



## Human Rights and Fundamental Freedoms in times of Humanitarian Crisis: Reflecting on the Interlink between International Legal Norms and South Africa's rights-based approaches

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**Abstract:** This provides a discursive perspective regarding the protection and realization of constitutionally entrenched human rights and fundamental freedoms, especially under circumstances that can best be described as humanitarian crisis. At the centre of attention, the article argues that the Covid-19 pandemic ascertained that human rights and human freedoms are awfully volatile. Further that state functionaries ought to always guard against households and individual deprivations. The emergence of the coronavirus disease (Covid-19) posed major threats to global wellbeing. South Africa's government deployed the Disaster Management Act 57 of 2002 to declare a national state of disaster, which amongst others, resulted in what is now termed as 'hard national lockdown', which itself brought about abrupt loss of enjoyment or limitation of various constitutionally entrenched fundamental rights and freedoms. Hence, law was used to temporarily deprive citizens of certain rights, while also curbing freedoms, to the extent that it would be justified as necessary to arrest the spread of the disease. In this article, I employ the theory of socialization process of human rights norms as propounded by Thomas Risse and Kathryn Sikkink, to highlight pitfalls of South Africa's rights-based normative framework. It is asserted that while the post-1994 dispensation embedded a rich human rights culture, there is still an overwhelming mismatch between normative legal frameworks and socio-economic and political realities besieging the poor. I argue that the Covid-19 and the subsequent national lockdown exposed the how majority of citizens are vulnerable to poverty, deprivations and insecure livelihoods.

**Keywords:** human rights; Covid-19; human wellbeing; humanitarian suffering; development

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## **1. Introduction**

The beginning of the year 2020 coincided with the emergent of a scourge never imagined before, the coronavirus disease (Covid-19). While it has been argued that the Covid-19 pandemic directly impacted on the prime right to life and rights to health (Bennounce, 2020, p. 667), this article argues that a wide range of civil and political rights and socio-economic rights were adversely affected, and that this affected sustainability of livelihood and human wellbeing. South Africa, like every country in the world, started promulgating measures to fight gains the spread of the disease, which engulfed the global community in a manner reminiscent of uncontrolled wild-fires. As a subsequent, established international human rights norms became threatened, because the pandemic brought about immense restrictions on the practice and realization of human rights and fundamental freedoms (Lebret, 2020, p. 1). As early as March 2020, it became unequivocal that South Africa's reality regarding the pandemic would be widely felt. Coincidental to the reality was the fact that South Africa generally suffers threats to realization of human rights and sustainable human capabilities development in many ways, and fundamentally due to poverty and underdevelopment in many respects. Hence, it has been argued that the advent of the Covid-19 in the country exacerbated the already excruciating disparities, characterized mainly by socio-economic inequalities (Labuschalgne, 2020, p. 5) besieging the working class and the poor in particular.

Because it became clear that South Africa would not be immune from the disease, as it was also caught in the midst of Covid-19 wild-fires, it also became obvious that human rights threats would emerge. Subsequently, South Africa was placed under strict national lockdown from the 26<sup>th</sup> of March of 2020, which was accompanied by strict restrictions such as on freedom of movement, limited access to basic amenities to sustain sustainable livelihood. Other scholars have argued that owing to the supposed combative nature of hard lockdowns, socio-economic inequality has worsened, and that social cohesion was also adversely affected as families and relatives lost contact with each other (van Barnveld et al, 2020, p. 134).

## **2. Rationale and Research Methodology**

Because there exists a vexed relationship between human rights and economic policy (Nolan, 2020:1247), it is important to understand the impact of law on human's socio-economic wellbeing and development. Hence, it is necessary to evaluate South Africa's socialization process regarding international legal

instruments in order to comprehend how such tools impact on the wellbeing of the underprivileged. This is essentially because South Africa's post-1994 regime has widely been commended for entrenching liberal constitutional and human rights legal norms, thereby establishing a human rights respecting state. As a result, comprehensive human rights frameworks have developed from the Constitution's revered normative framework, which aided immensely in giving new meaning to human entitlements in a democratic setting, and the need for enhancement of human capabilities, freedoms and realization of human wellbeing.

The object of this article is to advance a theoretical perspective that emphasises that rights-based legal norms ought to be predicated on lived experiences of the underprivileged civilians in order to be able to meaningfully alter their material socio-economic living conditions. There is a need to understand a civilian perception of the role of law in human wellbeing and sustenance of livelihood. It is also necessary to struck a sustainable balance between enforcement of strict legal norms and foundational socio-economic entitlements and enhancement of basic human capabilities. Thus, this article offers a critical perspective with regard to the real impact of legal instruments on broader human wellbeing achievements and enjoyment of human rights. The main research question is whether legal rules and norms have adequate proficiency to alter socio-economic deprivations. The article combines both a theory-based legal analysis and a traditional doctrinal approach to explain the extent to which the socialization process of legal norms is capable of effective elimination of socio-economic deprivation.

### **3. Theoretical Framework**

This article is theoretically reliant on Thomas Risse's and Kathryn Sikkink's fifth step of the spiral model in terms of which the power of international legal norms is assessed against its ability to manufacture domestic change, thereby influencing states to respect and protect human rights and the wellbeing of citizens. Risse and Sikkink (1999) argue that for states to register real progress towards human rights norms, such states ought to first accept that there are salient violations and or deprivations, and thereafter work towards entrenching a rule-consistent behaviour. In the case of South Africa, this theory entails that the state must accept that notwithstanding the presence of comprehensive legislative imperatives advocating for protection of human rights, there remains an incessant duty to assess, with honesty, if meaningful rights imperatives are being achieved or not. This rule-consistent behaviour also requires that the state must effectively improve the institutional entities tasked with advancing rights-based approaches to human development, socio-economic rights in particular.

Predicated on the strength of Risse and Sikkink's socialization process, it is crucial to explain how South Africa incorporated noble international legal instruments. Very often than not, domestic application of international laws has been determined through distinguished notions of monism and dualism (Sloss, 2011, p. 1). These two theories to a large extent unwittingly explain the extent to which member states commit to human rights culture and protection for instance. Monism and or Dualism play a significance role in illuminating on the relationship between international law and domestic law. Therefore, the effectiveness of human rights enforcement depends on choosing what is considered the best model in this regard. However, determining the best model is relatively dependant on the circumstances of each country. Monist states are regarded as those that largely recognize that both international law and domestic law forms a single unified system in which international law takes precedence. In this regard, the international law gets incorporated into national law upon ratification of such treaty or convention. Dualist states on the other hand require that international law ought to be incorporated into domestic law through legislative initiatives prior to being of any force. This entails that dualism is premised on two aspects. First, states signing, ratifying and acceding international treaties and conventions. Second, states effectively promulgating laws at the national level giving effect to such international instruments.

Thus, how do/can countries domesticate the international human rights norms? And what impact does this have on the human rights culture and experience in society? It is asserted that there is a need to be considerate of various factors surrounding the notion of fundamental human rights. It entails that each country's Constitution should inform the manner in which the process of domesticating norms and standards is to be carried out. In most instances, the fundamental rights will determine the extent to which international conventions will be domesticated, considerate of the need to meet minimum standards and expectations. That is to say, we need to look at the international core rights and evaluate in close check, the domestic human rights provisions. This helps in ascertaining conformity with international standards. According to Risse and Sikkink (1999, p. 3), this approach assists significantly in evaluating the realistic and tangible impact of human rights norms on the culture and practice of human rights. They argue that using the entrenched international norms to domesticate human rights practice is most viable. That these norms are better placed to challenge state rule over society and national sovereignty (Risse and Sikkink, 1999, p. 4). Secondly, that these international human rights norms are well institutionalized in international regimes and organizations, and that they are much contested and compete with principled ideas that are very much embedded in sustaining global peace that reinforces a human

rights culture. The practical application of these recognized norms therefore transcends and reinforces national frameworks and result in a rich human rights jurisprudence.

In establishing and moving towards achieving the idea of transforming the human rights experiences in a country, it is indispensable for a country to go through some process of political transformation too. This happened in South Africa for instance, where the need for human rights entrenchment broadly informed the need for changes in the larger political landscape. Risse and Sikkink further argue that enduring human rights changes go parallel with the domestic structural changes. This necessitates that a country should immediately set up structures that are geared towards supporting the system of human rights protection and enforcement in the country. This they identify as a 'socialization process'. This is a process which ensures that the domestic legislation affords human rights necessary protection. It also requires that social and political atmospheres provide good space for human rights enjoyment to the people. In such instances, there should be a sense that people will have institutions which supports, protects and safeguard an effective enforcement of human rights in general.

When closely assessed, it appears that an effective mechanism of domesticating international human rights norms is by entrenching fundamental rights in the Constitution. These should particularly entail rights that cannot be violated except when the law of general application warrants the need to limit such rights. Therefore, such a limitation of rights would not amount to rights violation. For instance, Article 3 of the Universal Declaration of Human Rights make provision for the right to life. This informed section 11 of the Constitution, 1996, and is recognized as containing an absolute right. From international and national perspectives, the right to life entails that no one, including the state may kill, execute or bring an end to life of any human being by any means. This was also canvassed before the Constitutional Court in the case of *S v Makwanyane* 1995 (3) SA 391 (CC) at para 137, which resulted in holistic change in law and ushered in a new era of rights-based approaches. The Constitution has thus incorporated aspirations of Article 1 of the UDHR. This was equally in line with maintaining the right to dignity of every person. These provisions resonate the ideals as espoused in section 1 of the Constitution. Further, it was observed that the right to life and right health were both highly imperilled by the Covid-19.

Based on Risse and Sikkink's theory, South Africa's effort of domesticating international human rights norms is noticeable. It can be described as being hybrid in that it carries elements of both monism and dualism theories. Section 231(2) and (4) of the Constitution adopts a dualist approach by stipulating that any

international agreement only becomes law in the Republic upon enactment into law by national legislation. On the one hand, section 232 and 233 of the Constitution also recognizes the transcendence of customary international law. In terms of section 231(3), it provides that certain international agreements may bind the state without approval of the National Assembly thereby subscribing to the Risse and Sikkink's fifth step of the socialization process. Further that when interpreting the Bill of Rights, a court, tribunal or forum must consider international law and may consider foreign law as outlined in section 39(a) and (b). When closely looked at, this accord to monism. Therefore, the Constitution adapts to dualism with regard to treaties and conventions, while also adopting monism on matters relating to customary international law.

In accordance with this theoretical reflections, it is important to ascertain if South Africa's post-1994 incorporation of international legal norms has fulfilled foundational aspirations of adaptation, and if indeed it began a process of conforming and safeguarding rights and enhancing human capabilities in real terms.

#### **4. International and Regional Legal Instruments in Context**

The human rights project is over seventy-years of age. Its history, its development in the main, was given added impetus by the catastrophic experiences prior to, during and post the World War II, an era characterized by systemic disregard and violation of human rights. The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948, a *sui generis* legal instrument, guided by humanitarian wishes for the human race.

The resultant adoption of the UDHR was in furtherance of the United Nation's obligation to promote respect for human rights and fundamental freedoms on a global scale (Smith, 2014:37). The UDHR was the first international instrument in which rights to be accorded to all the people were articulated, the effect of which still reigns in the 21<sup>st</sup> century. It was followed by the adoption of another set of significant human rights instruments; the International Covenant on Civil and Political Rights (ICCPR) 1966, dealing with first generation rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, concerning the second generation rights. The UDHR became the '*magna carta*' of humanity around all communities of the world. It provided a window opportunity for states, international organizations and civil society actors and organizations to place human rights on the international agenda (Hafner-Burton, 2005, p. 2). In modern terms, these efforts culminated in the creation and expansion of a global

system of international law designed to identify and protect basic human rights. Since its inception, the international project of human rights has been characterized by struggles for world peace, justice, humaneness and love among human species. Though, observed in varying ways throughout the world, the human rights are advocated for as an epitome of functional democracies. Hafner-Burton (2005) perceives human rights doctrine as a distinctive role-payer in terms of normalising international relations. The most visible function is seen from the ever increasing willingness of many parts of the international community to attend to concerns with regards to human rights violations as an acceptable justification to the global community. Hence, the world is to show commitment for human rights by ratifying essential international conventions that aim to guide countries in terms of how to domesticate specific norms as espoused in those conventions.

It is worth noting that the definite origins of human rights remain a matter for stagnant debate. However, it could be inferred from the constant contemporary human rights engagements that human rights originate from a common conscience of all in the human species. Every human being possesses a sense of self-regard and it is within this context that this theory and understanding should be regarded as a fundamental determinant of the need for the existence of human rights. This theory of self-regard entails with it, a sense of being responsible, respectful and considerate of other people's interests when acting based on your own interests. It entails that, while every human being is the source of human rights, the very human being is the source of the need to safeguard rights of other people. That is why human rights can be considered to be those fundamental moral rights of the person that are necessary for a life with human dignity (Forsythe, 2012, p. 3). Human rights are thus a means to a greater social end, and it is through a human rights entrenchment that all persons interact and interdepend on each other in a manner that promotes the spirit, purport and sustainability of human rights culture and practice.

## **5. Africa's Regional Human Rights System and the Socialization Process**

Because South Africa is part and parcel of Africa as a regional bloc, it is essential to understand the interaction between the established international and regional instruments, national legislative framework on human rights issues. Further, the regional human rights systems constitute an indispensable structure which, if formulated and utilized effectively, could assist immensely in ensuring a much stronger compliance to international human rights standards. This is attributable to the fact that in most instances, regions share several norms observance cultures in

common. It may include legal systems, social and political traditions, some common historical experiences and so forth. Indeed, it is through recognizing these factors that the regional authorities can found a system of human rights which tailors for circumstances that member states face or live by. However, such a system may still be subjected to assessment based on the precincts of universality of human rights. This is necessary to ensure that domesticating human rights culture is aligned with established norms. Also to ensure that certain traditions do not hamper the effectiveness of regional systems on human rights protection and enforcement. Considerate of historical background and developments, Africa has had to develop a regional human rights system which would complement the international human rights law. This would serve the purpose of responding adequately to dimensions of respecting, preventing violations and fulfilling human rights in general.

Against this backdrop, the African regional human rights system is premised on the Banjul Charter as a source of authority. The Charter led the founding of promising human rights structures, and informed the functionality and operation of the human rights system in Africa in general, particularly the establishment of the African Commission on Human and People's Rights and eventually inspiring the founding of the African Court of Justice and Human rights. From its inception, the Banjul Charter could not establish a court of law owing to the fact that such stance lacked adequate support, which others interpret as fear by recalcitrant member states against judicial scrutiny for human rights violations (Ssenyonjo, 2012, p. 10). When scrutinized closely against Risse and Sikkink's socialization process, one would observe this aspect in a negative light, especially because enforcement mechanisms created by the charter would be somewhat weakened as no judicially binding precedence could be founded and this therefore creates a vacuum that has been exploited by various human rights violators. The Charter also established conceptions of rights duties and obligations on member states. This regards issues of human rights campaigns and education, implementation and remedial action. These fundamental institutions bolster the protection and enforcement of human rights in Africa.

## **6. The African Commission on Human and People's Rights (AFCHPR)**

To report meaningful progress in terms of rights protection and realisation, much reliance is still on having a strong institutional framework. The establishment of this institutional framework was considered to be the most crucial international entity to buttress the human rights protection, enforcement and realization in Africa (Killander, 2012, p. 235). The African Commission on Human and People's Rights

was established in terms of Article 30 of the Banjul Charter. In terms of Article 45, the Commission is mandated to promote and propagate human rights education across the continent, conduct studies and organize seminars and conferences on matters of human rights, formulate principles and rules, and cooperate with other African and international institutions. It is noteworthy to state that since its inception, the Commission has had numerous hurdles, inclusive of its own lapses in terms of enforcement mechanism.

While this Commission has had a relatively noble record in monitoring the implementation of the Banjul Charter, it has also encountered unforeseen difficulties that resulted from its inability to make binding decisions. Another contributing factor is the fact that the Commission can only make recommendations to the offending member state, which in most instances would be ignored (Welch, 1992, p. 43). This has led to potential litigants being reluctant to refer their disputes to the Commission as they would not expect any meaningful impact (Killander, 2012). There has also been a critical challenge relating to security of its staff, which was alarmed by some unscrupulous calls by those urging that human rights defenders be eliminated (Sarkin, 1998, p. 237), a sign of disconcerting despots who care less about the poor civilians. These and other factors invariably weakened the Commission, rendering it toothless in many respects. Hence, the establishment of the African Court of Justice and Human rights which is the only hope henceforth. Therefore, the influence of the Commission is very minimal in South Africa.

## **7. South Africa's Rights-Based Approaches and Legal Norms**

Section 1 of the Constitution provides that, the Republic of South Africa is one, sovereign, democratic state founded on the following; human dignity, the achievement of equality and the advancement of human rights and freedoms. However, it is important to note that defining South Africa as a human rights state is a matter that depends on factors ranging from historical, social, economic, cultural, and even political realities. For decades, South Africa was under an unjust legal system characterized largely by systematic discriminatory laws. Therefore, under apartheid a human rights culture could not develop (Sarkin, 1998). Instead the system amplified human rights violations (Noyoo, 2004, p. 361). It is on this basis that an interrelatedness of humanity and human rights is founded. Humanity and human rights are important elements of democracy, an ideal governance system based on the rule of law and respect for human rights. Thus, ideals of human rights largely informed the need for change especially because human rights as a doctrine remained an irrelevant.

As a subsequent, the post-1994 dispensation heralded a new rights-based constitutional dispensation which embraced a new human rights culture predicated on protecting human worth. This was carried through the project referred to as transformative constitutionalism, which encompassed with it, the constitutional supremacy system. These notions are in accord with the idea of human rights. Thus, at the dawn of democracy, the human rights culture would then become entrenched at the heart of the governance and its legal system. The Constitution would be premised on healing the nation from its past and establish a society based on democratic values, social justice and fundamental rights. This ought to ensure that all citizens including the most vulnerable poverty stricken households, have an improved quality of life and have potential to develop fully (Liebenberg, 2010, p. 209), even under circumstances befitting a description of a humanitarian crisis.

The Constitution expressly entrenched an extensive Bill of Rights, recognized as the cornerstone of South Africa's democracy as provided in section 7(1), (2) & (3). This Bill of Rights enshrines all rights of the people and obligates the state to respect, protect, promote and fulfil all rights. Therefore, a transition into democracy was characterized by a successful domestication of international human rights norms. The Bill of Rights encompasses a variety of human rights as espoused in the primary international human rights instruments. Based on the need to publicize human rights perspectives, the 21<sup>st</sup> of March is annually commemorated as 'Human Rights Day'. Subsequently, human rights got embedded at the heart of South Africa's democracy, as required by foundational international human rights instruments.

An effective enactment and entrenchment of a human rights culture, especially on the part of judiciary, has had notable long-term benefits. When the country entered the new human rights era, it equally made its commitment to promoting and faithfully observing the international norms and standards (Mandela, 1996:98), towards ensuring that the socialization process encompasses the discharging of core obligations. It also pledged to play a crucial role in the betterment of civilian's prospects of attaining a better wellbeing. In particular, the most vulnerable segments of society ought to enjoy peace, respect and protection of human rights and fundamental freedoms, irrespective of wherever they live in society. Subsequently, no person may be perceived as unworthy of respect and thus may not be deprived of human entitlements. All persons are legal subjects that are worthy of respect (Kolosov, 2000, p. 259) without any suggestion of that being owed to another person as a favour.

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## **8. An Analysis of Human Rights Challenges as Humanitarian Threats**

When it started, South Africa's democracy promised to be a better architect of transformative ideals. However, it should be ascertained if this normative framework is capable of handling humanitarian crises such as the Covid-19. Therefore, the human rights culture was central to the new dispensation with ideals of building a society grounded in the rule of law and fundamental freedoms, but mainly focused on safeguarding socio-economic wellbeing. Twenty-five years later, human rights project is threatened by a multiplicity of contemporary challenges, including the Covid-19 pandemic. These challenges are compounded by a variety of socio-economic factors, inclusive of but not limited to poverty, the spiralling gap between the rich and the poor (inequalities), unemployment, the international and national politics, competing markets in international trade, stagnant economic growth, poor governance and inadequate political will and/or lack thereof. This entails that, a comprehensive and realistic realization of human rights is presently under invariable threat (Human Rights Watch, 2014, p. 169), the impact of which is being felt by many. The Covid-19 in particular has made it even more difficult for most people to safeguard rights realization and capabilities enhancement. The Covid-19 has also exposed South Africa's inability to fully protect human wellbeing, thus jeopardising real prospects of human development. These challenges have a potential to reduce noble human rights imperatives into populist presentations formulated for impression purposes.

Amongst the critical challenges, the Covid-19 has demonstrated that poverty remains a prime propeller of unstable social welfare and human wellbeing. It has also proved that the material disadvantages inherited from the past remain well-engrained, and the entrenched inequalities and poverty are pervasive. In the past, basic services such as access to education and health were systematically delivered on racial grounds. Therefore, race determined the extent to which quality is delivered. But, during the Covid-19 times, these basic human entitlements proved to be dependent on wealth and or material possessions, which determined the nature and form of amenities available between the rich and the poor. For instance, the affluent minority, whose children partake in the private sector did not need to worry about teaching and learning as it could still be executed online, whereas majority of learners in disadvantaged villages remained with limited access. This entails that children of the same country would develop cognitive capacities in varying ways. In the era pre-1994, the restrictive employment policies side-lined majority of citizens from accessing skilled and well-paying jobs, exacerbating their poor prospects and levels of poverty. Fast forward, it is still; observed that the previously disadvantaged proletariat were the hardest hit by sufferings brought about by the Covid-19 poverty and inequalities. Although the constitutional

dispensation ushered in a new era, and with the hope that poverty would be eliminated it remains high, and its adverse effects were exposed by Covid-19. Poverty was declared an enemy number one (Skweyiya, 2003), with the government making a commitment to uprooting it (Taylor, 2002, p. 9). the Covid-19 also illustrated that poverty is the main driver of human vulnerability. This is because those affected by poverty became more exposed to suffering. Therefore, the question that remains is whether South Africa achieved or whether there has been some notable progress in terms of alleviating poverty? In response, it is important to be considerate of relative factors such as access to basic education, access to health care, the issue of souring crime levels and corruption, and of course the deepening disparities of wealth between the rich and the poor.

In the beginning, the new constitutional dispensation promulgated a welfare system that carried policies augmenting a Reconstruction and Development Programme (RDP) of 1997. A means tested social security system aimed at providing benefits in cash or in kind or both was introduced. South Africa's ability to sustain social assistance provision was tested when the state was required to provide such temporary cash transfers as social relief to all those lacking an income. The primary goal was centred on providing social assistance to those whose earning power ceased permanently, never developed or is interrupted, and also in order to maintain children, and alleviate poverty. This was necessary because the Covid-19 interrupted various industries, thereby making it impossible for many workers to earn an income and livelihood. Poverty is so bad that it determines the nature and extent to which people can enjoy the right to access quality education and health care services amongst others. This entails that the more resources you have, the better your chances of success in life. This is undesirable as it leads to permanent class struggle and societal imbalances at large.

As at June 2020, South Africa was reported to have a population of approximately 59.62 million (StatsSA, 2020a), and is classified as a developing economy. Because of high levels of unemployment and poverty, over 17 million of the population are dependent on social grants in order to escape complete destitution, and this was even made worse by the Covid-19 eruption. This means that government spent immensely on funding social welfare programmes as it attempts to secure livelihood and human wellbeing. It is indisputable that provisioning of social assistance does alleviate poverty to a certain extent. However, this does not appear to be a sustainable method of fighting the scourge of poverty and deprivation. Instead, some have argued that the system is reproducing dependency syndrome which will result in a situation wherein state dependency supersedes economic growth. For instance, the Covid-19 led restrictions resulted in the economy contracting by over 7.0% (StatsSA, 2020c), while the household survey

programme has revealed that over 49% of adult population are living below the upper-bound poverty line, with poverty levels generally being considerably high (Frye, 2013:2; StatsSA, 2020b). This is exacerbated by high levels of unemployment, which emanate from the diminishing tax base is reduced. Youth is the hardest hit in terms of unemployment The official unemployment rate currently sits at 32.5% while the expanded unemployment rate is at 42.6% (StatsSA, 2020b). The unemployment crisis exacerbates poverty and inequalities. This therefore entails that moving forward, the government would struggle to sustain the social assistance provision, resulting in a national crisis. It is important to invest in skills acquisition among youth and this is achievable through technical institutions that support innovative entrepreneurship among youth, initiatives that assist to uproot child labour.

## **9. Conclusion**

This article set out to illustrate that legal norms ought to be fully strengthened in order to be effectively responsive towards safeguarding human wellbeing even in times of humanitarian crises. It is argued that the Covid-19 has exposed the extent to which South Africa's constitutional and rights-based imperatives are vulnerable to collapse. This is fundamentally because the Covid-19 resulted in acute economic contractions that exacerbated poverty, unemployment, socio-economic deprivations and inequalities. Further, this exposed the fact that although the post-1994 dispensation is widely commended as an epitome of hope, its practical positive impact on the lives of over 49% of disadvantaged households is meagre and pathetically shallow. Therefore, the Covid-19 pandemic has proved South Africa's normative framework is fragile because it lacks immediate synergy with socio-economic challenge besieging majority of poor civilians. Taking into the constitutional processes that unfolded, it is crucial to ascertain what actually resulted from the domestication process especially in terms of South Africa's willingness to conform to established international human rights norms. It is accepted that the post-1994 democratic dispensation entrenched the Bill of Rights, which became the cornerstone of democracy by enshrining rights of all people, further protecting respect for democratic values of human dignity, equality and freedom (Human Rights Watch, 2013, p. 173). While it is accepted that South Africa's domestication of established international legal norms embraced critical elements of Risse and Sikkink's socialization processes, especially adaption and the rule consistent behaviour, it is asserted that the Covid-19 pandemic exposed the fact that the prevailing legislative imperatives are only excelling in terms of protecting human rights and entitlements of the privileged few in society, the

owners and immediate participants of the larger means of production in the capitalist establishment.

## References

- Beitz, C. R. (2001). Human Rights as a Common Concern. *American Political Science Association*, Vol. 95, No. 2, pp. 269-282.
- Forsythe, D. P. (2012). *Human Rights in International Relation*. 3<sup>rd</sup> Ed. UK: Cambridge University Press.
- Bennoune, K. (2020). Lest We Should Sleep: Covid-19 and Human Rights. *The American Journal of International Law*, Vol. 114, No. 4, pp. 666-676.
- De Klerk, F. W. (1996). The Evolution of Human Rights in South Africa. In Patricia Morale (Ed.) *Towards Global Human Rights*. International Centre for Human and Public Affairs.
- Hafner-Burton, E. M. & Kiyoteru Tsutsui (2005). Human Rights in a Globalised World: The Paradox of Empty promises. *American Journal of Sociology*, Vol. 110, No. 5, pp. 1373-1411.
- Human Rights Watch, (2014). *World Report – Events of 2013*. Human Rights Watch Publication.
- Killander, M. (2012). The African Commission on Human and Peoples' Rights. In Ssenyonjo, M. (Ed.). *The African Regional Human Rights system: 30 Years after the African Charter on human and People's Rights*. Martinus Nijhoff Publishers.
- Kolosov, Y. (2000). The Right of the Child. In Janusz Symonides (Ed.) *Human Rights: Concepts and standards*. pp. 259-275. Paris: UNESCO.
- Labuschalgne, M. (2020). Ethicolegal issues relating to the South African government's response to Covid-19. *South African Journal of Bioethics Law*, Vol. 13, No. 1, pp. 6-11.
- Lebret, A. (2020). Covid-19 pandemic and derogation to human rights. *Journal of Law and the Bioscience*, Vol. 7, No. 1, pp.1-15.
- Liebenberg, S. (2010). Making a Difference: Human Rights and Development – Reflecting on the South African Experience. In Bard A. Andreassen & Stephen, P. Marks (Eds.) *Development as a human right: Legal, Political and Economic Dimensions*, pp. 209-244. Antwerp: Intersentia.
- Mandela, N. (1996). A New Era for Human Rights in South Africa. In Patricia Morales (Ed.) *Towards Global Human Rights*. ICHPA.
- Nolan, A. & Bohoslavsky, J. P. (2020). Human Rights and Economic Policy Reforms. *The International Journal of Human Rights*, Vol. 24, No. 9, pp. 12471267.
- Noyoo, N. (2004). Human Rights and Social Work in a Transforming Society: South Africa. *International Social Work Journal*, Vol. 47, No. 3, pp. 359-369.
- Risse, T. & Sikkink, K. (1999). The socialization of international human rights norms into domestic practices. In Thomas Risse, S. C. Topp, & Kathryn Sikkink (Eds.) *The Power of Human Rights: International Norms and Domestic Change*. pp. 1-38. 7<sup>th</sup> Ed. Cambridge University Press.
- Sarkin, J. (1998). The Development of a Human Rights Culture in South Africa. *Human Rights Quarterly*, Vol. 20, No. 3, pp. 628-665.

Savitri Goonesekere, (2013). National Implementation of International Human Rights, Social Inclusion and the Empowerment of People.

Skweyiya, Z. (2012). *Budget Vote Speech, Minister of Social Development National Assembly*. Cape Town.

Sloss, D. (2011). Legislating human rights: The case for federal legislation to facilitate domestic judicial application of international human rights treaties. *Fordham International Law Journal*, Vol. 35, No. 2, pp. 445-487.

Smith, Rhona K. M. (2014). *Textbook on International Human Rights*. 6<sup>th</sup> Ed., US: Oxford University Press.

Ssenyonjo, M. (2012). An Introduction to the Development of the African Regional Human Rights System. In Manisuli Ssenyonjo (Ed.) *The African Regional Human Rights system: 30 Years after the African Charter on human and People's Rights*. pp. 3-26 Leiden/London: Brill, Martinus Nijhoff.

Statistics SA (2020a). Mid-year population estimates. *Statistical Release P0302*. Department of Statistics South Africa.

Statistics SA (2020b). Quarterly Labour Force Survey. *Statistical Release P0211*. Department of Statistics South Africa.

Statistics SA (2020c). Quarterly Employment Statistics. *Statistical Release P0277*. Department of Statistics South Africa.

Taylor, V. (2002). Transforming the Present – Protecting the Future. *Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa*.

Van Barnveld, K.; Quinlan, P. K.; Kriesler, P.; Junor, A.; Baum, F. et al (2020). The Covid-19 pandemic: Lessons on building more equal and sustainable societies. *The Economic and Labour Relations Review*, Vol. 31, No. 2, pp. 133-157.

Welch, E. C. (1992). The African Commission on Human and Peoples Rights: A Five Year Report and Assessment. *Human Rights Quarterly*, Vol. 14, No. 1, pp. 43-61.