advised that the community had failed to exhaust all internal remedies prior to instituting its complaint and so closed the file. The community was advised to approach the Mayor of Rustenburg. In April 2017 the community laid a complaint with the South African Human Rights Commission ("SAHRC"). It is unclear what transpired with that complaint.

Anglo had also facilitated a meeting between the community and the National Home Builder's Registration Council ("NHBRC") in February 2017. On 4 May 2017, and in response to a complaint from the community, the NHBRC conducted a site visit, inspecting a few units inside and outside and driving around the area. The NHBRC produced a report dated 19 May 2017 ("the Report"), in which it found as follows –

> *The cracks were "repairable by normal maintenance expected from homeowners" and were thus not covered by the warranty fund of the NHBRC.*
>
> *The foundation designer for the housing units had designed rafts and expansion joints which adequately accommodated the clay soil that is found in the Seraleng area, being soil which expands and contracts in differential settlement.*

Regarding roof leaks, the Report found that the units were older than five years and were therefore not covered under the warranty fund of the NHBRC which only covers such defects within one year of occupation;

and the manhole in front of the units was found to be "[too far] from the structures/units to have an effect on their structural behaviour". In conclusion, the report held that the units are in need of regular maintenance by and for the account of the homeowners, rather than repairs by and for the account of the home builders.

2.4 The Constitutional Court of the Republic of South Africa

Aggrieved by the NHBRC's Report and a further lack of positive response from Anglo, the Municipality or the Department of Human Settlements, the community approached the Constitutional Court directly for assistance with the defective housing. The application was instituted on 31 August 2017. The Constitutional Court dismissed the community's application for direct access on 9 October 2017 on the matter having prescribed.

3. PRESCRIPTION

Prescription is means of losing or acquiring rights. It is also a method one can use in relieving themselves of any obligation through the time periods prescribed by the law. It , as many laws governing South Africa owes its origin to the Roman Dutch influences. The law of prescription is governed by Prescription Act 68 of 1969, that came into operation on 1 December 1970. The Act prescribes time periods when one can institute a legal claim and required that any claim institutes against the state or state entity be preceded by a written notice, stating the basis of the claim. Prescription lays down law on the acquisitioning of ownership over a thing over a period that one has it. In essence, prescription is then concerned with the possession and time over a thing so one can acquire ownership over the thing. Prescription is also concerned with when the creditor may be able to claim from the debtor. The Act states that the prescription period begins to run once the debtor is aware of the due claim. The purpose of the time running when the creditor is aware of the claim is that this guarantees certainty and fairness on the debtor.

The effects of prescriptions however on individuals is that it limits their access to court. This is because once the matter has prescribed then the aggrieved party no longer have a claim in court. To its justification, prescription law uses these time periods as justifiability to say that after a certain period, some matters can no longer be judiciable in court.

The history of prescription is statute in nature. In classical Roman law actions were not generally subject to time limits and the first general prescription period was instituted by the emperor Theodosius in 424 AD Known as praescriptio longi temporis. It applied to actiones in rem and actiones in personam and imposed a prescription period of thirty and

sometimes forty years. Subsequently, different time periods then over time applied different laws of prescription. The Roman Dutch law history of prescription owes a lot of its origins to the Justinian law.

South Africa uses the strong prescription system. This means that once the debt is acknowledged, the creditor has 3 years to claim or else the entire debt becomes completely extinguished.[4] The debt becomes extinguished in a manner that it ceases to exist.[5] This results in the extinction of the existing substantive right that comes with claiming for the debt.[6] These rights being both natural and civil obligations.

3.1 Case for prescription

The principles of prescription are built in 3 foundations. These foundations are certainty, fairness and public policy. The case for these principles as the paper argues are those that are based on the colonial understanding of justice and thus the exclusion of a lot of the formerly colonised individuals. This is because in the African culture and more specifically South African cultures, there is a saying that 'icala aliboli' meaning that there is no expiry date to a wrongdoing. Below, the paper then analyses the principles as they apply to prescription law. It further contradicts them to the African understanding of 'icala'.

3.1 1 Certainty,[7]

Certainty involves that the creditor does not drag their feet to initiate a claim against a debtor. It further ensures that no adverse consequences arise from the procrastination from initiating the claim. The result of certainty is that the law seeks to maintain good relations between the debtor and the creditor. However, this requirement fails to take into consideration all persons that may have claim against their creditors. It fails to appreciate that debtors may in certain instances be not aware of the perceived harm that may be caused by the delay in claim. As in fact, they may then find themselves in reverse position where they suffer harm because of the time constraints that exist in lodging a claim.

In the case of Engelbrecht against the Road accident fund and the minister of transport, the court correctly acknowledged the

[4] Prescription Act 68 of 1969, s 3(1) (c).
[5] As above.
[6] Prescription Act 68, 1969 chapter III.
[7] South African Law Reform Commission 'Discussion paper 125, Prescription periods' July 2011 https://www.justice.gov.za/salrc/dpapers/dp126_prj125_prescription-periods.pdf (Accessed 03 February 2024).

different classes of people that may be eligible for compensation in motor vehicle accidents. [8] The court further appreciated that these persons may not be aware of the time frames that are put in lodging a claim.[9] It further illustrated that the 14-day period that was put in place by section 2(1) (c) of the Road Accident fund act was unconstitutional. This is evident of the Seraleng community members.[10] The community upon realisation that they were defects with their houses took actions in correcting this. They did so by consulting with the municipality who had given the land to Anglo for the housing project. The community in doing this acted in accordance with African customary law. It is common that in African cultures, conflict is usually solved by engaging the affected parties amicably, something that the western culture has since adopted into law as mediation.

3.1.2 Fairness,[11]

The principle of fairness in prescription cases in based on the notion that the defendant cannot wait indefinitely for a claim to be brought forward, that is considered unfair on the defendant and removes the fear of unknown future litigation. The principle argues that the defendant is put in a vulnerable position when they do not know when a claim would be instituted. This implies that the creditor is put in an advantageous position as they can institute proceedings any time. Further, this reasoning presumes that the creditor is aware of the power that it possesses over the defendant. In order for the creditor to be aware of this power, they must be aware of prescription and the different time periods that applies to it. This insinuation is not only untrue, but it is also prejudicial to the millions of South Africans who do not possess any legal literacy. This in turn limits their right to access the courts should they have any dispute as stated in the Constitution of the Republic of South Africa

3.1.3 Public policy,[12]

The call for prescription in the prescription laws is that; in law, disputes must be resolved as quickly as possible. This is to maintain peace in society and to make sure that disputes do not drag for long so as to deny access to justice. This can be true of

[8] Engelbrecht v Road Accident Fund and Another (CCT57/06) [2007] ZACC 1; 2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC) (6 March 2007).
[9] Engelbrecht (n 8) para 25.
[10] Engelbrecht (n 8) para 40.
[11] n 7.
[12] n 7.

people that understand the notion of public policy. It is also true for people who understand the notion of public policy from a western lens as we observe here. However, for Africans, this is a different notion. It is much so a different notion when we consider the principles of Ubuntu. The principles of Ubuntu are explicit on icala aliboli. This is a phenomenon that is applied widely in the different parts of Africa. It means that once, a debt is due, it will be due until such a debt is paid. So, considering the African understanding of when the debt is due and payable, the Seraleng community still have a claim over their houses.

The principle of prescription suggests that prescription ought to bring about order and fairness in the society. However, as illustrated in the Seraleng community, this has nbot been their experience. These rules are applied in a narrow and blunt way. They are not cognisance of the evolving societies or societies that do not apply the same kind of laws.[13] This then is not in line with the rule of law as in essence then these laws do not apply in a similar fashion with every individual. Further, these laws are not in line with transformative constitutionalism that imagines a truly egalitarian society though their objective suggests so.[14]

Disputes in the African culture are solved usually by mediation through the traditional leaders. This is further mandated in the Constitution. What this means is that the way that traditional leaders solve disputes varies exceptionally from the western manner of doing the same. This then further means that as understood in the western imposed courts on African people, these courts aren't able to effectively solve African disputes. This is true in observing that out of frustration and disappointment in the disputes not solved, the Seraleng community then approached the Constitutional court. This is when they were advised that their case had prescribed and that it can no longer be litigated. This is very much in line with the public policy consideration in prescription law. This consideration states that public policy is also based on the premise that courts cannot be burdened by long ongoing disputes that aren't solved within a permissible period.

3.2 Prescription and indigenous people's knowledge systems

The Seraleng community after many attempts to get justice after the failed housing project in Seraleng approached the Constitutional court of South Africa for recourse. They did because, the constitutional court as the supreme court of South Africa was likely to have remedy for their

[13] n 7 page 3.
[14] n 7 page 4.

grievances that have went on for years. To their dismay, after approaching CALS found out that the matter has prescribed. Upon consultation with CALS, on a community visit, the community expressed their disappointment with the notion of prescription. To their knowledge, there was a valid claim to which Anglo American was supposed to atone for.

The shock and the disappointment by the Seraleng community is in line with the principles of Ubuntu as understood by indigenous people's knowledge systems. Ramose understands Ubuntu to mean; a lived and living philosophy that is practised by the Bantu-speaking people Africa.[15] Ubuntu as understood by Ramose is a philosophy that stands for justice in seeking equality between all human beings.[16] It ascertains that all people have a right to be treated equally on the sole basis that they are all people. The right to be treated equally is ascribed in our Constitution. The realisation oif the rights in the Constitution is evident in the Seraleng community's approach of the Constitutional court to fight for all the rights that they believe were infringed upon by the failed housing project.

However, as Ramose eloquently put it's, the Constitution does not by its own guaranteed justice as it is vulnerable to different interpretations.[17] This means that institutions that uphold democracy in South Africa have a duty to realise the values of the Constitution. These institutions include the judiciary, which is the Constitutional court of South Africa. In the Seraleng community housing matter, the constitutional court, against the values upheld in the Constitution which one may argue could uphold Ubuntu have failed to ascertain justice for this community.

Prescription as understood by the indigenous people of Africa, translates to *molato ga o bole* meaning that a wrongdoing does not have an expiry date.[18] This saying is in line with the African philosophy of Ubuntu. However, there then exists an antithesis between African knowledge system that understand Ubuntu to be their way of life and Western Law being the Constitution.[19] This is because every law in South Africa is enacted considering the Constitution. Essentially, prescription law is thus in line with the Constitution and against the Indigenous knowledge

[15] M Ramose 'Ubuntu Affirming a Right and Seeking Remedies in South Africa' in L Praeg and S Magadla (eds) *UBUNTU Curating the Archive* (2014) 121.
[16] As above.
[17] Ramose 'Ubuntu Affirming a Right and Seeking Remedies in South Africa' in L Praeg and S Magadla (n 15) 122.
[18] Ramose 'Ubuntu Affirming a Right and Seeking Remedies in South Africa' in L Praeg and S Magadla (n 15) 128.
[19] As above.

systems that do not recognise prescription.

Ubuntu is premised on an idea that there is no time influx to truth.[20] That in seeking truth, we are seeking justice. This is not true of our legal system. Our legal system demands that in recognition of wrong doing, one must then bring a claim within three years in accordance to the prescription Act. The inability of the Seraleng to access court systems is further likened to the right to access courts as enshrined in the Constitution of South Africa.[21] The limited access to courts is further heightened by the past colonial and Apartheid laws. This is because like the community in Seraleng, a large number of people in South Africa don't have the necessary knowledge that one needs in navigating the justice system in South Africa. This is It is then important that in an attempt to seek justice with the Seraleng community we first understand the hindrances that indigenous people face in accessing justice at the face of Western laws.

3.3 Prescription and access to social justice

The emergence of democracy in South Africa meant that a lot of previously oppressed people would have a chance at social justice. Social justice means working towards a truly just society.[22] This means taking into account those that were previously excluded from accessing justice and bringing them to an equal footing to the benefactors of the previously unjust system. Working towards social justice means taking into account the socio-economic conditions for the previously disadvantaged and using among many tools, law in making sure that they access justice. This means a society to which all its members have access to social justice.

In the previous years, through case law and scholarship, We have witnessed an emergence in challenging the law of prescription especially for sexual offences matters. This is because sexual offences violate fundamental rights as in the Constitution of the republic of South Africa. These fundamental rights include the right to dignity,[23] The right to access courts,[24] and socio-economic rights.[25] However, since 2007, section 12(4) of the prescription act have since been amended to state that provides that prescription does not begin to run where the victim of certain sexual offences is 'unable' to institute an action against the

[20] Ramose 'Ubuntu Affirming a Right and Seeking Remedies in South Africa' in L Praeg and S Magadla (n 15) 134.
[21] Section 34 of The Constitution of the Republic of South Africa, 1996.
[22] P Langa, 'Transformative Constitutionalism' (2006) 17 *Stellenbosch Law Review* 351.
[23] Section 10 of The Constitution of the Republic of South Africa, 1996.
[24] Section 34 of The Constitution of the Republic of South Africa, 1996.
[25] These are contained in the Bill of Rights of the Constitution of the Republic of South Africa, Chapter 2.

perpetrator. The amendment was made after calls from the civil society groups and affected persons to make sure that victims of sexual offenses get justice. The amendment in sexual offences is evident of work that must be done in South Africa in reforming the prescription laws.

'Ingalo yomthetho yinde' this is an indigenous idiom which translates to 'The arm of justice is long'. This is usually said in instances where it might take a long time for the affected parties to see justice, however this saying brings hope that justice always prevails. However, it is difficult for the Seraleng community to imagine the day when justice will prevail when prescription is the hindrance to the realisation of justice.

Social justice matters have taken less priority in law reform, perhaps because it is difficult for South Africa to fully conceptualise what exactly is social justice. However, the amendment of the prescription laws to afford the victims of sexual violence justice in coming forward with their violations is one but of many ways that South Africa can move towards the realisation of social justice. In advocating for the abolition of prescription, the argument was made that prescription should not be made a justification for the failure to obtain social justice. Considering, the background of the people in Seraleng who possess limited legal literacy, prescription goes against the community obtaining social justice.

The Constitution promotes the right to equality, and the right to access to courts. The law of prescription has challenged these rights as guaranteed by the Constitution. South Africa is a country grappled with so much inequality and illiteracy. As a result, many people are not literate especially when it comes to issues of the law. These people may be owed money or any other performance and may not be aware of this. As a result, when they become aware, because of the prescription Act in place, they cannot claim for performance and may not have any other legal recourse

As illustrated above, the Seraleng community had in many times tried to resolve the housing issues that they faced in their community. They tried many avenues before they can eventually take the matter to the constitutional court. Unfortunately, by the time they were able to take the matter to the Constitutional court, they then found out that the matter had prescribed. The failure to allow the Seraleng community to institute a claim against Anglo American in court has deprived them not just their right to access to court, but further, they have been restrained from accessing legal recourse to their housing grievances.

4. HOW THE ROLE OF LAW AND DEVELOPMENT AFFECTS ACCESS TO JUSTICE

This paper has studied how South African history is the history colonial and apartheid legacies. It is a history that saw the marginalisation of many Black people to the advancement of their White counterparts. To alleviate this, the democratic government post 1994 then enacted the Constitution of the Republic of South Africa (the Constitution). The Constitution was to play a legal reform role in that it sought to undo the past subjugation laws to bring about justice for everyone. The Constitution was then used as a tool that could influence societal behaviour that was in the result of the past legal framework which assigned races hierarchies in society in turn affording privileges to one group of people when the other group was the subject of oppression.

Law have been for centuries meant the regulation of social order.[26] It was used to make sure that there are systems that can regulate people's behaviour.[27] However, it has also been used to be the tool to oppress and undermine people's liberation. Modernity has then necessitated that law moves from just being the instrument for regulating societal behaviour but also as an instrument of change. This is more applicable for South Africa as law in the form of administrative law is used to dilute the concentration of power from one source which is the state.[28] This dilution of power is vital for the guarantee of different forms of development.[29]

Development is a broad area of work. It incorporates different aspects to it. These include economic, political and legal development. Article 22 of the African Charter for Human and People Rights states that:

> *1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*
>
> *2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*[30]

Through the enactment of the African Charter and subsequently the Constitution of South Africa, the aim was that the African people who were previously excluded in development discussion be included, especially by means of legislative frameworks. In the formation of the

[26] RM Salas 'Law and Development' (1969) 44 *Phillipine Law Journal* https://heinonline.org/HOL/Page?handle=hein.journals/philplj44&collection=journals&id=446&startid=&endid=451(accessed 4 July 2024).
[27] Salas (n 26) 447.
[28] As above.
[29] As above.
[30] African Charter for Humans and People's Rights, 1981.

African Charter, it is important to note that , the rights in the Charter are inalienable and that the states have an obligation to ascertain that people live better lives.[31] Additionally, for Africans, the right to development does not just mean economic growth but it also means the development of women in the continent which is further highlighted by the right to development in the Maputo protocol.[32] Based on the African observation and the Seraleng community, the right to development has not taken centre stage as it should. People and especially women and children that occupy the dilapidating houses in the Seraleng community are denied the opportunity to live better lives as their right to housing is compromised.

The inadequacies of domestic and regional legal frameworks to effect development for especially developing countries such as South Africa is because of the epistemicide suffered by indigenous people. This epistemicide has seen the exclusion of indigenous people's knowledge systems such as their traditions, culture and customs. This is evidence in the laws that are not reflective of the people that they represent. This is evidence in the prescription law discussed above. The exclusion of the Seraleng community's understanding of justice in relation to their housing grievances have precluded them from accessing justice. The effect that this has had on the community is that the community's development may be delayed instead of the community assigning their resources to bettering their lives, they are pulling into fixing the damages on the houses that have proven to be ongoing.

The discussion on law and development has shown that although there have been strides made in law for ascertaining development especially in developing countries, much work must be done to include everyone in these countries. This work must start by consulting with people who were excluded in the making of state laws. Upon consultation, their voices must find place in the country's laws. It is through incorporating voices of people who were previously excluded voices do we truly have laws that we can confidently say are laws that govern them. Laws that do not resemble many the country's population cultures and beliefs cannot be said to be their laws.

5. CONCLUSION

This paper has shown the importance of legal systems in the

[31] OC Okafor 'A regional perspective: article 22 of the African Charter on Human and Peoples' (2021) 21 *African Human Rights Law Journal* https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTDBook/PartIVChapter27.pdf (accesses 4 July 2024).

[32] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.

ascertainment of rights. It has argued that legal systems are important in making sure that societies are adequetly developed. The paper has also illustrated that for legal systems to fully rise to the task of development; it is crucial that they reflect the belief systems of those that they serve as such exclusions has often led to a miscarriage of justice. This paper made an example of such exclusionary laws to be prescription law as seen in the community of Seraleng.

The legal systems play a crucial role in the role of developing societies. However, the current legal systems are exclusionary in their nature. Their exclusionary nature has denied most of the people justice in South Africa. To fully address these injustices, there is a need for these laws to be reformed to echo the voices of those previously excluded form law making decisions. Such inclusion will further address the epistemicide that previously excluded people have been a victim of for centuries. Further, such inclusion will bring about justice central development.