

A Legal Perspective on Sustainable Development and Urban Poverty in South Africa

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Abstract

The doctrine of sustainable development has its origins in the realm of international environmental law. This article considers its potential usefulness for the purposes of alleviating urban poverty in South Africa. Urban poverty is an endemic and persistent phenomenon in South African cities, which lack economic and social integration. In the realm of international sustainable development discourse, it has come to be acknowledged in more recent years that sustainable development is intertwined with issues of poverty. South African legislation and case law acknowledge sustainable development but do not consider its possible usefulness as an underpinning doctrine for urban poverty alleviation. The potential of the doctrine for this purpose has been justifiably questioned on several grounds. However, it is possible to conceptualise ways in which it can be deployed as a theoretical basis for initiatives towards such alleviation. It is argued in this article that all three branches of government in South Africa should play a role in achieving this.

Keywords

Sustainable development, urban poverty, poverty alleviation, environmental law.

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1 Introduction

Sustainable development has for many years been a popular notion in the realm of international environmental law. It was coined in the 1987 Brundtland Report¹ and was taken forward into international discourse in 1992 as part of the *Rio Declaration on the Environment and Development*, and thereafter carried forward in subsequent international environmental instruments.² South Africa was a participant in all the relevant international conferences and has actively espoused the doctrine in the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) and much other legislation.³

The questions which underpin this article are whether the adoption of sustainable development into South African law is of value to the country's urban poor and whether the doctrine can be utilised to ameliorate urban poverty, and if so, in what ways.

Urban poverty is part of the reality of life in South African cities. Millions of South Africans and South African residents eke out an existence in deplorable living conditions, in informal and less formal housing structures,

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¹ The report was commissioned by the World Commission on Environment and Development (WCED *Our Common Future*, also known as the Brundtland Report). The definition of sustainable development in the report is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". After the Brundtland Report, many other definitions of sustainable development have been put forward. For example, the definition in South Africa's *National Environmental Management Act 107 of 1998* (NEMA) is "the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that development serves present and future generations". This is an illustration of how the concept has evolved and morphed over the course of time, by the introduction of the concept of the "three pillars" of development, being social, economic and environmental considerations, as per the NEMA definition.

² These include the 2000 *Millennium Declaration* (see UN *Millennium Declaration*), the 2002 *Johannesburg Declaration* (see UN 2002 https://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm), the 2012 declaration entitled *The Future We Want* (see UN *The Future We Want*), and the 2015 declaration entitled *Transforming Our World* (see *Transforming Our World: The 2030 Agenda for Sustainable Development* GA Res 70/1 UN Doc A/RES/70/1 (2015)), all of which emanate from international environmental and sustainability conferences organised under the auspices of the United Nations Commission on Sustainable Development.

³ See section 3 below, where the domestic adoption of the doctrine of sustainable development is more fully canvassed.

without or with limited services such as water, sanitation and refuse removal.⁴ The large-scale prevalence and embeddedness of poverty in the urban environment is at odds with the transformational orientation of the *Constitution* and its inclusion of socio-economic rights, and equality and dignity rights in the Bill of Rights.

The more recent international sustainable development conferences referred to above have come to acknowledge the interconnectedness of sustainable development and poverty.⁵ Whether this has practical ramifications for the poor in developing countries, including South Africa, bears questioning. Accordingly, this article contains a critical evaluation of the relationship between urban poverty in South Africa on the one hand and the country's commitment to sustainable development on the other hand. This evaluation is undertaken primarily from a legal perspective, but it also considers perspectives from other disciplines such as sociology, political theory and economics. The objective is to seek to understand the usefulness or otherwise of sustainable development as an underpinning theoretical doctrine for poverty amelioration in South Africa.

Urban poverty was a feature of colonial and apartheid cities and is still prevalent in South Africa approximately twenty-seven years after the political transition of 1994.⁶ Section 2 hereof deals with the phenomenon of urban poverty in South Africa and its causes and ramifications. Section 3 turns to the notion of sustainable development as outlined in international soft law instruments, from which they have been adopted into the South African *Constitution* and other legislation and policy, as well as case law, with a focus on the aspects thereof that may be relevant to urban poverty.

⁴ See the sources cited in fn 6 below.

⁵ In this regard it is notable that "end poverty, in all its forms, everywhere" is the first sustainable development goal among the seventeen goals listed in the *Transforming Our World* conference outcome. The outcome of the earlier 2012 Rio+20 Conference deals with poverty eradication in a somewhat more nuanced way, focussing on the green economy in the context of sustainable development and poverty eradication – see *Transforming Our World: The 2030 Agenda for Sustainable Development* GA Res 70/1 UN Doc A/RES/70/1 (2015) ch III.

⁶ In this regard see World Bank *Overcoming Poverty and Inequality* xv, where it is confirmed that South Africa is one of the most unequal countries in the world as per the Gini Coefficient index, and that this does not appear to be changing notwithstanding the passage of twenty years after the end of apartheid. Many academic writers have also written of the persistence of poverty in South Africa. These include McLean *Constitutional Deference* 220, where poverty is described as a burgeoning and worsening problem in South Africa; Rapatsa 2015 *Judicial Tribune* 217, who accounts for the "distressing levels of poverty" being experienced in South Africa on an ongoing basis; Dugard "Courts and Structural Poverty in South Africa", in which it is averred that poverty in South Africa is deepening notwithstanding the government's assertions that it is reducing.

Thereafter, in section 4 it is illustrated that there are limited ways in which sustainable development as adopted into South African law can potentially offer a means to address poverty issues in the urban context. In conclusion and on a more positive note, section 5 explores possible ways in which the notion of sustainable development could provide solutions for the alleviation of urban poverty, notwithstanding its limitations.

2 Urban poverty in South Africa

As indicated in section 1, poverty is a widespread and persistent phenomenon in South Africa. This applies generally to both urban and rural contexts. Urban contexts include towns that are not as large as metropolitan municipalities but large enough to suffer from pressures experienced in the urban context. This article deals specifically with issues pertaining to poverty that are relevant to or are exacerbated by the urban situation. The academic literature on urban poverty addresses the issue from a variety of perspectives and emanates from legal publications and publications in other theoretical fields.

The association of poverty with urbanisation is a well-documented phenomenon, both in the South African and the international contexts, as is apparent from the authors about to be cited. Writing in 2018, Arndt, Davies and Thurlow establish a link between urbanisation and poverty in South Africa and express the view that poverty is urbanising.⁷ They describe the phenomenon of poor people migrating towards cities due to slow economic growth and de-industrialisation, looking for work opportunities which are perceived to be more readily available in the cities.

Migration towards cities by poor people seeking livelihoods is a phenomenon that is well known to most South Africans, with the ongoing visible growth in informal settlements surrounding towns and cities. It is, however, not a uniquely South African phenomenon but is commonplace throughout the developing world, as is explained by Baker.⁸ He sets out a chronicle of hardships faced by the urban poor in developing countries, many of which resonate closely with the South African situation. These are low skills, low wages, unemployment, low social security, poor working conditions, adverse spatial locations, poor infrastructure, social marginalisation, high expenditure on housing, insecurity of tenure,

⁷ Arndt, Davies and Thurlow 2019 https://sa-tied.wider.unu.edu/sites/default/files/pdf/SATIED_WP41_Arndt_Davies_Thurlow_March_2019.pdf.

⁸ Baker 2008 <https://www.semanticscholar.org/paper/Urban-poverty-%3A-a-global-view-Baker/cae6b5b6233752023612b60517efbb007ed8fa18> 15.

vulnerability to climate change and disasters, exposure to environmental risks, financial insecurity, an inability to access credit, and exposure to crime.

Across the developing world the rate of the urbanisation of the poor is increasing.⁹ This is the case notwithstanding that it is an unplanned phenomenon. Thus, the locus of global poverty is shifting to cities.¹⁰ The ongoing urbanisation drive in the developing world is somewhat anomalous, because, as against the situation in developed countries, it does not necessarily bring benefits to those who follow the tide.¹¹

Poor communities in the urban environment in South Africa suffer a myriad of negative impacts on their lives. In particular, they bear the brunt of the negative spin-offs of urban development. In addition, they suffer spatial and physical problems unique to those living in urban poverty.¹² The "brown" issues of urban living, for example, pollution and waste management, play a disproportionately large role in their lives, and their quality of life is in stark contrast to that of the urban affluent.¹³

What are the reasons for the prevalence of urban poverty in South Africa? From a socio-historical perspective, it is trite that poverty and inequality emanated from the historical practices of colonialism and apartheid, and that the emergence of pockets of poverty within and adjacent to cities emanated from these phenomena.¹⁴ Thus in South Africa cities emerged over the course of recent history that is neither economically nor socially integrated.¹⁵ The lack of economic and social integration persists notwithstanding the passage of considerable time since the democratic transformation. According to Patel, the trajectory of developmental

⁹ In this regard see Cohen 2006 *Technology in Society* 64.

¹⁰ Cohen 2006 *Technology in Society* 74.

¹¹ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 27.

¹² Patel 2000 *Local Environment* 386.

¹³ Patel 2000 *Local Environment* 385.

¹⁴ In this regard see Gradin 2012 *Journal of African Economies* 219, who describes the way in which colonialism and apartheid established a system of "extreme and cumulative disadvantage" for the poor. Also see Mabin "Dispossession, Exploitation and Struggle", who describes the endemic persistence of poverty associated with the deprivation of basic services and amenities in South African cities. Also see Christiansen 2007 *Colum Hum Rts L Rev* 330, who avers that the poor in South African cities are no longer subject to the apartheid regime but are now the victims of "socio-economic apartheid". Also see Goebel 2007 *Habitat International* 292, who writes of the legacy of segregated neighbourhoods in South African cities, with skewed patterns of minority privilege and persistent historical inequalities in service provision.

¹⁵ Tacoli, McGranahan and Satterthwaite *Urbanisation* 15 describe South African cities as "economically fractured and socially segregated".

processes in South African cities at the time of her writing in 2000 had not been oriented towards the creation of a healthy and viable urban environment. Noting the more recent authorities referred to above, especially Cobbinah *et al* and Gradin and Tacoli *et al*, it is noteworthy that there has not yet been a move towards this type of developmental trajectory notwithstanding the passage of time since the democratic transition.

At least a portion of the urban poor in South Africa may be caught in a poverty trap that is of such a nature that it may be described as structural poverty. This description denotes that it has acquired a built-in or immutable nature and that there are minimal or no chances of escape from the situation.¹⁶ In a scenario of structural poverty the chances of sustainable development's¹⁷ being a useful doctrine for poverty relief would be diminished, given that any efforts at such relief must confront a solidly embedded phenomenon. The potential usefulness of the doctrine is discussed in the sections that follow.

3 South Africa's commitment to sustainable development in the context of poverty relief

As stated earlier, sustainable development has been a much talked about and analysed doctrine since it prominently featured in the international public law arena in the 1987 Brundtland Report and subsequently at the Rio Conference on the Environment and Development (hereafter the Rio Conference) in 1992. The historical development of the doctrine will not be considered in full here but will be touched upon insofar as it relates to matters pertaining to poverty in the South African urban context.

Sustainable development is a term that was first used by the author of the Brundtland Report, the report that informed and inspired the Rio Conference.¹⁸ Poverty is mentioned cursorily in the report, where it is cited as a cause of environmental problems.¹⁹ There is a brief reference to the need to alleviate poverty by way of the redistribution of material wealth.²⁰

¹⁶ Du Toit 2005 <http://repository.uwc.ac.za/xmlui/handle/10566/4550> labels the experience of those caught in an immutable poverty trap as "structural poverty".

¹⁷ Sustainable development, which is the focus of this article, is described in more detail in the subsequent section.

¹⁸ WCED *Our Common Future* (also referred to as the Brundtland Report).

¹⁹ See the World Commission on Environment and Development overview of the Brundtland Report (which constitutes part of the *Our Common Future* document) para 8.

²⁰ See Pt I Ch 3 Subch 1 para 6 of the Brundtland Report.

Poverty as a sustainability issue is, however, by no means a focus area of the report.

Agenda 21, which is the functional document emanating from the Rio Conference, refers to the need to undertake resource development, resource management and poverty eradication simultaneously.²¹ Thus, there is a somewhat oblique reference to poverty in the document, not unlike that in the Brundtland Report.

At the Millennium Summit held in 2000 at the United Nations headquarters in New York specific quantitative goals were set to address the lot of the world's poor and disadvantaged. In paragraph 19 of the *Millennium Declaration* the resolve was expressed to halve by 2015 the number of people living on less than one United States dollar per day, and the number suffering from hunger. This was part of the much-famed Millennium Development Goals. It is noteworthy that poverty eradication and sustainable development were set as two separate goals in the declaration,²² suggesting that they were considered to be two unrelated concepts.

The World Summit on Sustainable Development (WSSD) was held in Johannesburg in 2002, marking the tenth anniversary of the Rio Conference. The *Johannesburg Declaration* and the Johannesburg Plan of Implementation (JPOI) are the two outcome documents emerging from the summit. These have been criticised for being slanted towards dealing with environmental issues predominantly and failing to address social and economic issues.²³ The JPOI did not build further on the goals of *Agenda 21*, and its Section V, which deals with sustainable development, has been condemned for promoting "business as usual" with regard to sustainability.²⁴ Chapter 2 of the JPOI reiterates the Millennium Development Goals with regard to poverty reduction worldwide.²⁵ The merits of the summit itself, and by implication of international sustainability summits generally, as a vehicle for accomplishing sustainable development and/or poverty relief have been called into question by some. Environmental and social justice advocates protested vociferously at the conference venue and elsewhere in

²¹ See para 3.4 of the document (CSD 1992 <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>).

²² Goal 1 is "eradicate extreme poverty and hunger" and Goal 7 is "ensure environmental sustainability" (UN date unknown <https://www.un.org/millenniumgoals>).

²³ Pallemmaerts 2003 *RECIEL* 9.

²⁴ Gutman 2003 *Environment* 24.

²⁵ See the reference above to para 19 of the UN *Millennium Declaration*.

Johannesburg, some of them dubbing the summit "The World Summit of Shady Deals".²⁶ They argued that the focus of the summit was not on sustainable development but on the showcasing of capitalism and industry.²⁷ The protests at the summit were indicative of an emerging wave of protest and disappointment with the international sustainable development movement.

The "Rio+20" Conference in Rio de Janeiro in 2012 (hereafter Rio+20) was held on the 20th anniversary of the 1992 Rio Conference. Its outcome document is entitled *The Future We Want*.²⁸ It explicitly reaffirms the past goals and action plans of the previous United Nations conferences referred to above.²⁹ It adds an additional dimension to previous conference outcomes in prioritising an area of endeavour referred to as "the green economy in the context of sustainable development and poverty eradication".³⁰ Interestingly, poverty eradication is mentioned in Article 2 of the declaration as being "the greatest global challenge facing the world today and an indispensable requirement for sustainable development". Currently, this is the boldest enunciation yet of the importance of poverty in the international sustainability discourse.

Despite its purported focus on poverty eradication the conference attracted enormous protest from poor communities, especially from indigenous South American peoples.³¹ At the conference the G77 countries³² vehemently resisted the notion of the green economy concept in the absence of its being related directly to social and economic development in developing countries. Although South Africa was one of the main conference hosts, it has allegiances to the G77 and was therefore in a somewhat compromised position.

With Rio+20 having been beset by controversy; the conference outcome has been severely criticised. Being something of a "rubber-stamping" of the

²⁶ In this regard see Vally 2003 <https://mg.co.za/article/2003-01-01-the-iron-fist-and-velvet-glove/>.

²⁷ In this regard see Vally "Political Economy of State Repression".

²⁸ UN *The Future We Want*.

²⁹ UN *The Future We Want* Art 5 Ch I explicitly affirms the commitment of the participants to accelerate the achievement of the Millennium Development Goals.

³⁰ This is the focus of Chapter III of the declaration.

³¹ See for example Frank 2012 <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/future-we-dont-want-indigenous-peoples-rio20>, in which Miriam Anne Frank sets out the misgivings of local communities in Brazil and South America regarding the legitimacy and purpose of the conference, under the evocative title *The Future We Don't Want*.

³² The G77 is a coalition of developing countries formed in 1964.

earlier sustainability conferences, the conference declaration lacks normative content of its own.³³ The ongoing political relevance of the doctrine of sustainable development was questioned by some critics of the conference.³⁴

The current international sustainable development legal framework is dominated by the outcomes of the United Nations Sustainable Development Summit of 2015. The conference declaration, titled *Transforming Our World: The 2030 Agenda for Sustainable Development* (hereafter *Transforming Our World*) establishes seventeen Sustainable Development Goals (SDGs). The first of these is "end poverty, in all its forms, everywhere". Thus, it appears that poverty eradication is now the number one objective in terms of the international sustainability discourse. The detail of this somewhat ambitiously framed goal includes meeting certain targets by 2030. These include the eradication of extreme poverty, described as living on less than \$1.25 per day, halving the proportion of those living in poverty according to their own domestic standards, implementing nationally appropriate social security systems including floors, ensuring rights to economic resources, ownership and control of the land, inheritance, natural resources, technology and financial resources, and enhancing the resilience of the poor and reducing their exposure to shocks and disasters.

Several commentators have critiqued the ambitions expressed in *Transforming Our World*. Stevens and Kanie³⁵ explain that the declaration appears to be a sincere attempt to create an integrative agenda uniting environmental sustainability, social concerns and poverty eradication and that it is based on the outcome of a transparent process.³⁶ As such, they argue, it contains "seeds of transformation". They point out, however, that there are several matters that the declaration fails to address, including not questioning the growth-oriented economic model, and not considering how power differentials may affect inequality.³⁷

³³ Bernstein 2013 *Global Environmental Politics* 15. Also see Bulkeley *et al* 2013 *Environment and Planning C: Government and Policy* 959.

³⁴ See Bulkeley *et al* 2013 *Environment and Planning C: Government and Policy* 965, where the following comment of Stumpp is cited: "Sustainability has lost its job to the promising new colleague (resilience) and probably finds itself in a serious crisis of meaning, wondering what it did wrong. Planners kept it so busy, party-hopping from one event and discipline to another, that it missed the chance to get something done."

³⁵ Stevens and Kanie 2016 *International Environmental Agreements* 393.

³⁶ Stevens and Kanie 2016 *International Environmental Agreements* 395.

³⁷ Stevens and Kanie 2016 *International Environmental Agreements* 396.

As is pointed out by Qian-Qian, Man and Xiao-Lin,³⁸ the 2015 declaration represents the continuation of a trend which commenced at Rio+20 to integrate poverty reduction and sustainability imperatives. They describe poverty eradication as "the biggest global challenge facing the world" and as an issue which is inseparable from sustainable development.³⁹ The poverty baseline of \$1.25 per day, however, is too low, in their opinion.

SDG 1 as reflected in the 2015 declaration underpins and has a synergetic relationship with the other goals, as argued by Pradhan *et al.*⁴⁰ They caution, however, that potential synergy may not bear fruit if there is a continuation of historical circumstances which create a "lock-in" effect.⁴¹ This is arguably the situation in South Africa, with endemic poverty being associated with inequalities established during the times of colonialism and apartheid, and with the persistence of poverty associated with the inequalities of these times.

SDG 11 of the 2015 declaration is also of relevance to urban poverty – it states the imperative to make cities inclusive, safe, resilient and sustainable. Although not mentioned in SDG 11, this must include the pursuit of targets on poverty relief.⁴²

It is apparent from the 2015 declaration itself that renewed momentum towards the achievement of sustainable development has been necessary in the light of the failures in the achievement of the Millennium Development Goals.⁴³ These failures call into question the achievability of the goals in underdeveloped and developing countries, and it is arguable that those with a history of failure to achieve sustainable development should be the focus of development assistance.⁴⁴

What are the implications of the international sustainable development regime for urban poverty in South Africa? The country was a participant in the Rio Conference, although this took place at the time that the terms of the political transition away from apartheid were being negotiated, and thus it is unlikely that the conference was the focus of attention of the outgoing

³⁸ Qian-Qian Man and Xiao-Lin 2015 *Advances in Climate Change Research* 67.

³⁹ Qian-Qian Man and Xiao-Lin 2015 *Advances in Climate Change Research* 70.

⁴⁰ Pradhan *et al* 2017 *Earth's Future*.

⁴¹ Pradhan *et al* 2017 *Earth's Future* 1178.

⁴² This is argued by Parnell in 2016 *World Development* 539.

⁴³ *Transforming Our World* para 16 of the preamble acknowledges that the achievement of the Millennium Development Goals has been uneven. Also see Nhamo 2017 *Sustainable Development* 233, in which the author claims that the successes of the Millennium Development Goals have not been felt in Africa.

⁴⁴ This position is supported in Moyer and Bohl 2019 *Futures* 208.

or incoming political leadership. However, by the time of the Millennium Summit South Africa had a new constitution in place, including a clear reference to sustainable development in section 24 thereof,⁴⁵ and framework environmental legislation in the form of the *National Environmental Management Act (NEMA)*.⁴⁶ Thus, South Africa explicitly embraces the doctrine of sustainable development in its legal framework. The *NEMA* definition of sustainable development does not, however, make any reference to poverty relief.⁴⁷ The Act establishes an environmental assessment regime to manage the environmental impacts of development on a case-by-case basis. Although one may assume based on its definition of sustainable development that the decision-making process in this regime is meant to incorporate social, environmental and economic considerations, there is no clear indication of a methodology for doing so and also no indication that poverty relief might be a relevant consideration under any of the three categories. Thus, it cannot be said that the *NEMA* provides any solutions for the pursuit of sustainable development in relation to poverty relief.

The jurisprudence emanating from the South African courts, like the legislation, does not deal with poverty amelioration as a specific objective of sustainable development. A full discussion of the cases in which sustainable development imperatives are mentioned is outside of the scope of this discussion. However, the only Constitutional Court case on the subject is worthy of mention – the *Fuel Retailers* case.⁴⁸ The issue before the court was whether the authority considering an application for

⁴⁵ Section 24 of the *Constitution of the Republic of South Africa*, 1996 states:
"Everyone has the right-
(a) to an environment that is not harmful to their health or wellbeing; and
(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

⁴⁶ *National Environmental Management Act* 107 of 1998.

⁴⁷ The definition is somewhat simplistic, stating only the following: "sustainable development' means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations." The definition does not engage with issues pertaining to poverty, and also does not indicate any normative basis for the integration of social, economic and environmental factors into planning, implementation and decision-making.

⁴⁸ *Fuel Retailers Association of Southern Africa v Director-General, Environmental Management: Department of Agriculture, Conservation and the Environment, Mpumalanga Province* 2007 6 SA 4 (CC) (the *Fuel Retailers* case).

environmental authorisation for a petrol station was obliged to take into consideration socio-economic factors in addition to environmental factors as part of its decision-making, which by its own admission it had not, as it believed the former had been dealt with during the land use rights application process. The court found that it was so obliged.⁴⁹ The main socio-economic issue raised by the appellant was the proximity of other petrol stations in the area, which raised questions about the economic viability of the proposed new petrol station rather than about its social impacts. The court expounded upon the need to balance environmental, social and economic considerations in applying the principle of sustainable development.⁵⁰ This exposition is *obiter*, however, as the decision itself was based upon considerations related to the administrative process⁵¹ and upon economic rather than social considerations.⁵² Thus, the judgment does not directly deal with the economic aspects of sustainable development (including those pertaining to poverty), but only with a conceptualisation of sustainable development in a general sense. There is no reference in the judgment to the potential for the doctrine of sustainable development to be used as a tool to address persistent inequality and poverty. Its relevance for the present discussion is therefore limited.

From the discussion in this section, it is apparent that South Africa is committed to sustainable development. This is manifested by its participation in the international sustainable development conferences, the incorporation of the doctrine into the *Constitution* and other legislation, and the judgment in the *Fuel Retailers* case. Considering the content of these expressions of intent, as outlined above, in juxtaposition to one another, one is forced to conclude that they do not present a coherent picture of what is understood by sustainable development, nor of how the doctrine may be deployed for any particular purpose, including poverty amelioration.

The lack of clarity described above is borne out by the content of the two national policy documents thus far which have purported to give meaning to the doctrine. The first of these is the National Framework for Sustainable

⁴⁹ See para 82 of the *Fuel Retailers* case.

⁵⁰ See para 53 of the *Fuel Retailers* case, in which the court refers to environmental, social and economic considerations as the "three pillars" of sustainable development.

⁵¹ The court set aside the earlier decision based on s 6 of the *Promotion of Administrative Justice Act* 3 of 2000, which sets out procedural grounds upon which administrative decisions may be reviewed and set aside.

⁵² In the judgment there are numerous references to the proximity of other filling stations; for example in para 91 of the *Fuel Retailers* case the court refers to "overtrading", an economic rather than a social issue.

Development,⁵³ published in 2008. This document deals with a broad spread of environmental, social and economic issues. The need to ameliorate poverty is explicitly acknowledged, along with other imperatives such as resource conservation and behaviour change. Thus, it may be said that this policy acknowledges poverty relief as a component of sustainable development. It was superseded by a Draft National Strategy and Action Plan for Sustainable Development 2011-2014,⁵⁴ the final version of which has never been published. This later draft policy takes a much more strongly ecologically focussed stance regarding sustainable development, portraying on its front page the "embedded egg" model with the economy embedded in the social system, which is in turn embedded in the environment. It does not include poverty amelioration among its main objectives.⁵⁵ The contradictions between these two documents further illustrate the fact that the understanding of sustainable development is somewhat blurred and uncertain in the South African policy context. Concomitantly, there is a lack of a clear model of the potential of the doctrine for effecting poverty relief. In the following section it will be considered whether, conceptually, sustainable development could nevertheless be used as an underpinning doctrine to address urban poverty.

4 Could sustainable development be deployed as a vehicle for urban poverty relief?

In this section the position will be put forward that sustainable development, as currently understood (or not understood) in South Africa, does not provide either a theoretical or a practical solution to address urban poverty in the country. This is the case notwithstanding the fact that, as illustrated above, for example in the powerful statement in *The Future We Want* and in the 2015 declaration,⁵⁶ poverty relief is acknowledged in the international law arena as being intertwined with sustainable development.

A review of relevant academic literature on sustainable development in the context of poverty relief reveals that a substantial number of authors, writing in legal and sociological publications, take the view that it is not a useful

⁵³ DEAT 2008 https://www.dffe.gov.za/sites/default/files/docs/2008nationalframework_for_sustainabledevelopment.pdf.

⁵⁴ DEA 2011 https://www.dffe.gov.za/sites/default/files/docs/sustainabledevelopment_actionplan_strategy.pdf.

⁵⁵ The main objectives set out in s 3 of the plan (DEA 2011 https://www.dffe.gov.za/sites/default/files/docs/sustainabledevelopment_actionplan_strategy.pdf) are integrated planning, the efficient use of natural resources, the green economy, sustainable communities, and responding to climate change.

⁵⁶ See references to these documents in section 3.

concept in this context. This is borne out by the discussion of the literature that follows. Of these views one of the most cogent is the statement by Rapatsa, writing in 2015, close to the time of the development of the 2015 declaration *Transforming Our World*, that poverty stifles sustainable development and that achieving sustainable development depends on eliminating poverty.⁵⁷ This would seem to suggest that sustainable development and poverty are irreconcilable.

The fundamental irreconcilability between the doctrine of sustainable development, which conceptualises a somewhat utopian and highly functional society, and the dystopian reality of urban poverty⁵⁸ underlines the need to address poverty in urban environments as a priority in sustainability initiatives, or even as a precursor to such initiatives.

The irreconcilability referred to above is further underlined by the fact that metropolitan development, including the building of infrastructure such as landfills, wastewater treatment plants and large-scale housing developments, inherently involves enormous environmental impacts and as such poses a challenge to sustainable development. Development of this nature frequently has adverse impacts on the lives of the poor.⁵⁹ In such circumstances the challenge to provide infrastructure and services that provide benefits across the environmental, social and economic spectrum is enormous.

The lack of clarity as to the meaning and functionality of sustainable development and accordingly as to its potential to be deployed for the purposes of poverty relief is commonplace in developing countries.⁶⁰ There are illustrations of the failure of sustainable development to achieve synergies between environmental, social and economic issues in these countries, according to Cobbinah, Erdiaw-Kwasie and Amoateng.⁶¹ Thus, the lack of clarity regarding the doctrine in South African law, as accounted for in section 3 above, is not unique to South Africa.

One of the difficulties of achieving sustainable development in an urban environment is that the underlying social and political relationships in urban societies may interfere with sustainability imperatives. There are deep inequalities in South African society notwithstanding that the right to equality

⁵⁷ Rapatsa 2015 *Euro Economica* 47.

⁵⁸ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 25.

⁵⁹ Cohen 2006 *Technology in Society* 73.

⁶⁰ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 18.

⁶¹ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 21.

is entrenched in the *Constitution*.⁶² The existence of formal or theoretical equality may render those responsible for seeking to implement sustainable development complacent, and this may lead to a disinclination or a failure to address inequalities, which in turn would make the sustainability imperatives difficult or impossible to achieve.⁶³ This phenomenon could arguably prevent or retard poverty amelioration.

Another obstacle to the achievement of sustainability in the urban context is the fact that urban governance and management are often in crisis, having to deal with the ongoing influx of new inhabitants brought by the tide of urbanisation. This places enormous pressure on housing and municipal services and causes the focus to be on short-term, urgent needs rather than on longer term planning for sustainable development.⁶⁴

In general it is questionable whether uniform global sustainable development goals are and could ever be of value worldwide, especially from the perspective of developing and poverty-stricken societies. This is because these goals are formulated at a high level by external international experts who may not be familiar with the needs and aspirations of developing and poor societies.⁶⁵ The goals of sustainable development are based on a methodology of generalisation which may not recognise the ideologies and aspirations of individual communities.⁶⁶

The various positions stated above, presented by a variety of authors, all express misgivings in one form or another about the usefulness of deploying the doctrine of sustainable development in developing countries and situations of poverty. Reading these together lends itself to justifiable questioning of the value of sustainable development for the purposes of urban poverty amelioration.

In the next section consideration is given to the question of whether it is possible to overcome the limitations of sustainable development, as outlined

⁶² Section 9 of the *Constitution*.

⁶³ In this regard see Moyo *Transformative Constitutionalism*, who argues that formal equality masks underlying inequality and institutionalised privilege.

⁶⁴ Patel 2000 *Local Environment* 393.

⁶⁵ Satterthwaite 2014 *SAIS Review of International Affairs* 51.

⁶⁶ See D'Souza 2002 *Social Policy* 23, who argues that there are as many conceptualisations of sustainable development as there are societies, and that as a generalising theory sustainable development may obscure a society's need for self-determination. Also see Dempsey *et al* 2011 *Sustainable Development* 289, who argues that although sustainable development is an anthropocentric doctrine, there has been very little theoretical writing on its sociological dimension. Thus, it is arguable that its theoretical and conceptual frameworks are inadequate – a view posited by Patel 2000 *Local Environment* 384.

in this section, as a useful tool for poverty relief in the urban context, either by interpretive methods or by identifying specific aspects thereof which are useful in this context.

5 Overcoming the limitations of sustainable development in the context of urban poverty relief

If sustainable development is to be used as a tool to assist with urban poverty relief in the South African context, common ground should be sought between the doctrine and the underpinning principles of the *Constitution*.⁶⁷ This may entail academia, government and others taking a broad view of the application of the principles of sustainability in the light of the redistributive and transformational nature of the *Constitution*.⁶⁸ Thus, an appropriate spectrum of sustainability considerations in South Africa should arguably entail not only ensuring that environmental, economic and social issues are taken into consideration, but also the need for the redistribution of resources to redress past deprivations, and the need to effect societal transformation. This would have the effect that poverty would not be considered a side issue in the realm of sustainable development theory, but rather an integral part.⁶⁹

It is arguably a weakness of sustainability theory that it does not deal clearly with issues of justice and equity. The usefulness of the doctrine of sustainable development could be greatly enhanced if it were considered alongside these issues. From the time of its original formulation in the Brundtland Report, sustainable development has been framed as a desirable goal in itself, but not as a matter to be pursued for reasons of

⁶⁷ Rapatsa 2015 *Euro Economica* 45.

⁶⁸ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 18 endorse the principle of broadening the scope of sustainable development theory to include domestic socio-economic rights and issues. This imperative could be extended further to include an espousal of the underlying norms and values of the *Constitution*. Regarding the point that the *Constitution* is redistributive and transformative in its orientation, see its preamble, which speaks of healing the divisions of the past and establishing a society based on democratic values, social justice and fundamental human rights. It also speaks of improving the quality of life of all citizens and freeing the potential of each person. Integration of the sustainable development doctrine with the constitutional principles is an area for possible new research development.

⁶⁹ See Wilson and Dugard 2011 *Stell LR* 681, where it is argued that poverty should be taken more seriously and mainstreamed into jurisprudential discourse. It is similarly arguable that it should be mainstreamed into discourse in all branches of government that deal with justice issues.

social justice and equity.⁷⁰ If the goals and objectives of sustainability discourse domestically were to be overtly expanded to include these considerations, this could render sustainable development a more socially relevant concept and one which might be better able to achieve societal transformation. This is particularly pertinent in the South African context, where urban and other loci of poverty prevail.

It is fundamental to the success of sustainable development as a governance instrument that it be adopted not only by the government but also by individuals and institutions in civil society. The buy-in of civil society actors would ensure not only that the programmes of government are less susceptible to opposition and challenge but that they are actively driven by those who stand to contribute to or benefit from them.⁷¹ Thus, it is incumbent upon the government to ensure that citizens and institutions are made aware of national aspirations to achieve sustainable development and are encouraged to participate in their fulfilment. The somewhat vague and fragmented way in which sustainable development is currently espoused in South Africa, as alluded to in this article,⁷² could impact negatively upon the chances of infiltration thereof into the imperatives of civil society. This could be rectified by way of clearer government policy and programmes on sustainable development.⁷³

For sustainable development to take hold in South Africa, it is necessary for a developmental approach generally to be part of government policy. This is pointed out by Rosa,⁷⁴ who advocates a sharpening of the socio-economic rights and the addressing of matters of material and resource distribution. The *Constitution* and local government legislation confer the obligation to undertake holistic, sustainable-development-oriented planning upon local government,⁷⁵ but this is not matched by concomitant clear

⁷⁰ See Dempsey *et al* 2011 *Sustainable Development* 289, who bemoan the fact that that matters of justice and equity are implicit in sustainability discourse but rarely articulated.

⁷¹ In this regard see Brand 2011 *Stell LR* 624, at which the position is put forward that for democracy to be fully realised all actors in society must participate therein.

⁷² See section 3 hereof.

⁷³ See the last paragraph of section 3 hereof, where the contradictions in the (somewhat outdated and inchoate) national policy documents on sustainable development are pointed out.

⁷⁴ Rosa 2011 *Stell LR* 545 *et seq.* Also see Liebenberg and Young "Adjudicating Social and Economic Rights".

⁷⁵ Section 152 of the Constitution requires of municipalities to secure the provision of services to communities in a sustainable manner, to promote social and economic development and to provide a safe and healthy environment (subs (1)(b)(c) and (d) respectively). Ch 5 of the *Local Government: Municipal Systems Act* 32 of 2000 requires that municipalities undertake integrated development planning.

legislative responsibilities imposed on other spheres of government. Although the *NEMA* regime refers to sustainable development, it does not explicitly impose an obligation on all spheres of government to adopt a developmental approach in all their activities.⁷⁶ It is arguable that the usefulness of sustainable development in underpinning the relief of urban poverty could be greatly enhanced if the notion of integrated development planning were espoused as national policy across all spheres of government.

The obligations of government to pursue sustainable development, insofar as they are contained in legislation, are not matched by concomitant obligations to allocate budgetary resources towards programmes with such an orientation. Courts are usually reluctant to intervene in matters of government budgeting, as they perceive such intervention as a violation of the separation of powers.⁷⁷ It is arguable that sustainable development programmes to alleviate poverty may be hollow and meaningless if the government cannot be forced to allocate budgetary resources to them, and that the judiciary should reconsider its stance in this regard.⁷⁸

In order for sustainable development initiatives to touch the lives of the people, especially the poor, their orientation has to be towards locally implementable and viable solutions.⁷⁹ Thus, it is argued, there should be a move from sustainability as conceptualised in the arena of international environmental law towards locally relevant solutions affecting local livelihoods.⁸⁰ Arguably this is a prerequisite for sustainable development to have any prospect of having an impact upon poverty relief. It is easy to imagine poverty-stricken urban migrants living in shacks, deprived of basic

⁷⁶ See the reference in section 3 hereof to the orientation of the *NEMA* regarding sustainable development.

⁷⁷ See for example the matter of *Minister of Health v Treatment Action Campaign 2002* 5 SA 721 (CC) para 34 where the Constitutional Court stated that socio-economic programmes which government is obliged to undertake are not necessarily directed at rearranging budgets.

⁷⁸ In this regard see Pieterse 2004 *Hum Rts* Q 882, in which he points out that in the Certification Judgment it was expressly contemplated that courts could give judgment relating to budgetary matters. This has however not been taken forward by judicial practice.

⁷⁹ An example of a locally relevant solution is the following. In an environment in which pollution of watercourses is rife, the local community could be mobilised (industry and individuals) to cease polluting and to rehabilitate the watercourses. This would have positive spin-offs for the environment, social benefits and economic benefits via job creation.

⁸⁰ Cobbinah, Erdiaw-Kwasie and Amoateng 2015 *Environmental Development* 28.

amenities, as having no interest in the doctrine of sustainable development in the absence of its having tangible effects upon their lives.

In South Africa the historically segregated and dysfunctional spatial layout of cities has major negative impacts upon their sustainability. Sustainable development in the urban context, with positive spin-offs for the poor, could be driven by a shift towards more functional and equitable urban spatial layouts.⁸¹ It is imperative for cities to become more functional and sustainable if the injustices emanating from spatial disadvantage are to be redressed. This would be no easy task as it would entail major infrastructural reconfiguration, but land use management authorities should aspire to this as a goal.⁸²

Sustainable development or the lack thereof in the urban environment needs to be seen in the context of its situatedness in political and economic systems. A full analysis of how these affect the potential of sustainable development to take hold and alleviate poverty is outside of the scope of this article. It is worth mentioning, however, that it has been questioned if poverty relief (and by implication sustainable development) can take effect in a neoliberal capitalist political and economic system.⁸³ It is arguable that an enabling system to allow sustainable development to take hold is a *sine qua non* for it to have an impact on urban poverty. In the absence of such a system, initiatives taken toward sustainable development might achieve nothing.

This section has presented a selection of ideas and principles reflected in the academic literature which could possibly point towards methodologies for overcoming the limitations of sustainable development, to render it a more useful tool for urban poverty relief. None of these is in itself a complete solution to the conundrum of how to deploy sustainable development for this purpose. Taken collectively, however, they indicate that it may be possible to build a theory of how to interpret and expand upon the doctrine of

⁸¹ This would entail implementing spatial justice, sustainability, resilience, and efficiency, as posited in section 7 of the *Spatial Planning and Land Use Management Act* 16 of 2013 (SPLUMA). For example, access by communities to workplaces should be a central tenet of spatial planning.

⁸² Nel 2016 *Land Use Policy* 257. SPLUMA is a transformatory legislative instrument in the realm of spatial planning, providing in its preamble and in section 7 thereof for spatial justice and the redress of the imbalances of the past. However, changing the physical layout of cities is a process which obviously cannot occur quickly, since it consists of hard infrastructure and is underpinned by private property rights.

⁸³ See for example Davis 2016 *NYL Sch L Rev* 47.

sustainable development to render it useful for the purposes of urban poverty relief.

6 Concluding perspectives

This article initially sketches the nature of urban poverty in South Africa, with reference to theory on the phenomenon of urbanisation in the South African and wider contexts, and its manifestations relating to poverty. Thereafter it outlines the international discourse on sustainable development insofar as it relates to poverty relief and highlights its relevance to South Africa. Building upon this, the South African response to the international sustainable development regime is considered. It moves on to contemplate whether the commitment of the government to the doctrine of sustainable development could possibly be a vehicle for poverty relief in South African urban environments. The conclusion reached is negative, as is supported by the fact that urban poverty is a persistent problem, and by the views of the various writers cited. The penultimate section deals with literature in which it is suggested that the limitations of the doctrine of sustainable development could possibly be overcome in particular ways. None of the ideas presented in the section is more than an anecdotal or partial perspective, but reading them together leads one to conclude that the doctrine has some potential usefulness in guiding efforts made towards urban poverty relief.

This article has sought to illustrate that there is a fundamental irreconcilability between the existence of urban poverty in South African cities (and in cities in other developing countries) alongside pockets of wealth and privilege, and the doctrine of sustainable development. This disparity in wealth is not only at odds with the doctrine of sustainable development, but also with the transformational and reconciliatory spirit of the *Constitution*.⁸⁴ It is furthermore misaligned with the current ethos of international sustainable development theory, which has in recent times given renewed emphasis to poverty relief and urban issues.⁸⁵

Unless a way is found to reinterpret or expand the understanding of sustainable development and the potential to utilise the doctrine for poverty relief in the South African urban environment, it will remain of little value to

⁸⁴ See fn 68 regarding the transformative aspects of the *Constitution*.

⁸⁵ For example, the ending of poverty, in all its forms, everywhere, is the first sustainable development goal cited in the 2015 declaration, *Transforming Our World*. Poverty relief is also acknowledged in the 2016 *New Urban Agenda* of the United Nations Conference on Housing and Sustainable Development (UN *New Urban Agenda*) – see for example para 3 thereof.

those having to endure the hardships of urban poverty. How this reinterpretation or expansion should occur is a somewhat vexed question. Arguably all three branches of government – the legislature, the executive, and the judiciary – could play a role in the more meaningful deployment of the doctrine of sustainable development. For example, the legislature could actively seek to establish clarity in environmental legislation with regard to the utilisation of sustainable development theory and principles for the purposes of poverty relief.⁸⁶ The judiciary could adopt a more active stance in the interpretation of sustainable development as a judicial tool for directing the government towards undertaking programmes which achieve poverty relief and the realisation of socio-economic rights,⁸⁷ and could be more forthright with regard to directing executive spending.⁸⁸ With regard to the potential role of the executive, an argument could be made that in carrying out its role of implementing the law and allocating and spending public financial resources, it has a very significant role to play in deploying sustainable development to alleviate urban poverty.

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⁸⁶ See section 3 hereof regarding the limited way in which sustainable development is reflected as a doctrine in the *NEMA*.

⁸⁷ See section 3 hereof regarding the limited understanding of sustainable development reflected in the *Fuel Retailers* case.

⁸⁸ See section 5 hereof in this regard.

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Colum Hum Rts L Rev	Columbia Human Rights Law Review
CSD	United Nations Commission on Sustainable Development
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
Hum Rts Q	Human Rights Quarterly
JPOI	Johannesburg Plan of Implementation
NEMA	National Environmental Management Act 107 of 1998
NYL Sch L Rev	New York Law School Law Review
RECIEL	Review of European, Comparative and International Environmental Law
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013
Stell LR	Stellenbosch Law Review
UN	United Nations
WCED	World Commission on Environment and Development
WSSD	World Summit on Sustainable Development