

**PROSPECTS OF LIMITING THE RIGHT TO REPRODUCTIVE HEALTH IN SOUTH  
AFRICA: A HUMAN WELLBEING AND SOCIO-ECONOMIC VIEW**

**By**

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**Submitted in partial fulfilment of the requirements for the degree of**

**Master of Laws,  
DEVELOPMENT AND MANAGEMENT LAW**

**In the**

**Faculty of Management and Law**

**School of Law**

**UNIVERSITY OF LIMPOPO**

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## **DECLARATION BY STUDENT**

I, Matsheta Reginald Masilo, declare that this mini-dissertation; *Prospects of Limiting the Right to Reproductive Health In South Africa: A Human Wellbeing And Socio-Economic View*. Hereby submitted to the University of Limpopo for the Masters of Laws degree has not previously been submitted by me for a degree at this or any other university, that this is my own work in design and execution, and that all the sources that I have used or referred to have been designated, acknowledged and fully cited.

**MATSHETA R.M**

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**Signature**

**date**

## **DEDICATION**

This research is dedicated to my mother Calvia Matome Matsheta and to all members of Matsheta Clan.

## **ACKNOWLEDGEMENT**

Firstly, I would like to thank the Almighty God: because I owe it all to you, Many Thanks!

Secondly, I would like to express my very profound gratitude to my mother Matsheta Calvia Matome and my grandmother Matsheta Moyabo Elizabeth, not forgetting my siblings, Matsheta Samuel, Matsheta Seja, Matsheta Mokgadi and my nephew Matsheta Brown, who have provided me with moral and emotional support throughout this journey. I am also grateful to my other family members and friends who have shown me enormous support and love throughout my life, many thanks.

A very special thanks and gratitude of the highest altitude to my supervisor, Adv. M.T Rapatsa, for your guidance and support through this journey. For all those calls, emails and texts to encourage me to work hard. Your generosity and experience have contributed greatly to the accomplishment and success of this research. May God and gods bless you.

And lastly, but by no means least, to everyone who contributed to this research, it was a great learning experience, may God bless you all.

## TABLE OF CONTENTS

DECLARATION BY STUDENT .....	i
DEDICATION .....	ii
ACKNOWLEDGEMENT .....	iii
LIST OF ABBREVIATIONS AND ACROMYMS .....	vii
TABLE OF CASES.....	ix
TABLE OF STATUTES .....	x
ABSTRACT .....	xi
<b>CHAPTER 1: INTRODUCTION AND BACKGROUND .....</b>	<b>1</b>
1.1 Introduction and Background .....	1
1.2. Problem Statement .....	2
1.3. Research Question .....	3
1.4. Aims and Objectives .....	4
1.5. Literature Review .....	4
1.6. Research Methodology .....	10
1.7. Comparative Study: South Africa and China.....	10
1.8. Outline of Chapters .....	11
1.8.1 Chapter 1: Introduction.....	11
1.8.2 Chapter 2: Theoretical Framework.....	11
1.8.3 Chapter 3: The Constitutional context of the Right to Reproductive Health .....	11
1.8.4 Chapter 4: Right to Reproductive Health and Socio-economic development....	12
1.8.5 Chapter 5: Comparative Analysis.....	12
1.8.6 Chapter 6: Conclusion and Recommendations.....	12
<b>CHAPTER 2: THEORETICAL FRAMEWORK .....</b>	<b>13</b>
2.1 Introduction .....	13
2.2 The Capabilities Approach .....	13
2.3 Martha Nussbaum's Perspective .....	14
2.4 Amartya Sen's Perspective .....	14
2.5 Central elements drawn from Sen and Nussbaum.....	15
2.5.1 Further Literature.....	16
2.6 South African's Realities .....	19

2.6.1 Discussion.....	19
2.7 Conclusion.....	21
<b>CHAPTER 3: THE CONSTITUTIONAL AND LEGISLATIVE CONTEXT OF THE RIGHT TO REPRODUCTIVE HEALTH .....</b>	<b>23</b>
3.1 Introduction .....	23
3.2 The Right to Procreate and The Constitution of the Republic of South Africa,1996 .....	23
3.3 The Limitation Clause and Social Development.....	27
3.4 Children’s Act 38 of 2005 .....	28
3.5 Social Assistance Act.....	29
3.6 The Choice of Termination of Pregnancy Act.....	29
3.6.1 International Instruments .....	31
3.7 Conclusion .....	32
<b>CHAPTER 4: THE RIGHT TO REPRODUCTIVE HEALTH AND SOCIO-ECONOMIC DEVELOPMENT .....</b>	<b>33</b>
4.1 Introduction .....	33
4.2 The Right to Reproductive Health on Overpopulation.....	33
4.3 The Impact of Overpopulation on State-Sponsored Security .....	34
(a) Overpopulation and Access To Social Welfare .....	35
(b) Overpopulation and Access to Education.....	35
(c) Overpopulation and Access to Health Care.....	37
(d) Overpopulation and Access to Adequate Housing .....	39
4.4 The Potential Impact of Limiting the Right to Procreate .....	41
4.6 Conclusion .....	41
<b>CHAPTER 5: COMPARATIVE ANALYSIS: SOUTH AFRICA AND CHINA .....</b>	<b>43</b>
5.1 Introduction .....	43
5.2 China One-Child Policy in Perspective .....	43
5.2.1 Reasons for Introduction: One Child-Policy .....	44
5.2.2 Achievements: China One Child Policy .....	46
5.2.3 One Child Policy: Impact On Population Growth .....	48

5.3.1. Improve Access to Housing .....	51
5.3 .2 Improve Access to Education .....	51
5.3 .3 Improve Access to Health Care .....	51
<b>CHAPTER 6: CONCLUSION AND RECOMMENDATIONS.....</b>	<b>53</b>
6.1 Conclusion .....	53
6.2 Recommendations .....	55
<b>BIBLIOGRAPHY .....</b>	<b>57</b>

## **LIST OF ABBREVIATIONS AND ACROMYMS**

<b>ADBCER</b>	Asian Development Bank Country Economic Review
<b>ANC</b>	African National Congress
<b>CCP</b>	Chinese Communist Party
<b>EEO</b>	Equality Education Organisation
<b>EIG</b>	Education Infrastructure Grant
<b>FFC</b>	Finance and Fiscal Commission
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
<b>ICESCR</b>	International Covenant on Economics, Social and Cultural Rights
<b>ICPDPAUN</b>	International Conference on Population and Development Program Action
<b>LDPSD</b>	Laxenburg Declaration on Population and Sustainable Development
<b>MDGR</b>	Millennium Development Goal Report
<b>PRC</b>	People Republic of China
<b>SSA</b>	Statistics South Africa
<b>UDHR</b>	Universal Declaration and Human Rights
<b>UNCTD</b>	United Nations Conference on Trade and Development
<b>UNINPDA</b>	The United Nations Information Network on Population and Development Africa.
<b>VAT</b>	Value Added Tax





## TABLE OF CASES

*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998 (11) BCLR 1434 (T), 1998 (4) SA 1113 (T)

*The government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)

*Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) (9 October 2009)

*Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009)

*Minister of Health and Others v Treatment Action Campaign and Others (No 1)* (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002)

## **TABLE OF STATUTES**

Children's Act 38 of 2005

The choice on Termination of Pregnancy Act 92 of 1996

Housing Act 107 of 1997

Local Government: Municipal System Act 32 of 2000

Social Assistance Act 59 of 1992

## **ABSTRACT**

Like many other countries, South Africa has its own socio-economic challenges. For the past two decades, the country has been experiencing rapid population growth, yet in the same period, there has been a pervasive decline in social and economic stability, and in the end, stagnant human wellbeing. This has been as a result of diminishing access to basic services such as health care, quality housing, quality education and safe clean drinking water. Among other factors, unregulated and rapid population growth contribute to these socio-economic challenges. This study seeks to illustrate that overpopulation undermines and threatens social development, societal stability and survival of humanity. Therefore, the examines the possibility of enacting a legislation or policy that will regulate or limit procreation or the right to give birth. It also reflects on the Chinese experience to obtain some lessons from China's One-Child Policy. It is submitted that South Africa must draft its own policy or legislation that will regulate population growth with the primary objective of aligning population with available state resources.

**Keywords:** overpopulation, right to reproductive health, socio-economic rights, human wellbeing, social transformation.

## CHAPTER 1: INTRODUCTION AND BACKGROUND

### 1.1 Introduction and Background

South Africa is a diverse multicultural and democratic country which is inundated with a multiplicity of socio-economic challenges, and included among these challenges are unemployment, poverty, inequalities, moral decay, racial tensions, slow economic growth and diminished socio-economic opportunities in general. All these factors have an inherent bearing on the well-being and livelihood of citizens, a question which can best be addressed by ascertaining the interaction between people's socio-economic circumstances and the phenomenon of overpopulation. This indicates the need to understand the impact of overpopulation on the well-being and livelihood of a people, and prospects towards attaining social peace and societal stability.

The United Nations Information Network on Population and Development in Africa (UNINPDA)<sup>1</sup> provide that nations party to it, such as South African, must seek among other things to promote and protect socio-economic rights and the well-being of the people. Within the same context, the country, like many other countries in the world, is faced with an increase in population, but decrease in prospects of success, mainly owing to dwindling economic growth.

In 1994, South Africa became a Constitutional state. The Constitution of the Republic of South Africa, 1996 (*hereinafter, the Constitution*), became the supreme law of the republic, further asserting that any law or conduct inconsistent with it is invalid.<sup>2</sup> The Constitution also enshrined the Bill of Rights in chapter 2, which is accepted as the cornerstone of South Africa's democracy. The Bill of Rights entrenched a comprehensive set of human entitlements. In particular, section 27(1)(a) provides that 'everyone has the right to health care services, including reproductive health care. The inference drawn from section 27(1)(a) is that everyone who enjoys the privilege of this section is at liberty to procreate anyhow and without limitations. Now, the problem arises due to the fact that in

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<sup>1</sup> United Nation Population Information Network, 05 June 1996.

<sup>2</sup> The Constitution, 1996, s2.

South Africa there no specific legislation that seeks to control nor limit population growth. The South African government has yet to enact such laws and in the absence of laws that controls population, it becomes difficult for the state to manage the population in the manner that population will be in line with available state resources.

International Conference on Population and Development Program of Action, Chapter II, Principle 6 (ICPDPAUN, 1994) provide that “Sustainable development as a means to ensure human well-being, equitably shared by all people today and in the future, requires that the interrelations between population, resources, the environment and development should be fully recognized, appropriately managed and brought into harmonious and dynamic balance.”<sup>3</sup>

Moreover, the expanding of the population makes it difficult for countries to maintain or increase per capita spending on young people. For instance, this is practically linked with failures to make adequate provision for health, education and other basic social services. The United Nations Conference on Trade and Development (UNCTD), held in 2006 emphasized this point. Further, the United Nations Fund for Population Activities of 2011 provides that over the next forty years, the population of the least developed countries is projected to increase by about 15 million people per year and their labour force will expand by about 33 thousand persons per day.<sup>4</sup> International Labour Origination assert that these trend of increasing population poses challenges considering that 50% of the current population lives in extreme poverty and 80% of the labour is vulnerably employed.<sup>5</sup>

## **1.2. Problem Statement**

It has become commonplace that overpopulation, as a worldwide phenomenon, threatens the ability of humans to survive, and sustain peace and co-existence. Uncontrolled

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<sup>3</sup> United Nations, International Conference and Population Development, 18 October 1994. < A/CONF.171/13: Report of the ICPD (94/10/18) (385k)> accessed May 14, 2017.

<sup>4</sup> United Nations Population Fund” Population and Poverty”< <http://www.unfpa.org/resources/population-and-poverty>> accessed 12 July, 2017.

<sup>5</sup> Werner H. (2012). Population Matters for Sustainable Development, at p 7.

population bears a direct negative impact on socio-economic development. In some other countries like China, laws and policies have been enacted to control the population. However, in South Africa, the state has yet to enact laws aimed at controlling population growth. Due to the absence of such laws and policies that regulate population, the South African population is increasingly growing and this affects the prospects of people's well-being and better livelihood.

The Statistics South Africa reported that the current population of South Africa is estimated at 55.91 million.<sup>6</sup> This poses a greater challenge for the state when it comes to providing adequate social services to its citizens, especially the indigent people who largely depend on the state to provide social assistance, in order to enhance their human capabilities. Owing to the absence of legal instruments aimed at controlling population growth, the state becomes burdened and as a matter of fact, its capacity to deliver in accordance with its transformative vision will be inhibited, which implies inability to fulfil ideals of fundamental socio-economic rights such as adequate health services, quality education, proper housing and other basic services. Therefore, this dissertation presents a problem facing South Africa, that uncontrolled population growth and eventual overpopulation threatens the country's constitutional ambitions of redressing the imbalances of the past in social and economic terms. It illustrates how poverty and inequalities stand as immense inhibitors of transformation, and that these challenges are being worsened by uncontrolled population growth.

### **1.3. Research Question**

This dissertation ponders the prospects of how limiting the right to reproductive health may provide a workable solution or at least mitigate the effects of inequalities and material disadvantage inherited from the past. It questions the relationship between the phenomenon of overpopulation and challenges associated or arising out of inability on the part of the majority of citizens to realise and enjoy socio-economic rights. Thus, it

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<sup>6</sup> Statistics South Africa. Statistical release P0302 mid-year population estimate, 2016 <statssa.gov.za/publication/P0302216.PDF> accessed 27 June 2017.

questions the impact of overpopulation of the realisation of second-generation rights. The dissertation will further strive to explore the question of whether the state can draft legislation to limit the right to reproductive health, which will seek to better resolve the socio-economic challenges as a progressive mechanism towards progressive realization of socio-economic rights.

#### 1.4. Aims and Objectives

The study aims to analyse how the notion of limiting the right to reproductive health may be employed as a complementary method through which to effectively address the socio-economic challenges in South Africa. The study further seeks to explore the concept of family planning with the view of assisting the state to change the status quo of failing to realize the socio-economic rights.

The objective is to illustrate how limiting the right to reproductive health can assist the state to progressively realize socio-economic right. Further, it will illustrate a mechanism that may be employed in order to advance and improve access to basic social services such as health care and education. It shall educate the populace on how limiting reproductive rights will enhance their quality of life. Lastly, the study seeks to inspire thoughts that the extent of population growth should correspond with the ability of the state to provide essential social services.

#### 1.5. Literature Review

The Millennium Development Goals Report(MDGR) captured how the unmet of family planning and unwanted pregnancies directly makes it harder for families to afford inter alia schooling and health care for their children.<sup>7</sup> The report further contends that these results are due to the decline in usage and access to contraceptive in many countries.<sup>8</sup>

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<sup>7</sup> United Nations, The Millennium Goal Report (2008) Report, New York, at p 27.

<sup>8</sup> Ibid, footnote 7 above.



Lance Gable reflected on the reproductive right wherein he complimented and concurred with the millennium report which by stating that approximately 200 million women worldwide want to delay and avoid pregnancy, however, due to inaccessibility to contraceptives women find it difficult to delay and avoid those pregnancies.<sup>9</sup> This consequently results in the increase of population which subsequently lead to a burden on the limited state resources.

According to the Laxenburg Declaration on Population and Sustainable Development (LDPSD) (*hereinafter, the Laxenburg Declaration*),<sup>10</sup> the population is among the factors that inherently impede sustainable development. The Declaration further state that in order for countries to overcome socio-economic challenges, such countries must acknowledge the fact that population is at the centre of concern for sustainable development. Further, the characteristics of human beings must be at the core of any serious analysis when we are talking about socio-economic challenges and opportunities for sustainable development. The Luxenburg Declaration clearly illustrate that the state of any country that has socio-economic challenges cannot find a solution to those challenges if it fails to acknowledge and neglect the fact that human beings are in point of fact the one who is contributing to those problems.

Hall and Sambu focused on how funding is a fundamental factor that is needed to allow people to have access to basic services. However, due to many people being unemployed and surviving on a low income, access to adequate social services is hindered. Hall and Sambu assert that funding is an imperative factor that is required to have access to basic adequate service by the state, and often the state is the main role player that provides such social services.<sup>11</sup>

Soukeyna, on the other hand, stressed that countries that are experiencing the problems of the youthful or ageing population have taken measures to try to influence their birth

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<sup>9</sup> Lace, G (2010). Reproductive health as a human rights, at p 964-965.

<sup>10</sup> The Laxenburg Declaration on Population and Sustainable Development, Statement of global expert panel. (October 2011), at p 1.

<file:///D:/rreginald/print%20materials/Laxenburg%20Declaration%20on%20Population%20%20Development\_finall\_logos%20.pdf> accessed 12 July 2017.

<sup>11</sup> Hall K and Sambu W Income and social grant-children living in poverty (Children's Institute, University of Cape Town).

rates since these affect their economy and standard of living of the people. Some measures have been more effective than others, but ultimately government incentives may have little long-term influence.<sup>12</sup>

And she further contended that the carrying capacity of a country is important in determining its optimum population. Countries such as China, Singapore and Sweden are trying to bring their population levels back to ones which are neither too large nor too small to be supported by the resources available. If this is then achieved, their people will have a better quality of life due to an increase in services, infrastructure and incomes.<sup>13</sup> She further alludes that the primary concern is that funding is at the centre of socio-economic issues and that the only way to resolve the socio-economic issues is if we create opportunities for people to make an income so that they are independently able to solve their own problems without burdening the state.

According to the United Nations, Population and Development in Africa discussion document, the problem of overpopulation is not simply a problem of the number. It is a problem of welfare and development. The population has a serious consequence for the wellbeing of humanity worldwide. The United Nations further assert that overpopulation in many African countries detracts, among other things, the realization of development.<sup>14</sup>

It was further noted that the high birth rate results in increased population size which has led to increased dependency and burden on the government. This on its own accentuates the problems inter alia of unemployment, crime and poverty within our societies and communities.<sup>15</sup> The article clearly shows the relationship between the high population and how it suppresses the socio-economic development in South Africa.

David Rust expressed his view on the issue of the population by arguing that it is morally acceptable for developing countries to employ population controls, irrespective of what

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<sup>12</sup> Soukenya G (2006). To what extent can government control Birth Rate. Kingston School, Barcelona. April 9<sup>th</sup> 2006, at p 1. <file:///D:/rreginald/SOUKENYA%20G%20TO%20WHAT%20EXTEND.pdf> accessed 12 July 2017

<sup>13</sup> Ibid, footnote 12 above. p 2.

<sup>14</sup> United Nation, Population and development in Africa, prepared by Organization of African, Unity (OAU) and Economic commission for Africa (ECA), at para 1.

< <http://www.un.org/popin/icpd/conference/bkg/pop.html> > accessed 12 July 12, 2017.

<sup>15</sup> Ibid, footnote 14 above, at para 2.

controls are chosen. He further illustrates his point by giving an example that just as war is at the time needed to protect the certain protectable interest of a country (i.e. world war two), population control is needed in much the same way.<sup>16</sup>

Rust further allude that, one will be safe to assume that slowing population growth would help in solving socio-economic issues since the fewer human will translate into less competition for resources. Rust give a direct link on how socio-economic challenges are as a result of over-population and he further provides mechanisms that can be employed to address over-population. The first mechanism is coercive population control, this mechanism that government can impose upon its subjects such forceful abortion. The second mechanism is passive population control mechanism, this mechanism takes place wherein foreign aid stops assisting underdeveloped country and by so doing individual in that country will be inclined to limit the number of children that they have.<sup>17</sup>

Michele Gilman indicates that reproductive health is not merely about abortion. Access to family planning services is actually the most imperative factor that must be intertwined with the services of reproductive health.<sup>18</sup> Michele further argues that giving access to family planning contribute to the economy since the majority of women who would fall pregnant they will do so when they are financially and socially stable, however, if we do the opposite, we will pose a threat to the realization of sustainable socio-economic development.<sup>19</sup> It can be deduced from Michelle's writing that family planning is, in fact, a crucial service that must be afforded to women. However, she does not link the socio-economic challenges with a population like David Rust do in his writings.

According to Thomas, population determines the standard of living for the people, he argues that when the population is high the standard of living will be low and when the population is low the standard of living will be high and as a result of that population control measures must be employed. The first measure he delineates is preventive checks, which refers to an intentional reduction of fertility and the second is positive

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<sup>16</sup> Rust, D.L (2010). The Ethics of controlling population growth in the developing world, at p 71.

<sup>17</sup> Ibid, footnote 16 above, p 70.

<sup>18</sup> Gilman M (2016), How limiting women access to birth control and abortions hurts the economy. 28 April 2016 Associated press.

<sup>19</sup> Ibid, footnote 18 above.

checks which refer to malnutrition, diseases and famine which will result in failure to employ preventive checks measures to control population.<sup>20</sup>

The case of *Mazibuko and Others v City of Johannesburg*<sup>21</sup> dealt with the fundamental constitutional right, in particular, the right to access to sufficient water<sup>22</sup> as captured in terms of section 27 (1) (b) of the Constitution.

The applicant, in this case, challenged the City of Johannesburg Free Basic Water Policy. The complaint of the applicant was that the water policy that provides for free water to the resident of Johannesburg was not sufficient. In the Constitutional Court, the court ruled in favour of the applicant by inter alia stating that section 27 place an obligation on the state to take reasonable legislative and other measures that seek to protect socio-economic rights.

In the case of *the Government of the Republic of South Africa and Others v Grootboom and Others*,<sup>23</sup> the respondent had been evicted from their informal homes situated on a private land earmarked for formal low-cost housing. The high court held that, in terms of the Constitution, the state was obliged to provide rudimentary shelter to children and their parents on demand if the parent on demand if the parent were unable to shelter their children.

The appellant appealed against the decision in Constitutional court wherein it was held that the issue of whether socio-economic rights are enforceable at all in South Africa by the Constitution as construed in the judgement of Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa.

The court noted that when interpreting socio-economic rights, they must be interpreted in the context of chapter 2 of the Bill of Rights as well as the Constitution as a whole. And

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<sup>20</sup> Brandon L, (2007). The effects of population growth on economic performance in China and India, at p 2.

<sup>21</sup> *Lindiwe Mazibuko and Others v City of Johannesburg and Others*, 2009, ZACC 28.

<sup>22</sup> Section 27 (1) (b) of The Constitution.

<sup>23</sup> *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000, 46 CC, para 3.

further that the state was obliged to take a positive action to meet the needs of those living in the extreme condition of poverty and homelessness.<sup>24</sup>

Ahlburg, Kelly and Manson assert that population may in some instance be positive in that when young people grow older they will have contributed to household and eventually to the economy. However, the negative impact of the population is that it will among other lead to environmental degradation, which will lead to an increase in the scarcity of resources. Further, population growth also impairs the attainment of children education and health services. This will in turn likely to reduce their productivity as an adult.<sup>25</sup>

Brown, Gardner and Halweil contend that population growth has exceeded sustainable limits on environmental fronts, availability of water and unemployment. The authors further allude that population growth exacerbate the existing problems and making them more difficult to manage.<sup>26</sup> Jim Mars captured the utterance made by the England s Prince Phillip, the Duke of Edinburgh, wherein he alluded that human population growth is probably the single most serious long-term threat to survival and further that the world is in for major disaster if population growth is not curbed not just for the natural world but also for the human world. Prince Phillip further asserts that the more population increase the more we will consume which will eventually lead to fighting and wars. The prince last remarks were that we have no option but to control population growth voluntarily because if we don't, it will involuntarily be controlled by an increase in disease, starvation and

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<sup>24</sup> Ibid, footnote 23 above, para 24.

<sup>25</sup> Ahlburg DS, Kelly AC and Mason KO (eds), (1996), The impact of population growth on well-being in developing countries, at p 1.

<[https://books.google.co.za/books/about/The\\_Impact\\_of\\_Population\\_Growth\\_on\\_Well.html?id=cdPqCAAQBAJ&printsec=frontcover&source=kp\\_read\\_button&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.za/books/about/The_Impact_of_Population_Growth_on_Well.html?id=cdPqCAAQBAJ&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false)> accessed 13 July 2017.

<sup>26</sup> Brown LR, Gardner G and Halweil B, (2000), Beyond Malthus nineteen dimensions of the population challenge, at p 2.

<https://books.google.co.za/books?id=8dQAwAAQBAJ&printsec=frontcover&dq=BEYOND+THE+MALTHUS+NINETEEN+DIMENSIONS+OF+THE+POPULATION+CHALLENGES&hl=en&sa=X&ved=0ahUKEwjEiOzT8YXVAhVJLMAKHxb-BS0Q6AEIJjAA#v=onepage&q=BEYOND%20THE%20MALTHUS%20NINETEEN%20DIMENSIONS%20OF%20THE%20POPULATION%20CHALLENGES&f=false> accessed July 13, 2017.

war.<sup>27</sup> In terms of Children s Act 38 of 2005,<sup>28</sup>the government of the Republic is obliged to give effect to the rights of children as encapsulated in the act. Moreover, the act provides that the Republic must make provisions for structure, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children in the republic.<sup>29</sup>

Social Assistance Act 13 of 2004,<sup>30</sup>places a duty on the state to administrate the social assistance and payment of social grants to deserving recipients.<sup>31</sup> The act further state that the minister, must outsource money from parliament to provide for child support, care dependency grant, foster child grant, disability grant, an older person's grant, war veteran's grant and grant in aid. <sup>32</sup>

## **1.6. Research Methodology**

The research methodology to be employed in respect of the study is qualitative. The research is based on an extensive literature study on the subject of limiting the right to reproductive health utilizing library materials which include but not limited to legislation, textbooks, academic journals, regulations, charters and declarations. It is a non-empirical research. The Capabilities Approach will be employed as a tool of analysis.

## **1.7. Comparative Study: South Africa and China**

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<sup>27</sup> Mars J, (2016), How corporate owners are killing us, p 1.

<https://books.google.co.za/books?id=BcecBAAAQBAJ&printsec=frontcover&dq=how+corporate+owners+are+killing+us&hl=en&sa=X&ved=0ahUKEwiNpaq19YXVAhWJBsAKHRkWCRO6AEIJAA#v=onepage&q=how%20corporate%20owners%20are%20killing%20us&f=false> accessed July 13, 2017.

<sup>28</sup> Children s Act 38 of 2005.

<sup>29</sup> S 2(c) and (d), Children Act.

<sup>30</sup> Social Assistance Act 13 of 2004.

<sup>31</sup> S 3 (a) and (b), Social Assistance Act.

<sup>32</sup> S 4 (a-g), Social Assistance Act.

The comparative study will be undertaken between South Africa and China. The focus will be on analyzing the Chinese population controls and consider if the Chinese population controls can be used to prompt enactment of a similar policy in South Africa. The reason for comparing South Africa and China is on the basis that China is the first country that successfully introduced and implemented the one-child policy and moreover the comparison will assist the South African government to be pro-active in approach as the Chinese have provided models that we can learn from.

## **1.8. Outline of Chapters**

### **1.8.1 Chapter 1: Introduction**

This chapter is introductory in nature. It will deal with the research statement, aims and objectives of the study and it will further contain a general introduction to the subject matter.

### **1.8.2 Chapter 2: Theoretical Framework**

The chapter will provide a theoretical framework premised on the Capabilities Approach of Amartya Sen and Martha Nussbaum, which will primarily focus on the people and their capabilities, capabilities referring to their freedom and opportunities on how to better themselves and adequately address socio-economic issues.

### **1.8.3 Chapter 3: The Constitutional context of the Right to Reproductive Health**

This chapter will deal with the South African context of the right to reproductive health and further deal with the interpretation, application and limitation of this right. Lastly, explore if this right can be curtailed within the constitutional boundaries with the aim of curbing population in South Africa.

#### **1.8.4 Chapter 4: Right to Reproductive Health and Socio-economic development**

This chapter will illustrate the linkage/relation between the right to reproductive health and socio-economic development. It will further examine the effects of the right to reproductive health on the promotion and realization of socio-economic development in South Africa.

#### **1.8.5 Chapter 5: Comparative Analysis**

The provisions of China one-child policy laws and policies will be discussed and compared to the South African position with strict focus on limiting the right to reproductive health, further a thorough analysis will be made to consider whether the Chinese one child policy can be used in drafting our own legislation on limiting the right to reproductive health.

#### **1.8.6 Chapter 6: Conclusion and Recommendations**

This will contain a conclusion and recommendation for improvement and adequate realization of socio-economic rights in South Africa.



## CHAPTER 2: THEORETICAL FRAMEWORK

### 2.1 Introduction

This chapter presents a theoretical framework, whose fundamental purpose is to identify tools that may be used to analyse factors affecting people's social and economic development. The Capabilities Approach speaks to aspects of social development and will be discussed in the context that may inform the need for limiting the right to reproductive health. This chapter will further seek to establish the potential impact of limiting or not limiting the reproductive right as a way of addressing people's social and economic challenges. The chapter further discusses the combination of a number of theories to provide insight into the challenges that South Africa is faced with as a result of overpopulation which is linked with limiting reproductive right as a control mechanism to address socio-economic challenges.

### 2.2 The Capabilities Approach

In the context of moral and political philosophy,<sup>33</sup> the Capabilities Approach provides a theoretical framework that became a focus on studies about human wellbeing, development and justice. The Capabilities Approach was pioneered by Amartya Sen and Martha Nussbaum. The fundamental function of the capabilities approach is to seek to purport that freedom to achieve well-being is a matter of what people are able to do and to be. It is noteworthy that the capabilities approach is not premised strictly on wellbeing as it is a multidisciplinary framework. The capabilities approach encapsulate fundamental normative claim, the claim that freedom to attain wellbeing must be in line or in accordance with the people's capabilities, meaning that people should be afforded opportunities in order for them to realize their wellbeing. It, therefore, means that the theory is not explanatory in nature, for example, the theory will not explain what poverty is, but it will assist in abstracting this notion of poverty.

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<sup>33</sup> Robeyns, Ingrid, "The Capability Approach", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL <<https://plato.stanford.edu/archives/win2016/entries/capability-approach/>>. Accessed 26 May 2018.

### **2.3 Martha Nussbaum's Perspective**

Martha Nussbaum's perspective<sup>34</sup> is that the Capabilities Approach provides for an account of human capabilities, and as such it has been used to answer distinct various questions, such as: what is the living standard? what is the quality of life? What is the relevant type of equality that we should consider in political planning?<sup>35</sup> Nussbaum further alludes that the Capabilities Approach is intertwined with the theory of justice because the theory of justice seeks the need for an account of what is attempting to attain for the people. Furthermore, justice theory fundamentally focusses on promoting the desired state of the people and it also gives an account of the proper goal of government, which bring all citizen up to a certain basic minimum level of capability.

### **2.4 Amartya Sen's Perspective**

Amartya Sen provides that the Capabilities Approach to a person is a focused or concerned with that person's actual ability to attain different valuable functioning's as a part of living. Sen further provides that functionings represent a state of a person wherein that person is able to do various things and leading his or her life. Therefore, the capabilities of a person are reflecting on the combination of functioning a person can achieve. Moreover, Sen asserts that capabilities approach is premised on the view of living as a synthesis of different "doings and beings", with the quality of life to be determined in accordance of the capability to achieve valuable functionings.

Sen went on further to allude that certain functionings are fundamental and imperative, such as being sufficiently nourished and being in good health. These functions Sen assert that they are strongly valued by all people for various reasons, such as the attaining self-respect or being socially integrated within the society.

Sen also discuss capabilities within social context wherein he provides that when dealing or confronted with extreme poverty in developing countries, the fundamental functioning required in these countries may be relatively small number of central important functionings and the corresponding basic capabilities, for example, the ability to be

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<sup>34</sup> Nussbaum, M.C. (1997). Capabilities and Human Rights, 66 Fordham L. Rev. 273 (1997), p 279.

<sup>35</sup> Ibid, footnote 34 above.

adequately nourished and well sheltered may be a fundamental functioning to the people who live in developing countries as opposed to the people who live in developed countries whom shelter and food is sufficient.

## **2.5 Central Elements Drawn from Sen and Nussbaum**

The central elements drawn from the capabilities approach of both Sen and Nussbaum are that both authors agree that capabilities approach are important and fundamental for human development. Therefore, what can be drawn or learned from Nussbaum is that capabilities approach are fundamental in that they provide an answer that will assist in the betterment of human living standards, for instance, Nussbaum asserts that capabilities approach seeks to answer questions such as, what is the living standard? what is the relevant type of equality that we should consider in political planning? what is the quality of life? From these assertion elements that can be drawn are that Nussbaum's perspective is premise more on the quality of life and how do we improve it through employing his capabilities approach.

The other element that can be drawn from Nussbaum's perspective is that he interlinks the capabilities approach with the theory of justice, wherein he describes justice as the proper goal of government which seeks to bring about all citizen to acquire a basic minimum standard of living.

On the other hand, central elements that can be drawn from Amartya Sen's capabilities approach are that capabilities are fundamental for the betterment of human lives. He terms those capabilities as "basic abilities", which inter alia include food, shelter and good health. Sen alludes that these capabilities are fundamental and imperative to every person, although these basic abilities are different and people might need them for various reasons, they still remain fundamental. Sen further provides an example wherein he provides that where a country is faced with an extreme poverty, what will be fundamental and important to the citizen of that country will be basic abilities (food). Lastly, it can be drawn from Sen capabilities approach that the capabilities approach seeks to assist people to live a better life, however in order for them to accomplish and lead that life, that is dependent on their functionings, functioning's referring to their doings and beings.

### 2.5.1 Further Literature

According to Hartmann,<sup>36</sup> population control programs all start with a basic premise, which entails that in order to improve people's lives, there must be a reduction in the rate of growth of the world population.<sup>37</sup> In essence, Hartmann alludes that in order for the state or government to improve socially and economically, the first step is to acknowledge that uncontrolled population is a challenge and not only that, but for the state or government to achieve the improvement and development of its people, the state must secondly have measures in place to reduce population growth.

Hartmann further argues that the population is a symptom as opposed to a cause of socio-economic challenges and if improvement is what the state strives for, the very same state must allow women to voluntarily partake in birth control as opposed to birth control being imposed upon them.<sup>38</sup>

Hartmann went on further and alludes that limiting reproductive rights can assist in curbing the social and economic challenges, and extends her argument to say that, when one is dealing with population control, we need to address it from the point of respecting women and demonstrating commitment toward eliminating inequalities among groups of nations as opposed to advocating for women's rights for opportunistic reasons.<sup>39</sup>

Hartmann illustrates the point that the manner that many countries employ to deal with population control is perplexing, she gives an example about Bangladesh, where some regions in that country do not have birth control mechanisms in place and in those regions birth control is practised, is practised in a manner that she deems improper. She asserts that birth control in some regions is in full operation but she disagrees with this position to the extent that the government does this without even offering adequate medical

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<sup>36</sup> Hartmann, B. (1995). *Reproductive rights and wrongs: The global politics of population control*. P xi-125.

<sup>37</sup> *Ibid*, footnote 36 above, p xi.

<sup>38</sup> *Ibid* footnote 36 above.

<sup>39</sup> *Ibid*, footnote 36 above, p xii.

screening, supervision and follow-ups.<sup>40</sup> She viewed this to be an injustice to women as male were excluded to birth control and the responsibility that came with it.<sup>41</sup>

Hartmann concludes by providing that current policies that regulate birth control are failing because their approach is to control women by not taking into account the interest and the right of individual woman as a starting point. Instead, the approach of the current policies that regulate birth control is imposing in nature.

According to MacNamara, former president of World Bank,<sup>42</sup> he provide that rapid population is a result of a catalogue of miseries, such as unemployment, an increase in poverty and the rise of government authoritarian. He cautions that if the world fails to control the population and bring down population growth through the voluntary measure, the Malthusian theory of checks of starvation and disease will prevail. Alternatively, the government will find itself in a position to have to take coercive measures to control population.<sup>43</sup>

McNamara depicts his argument by averring that, in order to have a proper population control, population policies must encapsulate, firstly, a collection of data and pen down the pernicious effect of rapid population growth. Secondly, leaders must show political commitment in addressing the challenges that are brought about by rapid population growth. Lastly, the government must intensify its support for family planning services and programs which will assist in curbing the rapid population growth, because in the absence of the latter, the gap between the rich and poor will continue to grow more wider.<sup>44</sup>

MacNamara, further links overpopulation with employment. He makes allusions that as much as there are an optimistic views and assumptions of renewed vigour in the world economy, job sectors are not in a position to create more work due to imbalances between jobs and population.<sup>45</sup>

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<sup>40</sup> Ibid, footnote 36 above, p xv.

<sup>41</sup> Ibid, footnote 36 above, p xvi.

<sup>42</sup> MacNamara R.S. (1984). Time bomb or myth: The population problem, at p 1120.

<sup>43</sup> Ibid, footnote 42 above, p 1131.

<sup>44</sup> Ibid, footnote 42 above, p 1115.

<sup>45</sup> Ibid, footnote 42 above, p 1116.

He went further to say that, overpopulation will also affect the sector of agriculture, that agricultural sector will not grow nor expand in terms of its employment. He asserts that this is due to the fact that the ratio between land and population is already at a very low level. He motivated his argument by citing an example that, between the year of 1953 and 1971 that 66% increase in a number of rural households was coupled with 2% in cultivated land. These numbers demonstrate that small land must be subdivided to accommodate a large number of population and this trend has led to a decrease in employment in the agricultural sector in recent years.<sup>46</sup>

However, Hartmann does not agree with MacNamara, in fact, she criticizes him, by asserting that McNamara's version provides that "policymaker must draw up the policy, then functionaries must implement those policies and lastly the poor masses must comply by limiting their fertility". She compares this with military style, by asserting that "the chain of command is clear as a military hierarchy". This seeks to manage civil society like an army at war.<sup>47</sup>

Rust avers that population must be controlled voluntarily or through coercive measures by the government or alternatively through foreign aid seizing to provide such aid. He proclaims that this will deter individuals or families from having many children. Rust further allude that, one will be safe to assume that slowing population growth would help in solving socio-economic issues since the fewer human will translate into less competition for resources.<sup>48</sup> Thomas asserts that population dictate the standard of living and accordingly when people are few and manageable, the standard of living will be high. However, the standard of living will be low if there is overpopulation. He concurs with MacNamara, by alluding that population control is inevitable, it will happen either deliberately through voluntary population control measures which will take place through what is termed as positive checks, which refer to the reduction of the population through malnutrition, diseases and famine.<sup>49</sup>

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<sup>46</sup> Ibid, footnote 42 above, p 1116.

<sup>47</sup> Ibid, footnote 42 above, p 125.

<sup>48</sup>Rust, D.L (2010). The Ethics of controlling population growth in the developing world, at p 71.

<sup>49</sup> Brandon L, (2007). The effects of population growth on economic performance in China and India, at p 2.

Brown, Gardner and Halweil, intertwine population with the environment, they both concur and assert that population growth has extended to the sustainable limit on the environmental front, as such this will result in severe irreparable degradation on the environment. This notion was also supported and pointed out by Ahlburg, Kelly and Mason. They also assert that; negative impact of population is that it inter alia leads to environmental degradation which in turn result in a scarcity of natural resources. Ahlburg et al affirm that overpopulation growth also impairs the attainment of children education and health services. This will, in turn, be likely to reduce their productivity as an adult.<sup>50</sup>

## **2.6 South African's Realities**

The 1994 election gave South African people hope that the dawn of democracy will usher in political and socio-economic changes to better the lives of South African people who were denied civil rights under the apartheid regime. 1994 brought about the start of a new journey to undo and reverse the apartheid legacy and to construct a new country based on the democratic principles as encapsulated in the Constitution.<sup>51</sup> However, 24 years later after democracy, South African people still experience socio-economic challenges such as poor service delivery, poverty, corruption, high unemployment, the increase in dependents on state social security and many other challenges.

The 1994 National Election Manifesto<sup>52</sup> of the African National Congress(ANC) capture the ideal goals which the ANC promised to deliver to the people of South Africa, inter alia those goals are; the improvement of the quality of life, ending rural poverty, housing and service for all, health: caring for all people. These were among the ideal goals that the African National Congress manifesto pledge to the people of South Africa.

### **2.6.1 Discussion**

#### **2.6.1.1 Unemployment**

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<sup>50</sup> Ahlburg DS, Kelly AC and Mason KO (eds), (1996), The impact of population growth on well-being in developing countries, p 1.

<sup>51</sup> Munusamy R. For better, for Worse: SA 1994-2013. Daily Maverick 29 April 2013.

<sup>52</sup> African National Congress

[www.anc.org.za/documents/Manifestos/any-author/any-yea](http://www.anc.org.za/documents/Manifestos/any-author/any-yea) accessed 3 June 2018

According to Statistics South Africa,<sup>53</sup> it illustrates that the government has not lived to its promised ideas which were captured in the African National Congress manifesto, rather the population of South Africa as of 31 July 2017 stood at 56,52 million.<sup>54</sup> In the 56,52 million, it was recorded that unemployment was 27,7%, the highest since 2003. Currently, in 2018, the unemployment level is standing at 26.7, implying that one out of three young people is employed. Moreover, of the 10.3 million people aged 15-24 years, 3.3 million of those people were not employed, in education or in training. On the other hand, graduate's unemployment rate remained high and unchanged in all provinces except Northern Cape. With regard to the absorption in employment which in 2017 the stats SA record it at 144 000, which was offset by the growth in the number of job seeker which was at 433 000,<sup>55</sup> which then implies that the number of unemployed as much as there was absorption the numbers still increased.

### **2.6.1.2 Poverty**

In terms of the data released by Statistics South Africa(SSA), poverty is on the rise in South Africa. The data illustrate that poverty trends have increased from 53,2% in 2011 to 55.5% in 2015. These figures translate into 30,4 million South African people living in poverty. Accordingly, stats SA in their reports asserts that these high level of poverty are due to, inter alia, high consumer prices, continuing high level of unemployment, the greater dependency of South African people on credit which in turn pulled more people in poverty. It further alludes that due to a high level of poverty, the majority of young people grow up in poverty which then threatens healthy childhood development and this are the reality of over 13 million children in South Africa.

These realities were also expressed by Chutel,<sup>56</sup> whom in her article articulated that, since 2011 about 3 million South African were pushed below the poverty line and further that about 30.4 million South African out of the then 55.5 million population number were living on less than R992.00 and per person per month.

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<sup>53</sup> Statistics South Africa  
[www.statssa.gov.za/](http://www.statssa.gov.za/) accessed 3 June 2018.

<sup>54</sup> Ibid, footnote 53 above.

<sup>55</sup> Ibid, footnote 53 above.

<sup>56</sup> Chutel L” Post-apartheid South Africa is failing the very people it liberated” 25 August 2017 Quartz Africa



### **2.6.1.3 Education**

According to Lehohla,<sup>57</sup> insufficient progress has been made with regards to enrolment and participation in education, especially among the black African. In respect of the transition from grade 12 to tertiary, there is a deterioration in that transition in recent years for both black African and coloured.<sup>58</sup>

### **2.6.1.4 Service Delivery**

Makale,<sup>59</sup> allude that, there a lot of areas in South African which are underdeveloped due to the majority of people in those areas being poor and as result of that, those people rely and depend on government social grants. She avers that the number of people who rely on social grant has increased from 2003 to 2013. In 2003 the number of people who depended on the social grant was 12.7 % and in 2013 the number increased to 30.2 %. As a result of the increase in population, it led to declining in access to basic service delivery, it became difficult and strenuous for government to accommodate more people with less financial resources in order to ensure that everyone has access to basic services.<sup>60</sup>

She further avers that municipalities that display negative access to basic services delivery are as a result of among other, high population growth.<sup>61</sup> She continues to provide an example that “the eMalahleni population has more than doubled since 1990, from 56 349 to 123 663 and that municipality had high access to service delivery as compared to other municipality in 1996 when the population was lower”.<sup>62</sup>it can be inferred that Thandi Makale, allude that increase in population growth is a factor that hinders and declines effective services delivery in South Africa.

## **2.7 Conclusion**

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<sup>57</sup> Lehola PJ (2016). Education series volume 3: educational enrollment and achievement, report no:92-01-01

<sup>58</sup> Ibid.

<sup>59</sup> Makale Thandi *Service Delivery in South African Rural Municipality*. (LLM Dissertation 2015 Stellenbosch) p 11.

<sup>60</sup> Ibid, footnote 59 above.

<sup>61</sup> Ibid, footnote 59 above, p 15.

<sup>62</sup> Ibid, footnote 53 above.

In conclusion, it's noteworthy to recognize that in order to adequately address the South African socio-economic challenges, South Africans must recognize and acknowledge that population plays a central role in mitigating or aggravating the socio-economic challenges that the country faces. Mqamelo,<sup>63</sup> in her article, she pens down that more often, when dealing with issues facing South Africa, issues such as, job creation, housing backlog, water shortage, the skill deficit or land issue, South African are reluctant to speak about “the elephant in the room which is population growth”, yet there is hardly a problem today be it in the world or South Africa that would not be ameliorated by a cessation to our rapidly increasing number.<sup>64</sup>

She further avers that, the sooner we stop polarizing the issue of population, the sooner we will stabilize our population which will translate in South African being in the position to address the material conditions and challenges we are faced with.

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<sup>63</sup> Mqamelo J (2013) “burning issues of SA’s population growth: time to look an elephant in the eye” 26 February 2018.

<sup>64</sup> Ibid, footnote 63 above, para 2.

## **CHAPTER 3: THE CONSTITUTIONAL AND LEGISLATIVE CONTEXT OF THE RIGHT TO REPRODUCTIVE HEALTH**

### **3.1 Introduction**

The constitution is the mother of all legislations, in order to discuss the constitutional context of the right to reproductive health and the legislative apparatus together with the case laws which gave birth to judicial precedents which deals with the betterment and development of the people of South Africa. Such must be done within the constitutional boundaries, and as such, the interpretation of acts and case law will be within the parameters of the constitution and within the contextualization of this right of reproductive health in line with the domestic and international laws.

### **3.2 The Right to Procreate and The Constitution of the Republic of South Africa,1996**

Section 2<sup>65</sup> of the Constitution provides that the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. This entails that all laws of the Republic must be in line with the Constitution in order for those laws to be recognised as valid and binding. In other words, laws endorsed must give effect to the constitutional provisions such as section 10 on the right to human dignity,<sup>66</sup> section 11 on the right to life,<sup>67</sup> section 26 on the right to housing,<sup>68</sup> section 27 on the right to health care, food, water and social security.<sup>69</sup> Further section 38 affirms that rights in the bill of rights can be enforced.<sup>70</sup> It, therefore, means that failure by the state to reasonably realise the rights in the bill of rights, enforcement can ensue.

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<sup>65</sup> S 2, The Constitution.

<sup>66</sup>Ibid, S 10. The Constitution.

<sup>67</sup> Ibid, S 11. The Constitution.

<sup>68</sup>Ibid, S 26. The Constitution

<sup>69</sup> Ibid, S27. The Constitution.

<sup>70</sup>Ibid, S 38. The Constitution.

In terms of section 10, Everyone has inherent dignity and the right to have their dignity respected and protected.<sup>71</sup>

Dignity is a fundamental right in itself. The 1948 Universal Declaration of Human Rights (UDHR)<sup>72</sup> enshrined human dignity in its preamble: '*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*'<sup>73</sup> In the absence of population control, and limited resources, certain rights afforded by the Constitution will not be progressively realised and that on its own will undermine the dignity of those individuals.

Section 11, provides that Everyone has the right to life. In the event that any right in the Bill of Right is violated, threatened or undermined, automatically the right to life is implicated because all the rights in the bill of the right are all depended on the right to life. In the absence of the right to life, one cannot speak about the right to health care, dignity, choice, equality or even privacy, because all these rights are interdepending on the right to life for their existence. Therefore, for the state not to find itself in a position which seeks to suggest that, the state is not upholding and protecting the right to life, it should rather draft legal instruments aimed at controlling population growth.

Section 27 provides that: -

- 1) Everyone has the right to have access to
  - a) health care services, including reproductive health care;  
sufficient food and water; and social security, including, if they are unable to
  - b) support themselves and
  - c) their dependents, appropriate social assistance.

The state must take reasonable legislative and other measures, within its available  
2) resources, to achieve the realization of each of these rights.<sup>74</sup>

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<sup>71</sup>Ibid, The Constitution, S 10.

<sup>72</sup> The Universal Declaration on Human Rights, 10 December 1948

< <http://www.un.org/en/universal-declaration-human-rights/>> accessed at 03 September 2017

<sup>73</sup> Ibid, footnote 72 above.

<sup>74</sup> S 27, The Constitution.

Section 27 imposes duties on government to ensure that everyone is afforded an access to health care services, food, water and social assistance. The section goes further and requires the state to draw up legislative measures which seek to realise the provision captured in section 27 (1) (a), (b) and (c) respectively. It, therefore, means that the state is burdened to provide and fulfil the rights in the Bill of Rights. Statics South Africa,<sup>75</sup> provide that the current population is estimated at 55,91 million<sup>76</sup>, now taking into account that this poses a countless challenge for the state when it comes to providing adequate social services to its citizens, especially the indigent and unemployed people who largely depend on the state to provide social assistance.

In the case of *The Government of the Republic of South Africa and Others v Grootboom and Others*<sup>77</sup> it was said “millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services.<sup>78</sup> These conditions already existed when the Constitution was adopted. “this utterance compliments the fact that state with its limited resources is not in a position to cater for everyone socio-economic right, consequently population control must be considered as a solution to socio-economic challenges.

in the case of *Treatment Campaign v Minister of Health*,<sup>79</sup> the Constitutional court made the following utterance in relation to Bill of Rights, not in so many words but in effect that the rights captured in the bill of rights are obligatory in nature and therefore the state must ensure that they are realized.<sup>80</sup>

Section 28(2) best interest of the child provide that: -

- 1) Every child has the right
  - a) To a name and nationality from birth,

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<sup>75</sup> Statistics South Africa. Statistical release P0302 mid-year population estimate, 2016 <statssa.gov.za/publication/P0302216.PDF> accessed 03 September 2017.

<sup>76</sup> Ibid, footnote 75 above.

<sup>77</sup>Government of the Republic of South Africa and Others v Grootboom and Others 2000 ZACC 19.

<sup>78</sup> Ibid, footnote 77 above.

<sup>79</sup> Minister of health v treatment action campaign, at para 30.

<sup>80</sup> Ibid, footnote 79 above.

- b) To family care, or to appropriate alternative care when removed from the family environment;
  - c) To basic nutrition, shelter, basic health care services and social services;
  - d) To be protected from maltreatment, neglect, abuse or degradation;
  - e) To be protected from exploitative labour practices;
  - f) Not to be required or permitted to perform work or provide services that
    - i) Are inappropriate for a person of that child's age; or
    - ii) Place at the child's well-being, education, physical or mental health or spiritual, or moral or social development
- 2) A child's best interest is of paramount importance in every matter concerning the child.<sup>81</sup>

Section 28 provides that the state must take measures to ensure that children are well protected, provided with adequate health care, shelter and provided with nutritious food. Further that the child's best interest is of utmost importance. All these provisions to be realized requires resources, and with state limited resources and corruption which is taking toll on the state resources, its rather becomes difficult for the state to realise these provisions, therefore the viable alternative solution is to prevent the problem before it even transpire by limiting reproductive right as a mechanism to control population growth.

In terms section 26<sup>82</sup> of the constitution, it provides that everyone has the right to have access to adequate housing and moreover the state must take steps to expedite the realization of this right. Section 26 further gave birth to The Housing Act 107 of 1997<sup>83</sup>. The Housing Act in its preamble explicitly provides that the government must lay measures in place to ensure the realization and effect of section 26. It further entails in terms of its provisions, in particular, section 9 (1)(a)(iii),<sup>84</sup> that the local municipality must ensure and provide access to among other basic services, water, sanitary and electricity. Section 26 together with housing Act, therefore, implies that, the government must cater to these services to every person who is in need of such services, now taking into account the increase in population rate, poverty and unemployment rate, it is therefore based on

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<sup>81</sup> S 28, The Constitution.

<sup>82</sup> S 26, The Constitution.

<sup>83</sup> Housing Act 107 of 1997.

<sup>84</sup> Ibid, footnote 83 above, s 9.

that rate that it can be suggested that, the government will not be in a position to cater and provide those services to the people.

The Local Government: Municipal Systems Act 32 of 2000 (*hereinafter, referred to as Municipal Systems Act*)<sup>85</sup> gives legislative content to the several constitutional responsibilities of local government. Section 4(2)<sup>86</sup> of the Municipal Systems Act sets out the responsibilities of municipal councils, which exercise the executive and legislative authority at the municipal level. In particular, section 4(2)(f)<sup>87</sup> provides as follows:

(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to  
(f) give members of the local community equitable access to the municipal services to which they are entitled."<sup>88</sup>

In essence, the Municipal System Act place responsibilities on municipality which represent the government to ensure that it provides services to people within its area of jurisdiction. The provisions of the Act even go further to say that people are entitled to those services, which implies that it is not a privilege but rather a right, which has legal effect. Accordingly, the Statistics South Africa illustrate that the number of people who are in unemployed is increasing,<sup>89</sup> which then suggest that those who cannot afford will then depend on the municipalities to provide free services. The financial and Fiscal report<sup>90</sup> also support this notion, it is testified in the report that, population density has a negative impact on the municipal expenditure, suggesting that when population increase that leads to strain on municipal infrastructure and services.

### **3.3 The Limitation Clause and Social Development**

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<sup>85</sup> The Local Government: Municipal Systems Act 32 of 2000.

<sup>86</sup> Municipal system act, s4(2).

<sup>87</sup> Ibid, footnote 86 above, s4(2)(f).

<sup>88</sup> Ibid, footnote 87 above.

<sup>89</sup> Statistics South Africa

[www.statssa.gov.za/](http://www.statssa.gov.za/) accessed 3 June 2018

<sup>90</sup> Financial and Fiscal Commission, 2012-2013, Technical Report, p 129.

<file:///C:/Users/ReginaldM/Downloads/Chapter%207%20-%20Estimating%20the%20Factors%20that%20Influence%20Municipal%20Expenditure.pdf> accessed 20 June 2018

S 36 of the Constitution<sup>91</sup> clearly outlines, how and when rights contained in the Bill of Rights can be limited. The provisions of s 36 provide that, limitation of the rights in the Bill of Rights can be done, provided that, such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.<sup>92</sup> Thus then suggest that the state is empowered in terms of the constitution to limits rights even those that are captured in the Bill of Rights, as long as the following factors are taken into consideration;

- a. the nature of the right,
- b. the importance of the limitation,
- c. nature and extent of the limitation,
- d. the relation between the limitation and purpose and
- e. less restrictive means to achieve the purpose.

Thus the provision of s 36 permits the state to limit any rights provided the state adhere and complies with the provisions of s 36. Therefore, the state can more in particular limit the right to reproductive health or procreate in terms of s 27 (1) (a) of the Constitution<sup>93</sup> for the purpose of advancing social development in the country. Moreover, s 27 (2) of the Constitution entails that the state must take reasonable legislative measures within its available resources to progressively realise the rights in the Bill of Rights.<sup>94</sup> An inference can be drawn from the provision of s 27 (2) that in an instance where the state resources are not available or are limited to cater for everyone, the state cannot be obliged to perform beyond its resources. Therefore, when the state limits the right to procreate or the right to reproductive health, such will allow the state to also have a regulated population which will complement and synchronize the state available resources with the view of advancing and enhancing social development.

### **3.4 Children's Act 38 of 2005**

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<sup>91</sup> s 36, The Constitution.

<sup>92</sup> Ibid, footnote 91 above.

<sup>93</sup> Ibid, footnote 91 above, s 27 (1).

<sup>94</sup> Ibid, footnote 91 above, s 27 (2).



In terms of Children's Act 38 of 2005,<sup>95</sup> the government of the Republic is obliged to give effect to the rights of children as encapsulated in the act. Moreover, the act provides that the Republic must make provisions for structure, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children in the republic.<sup>96</sup> This then suggests that the government must take initiative to provide such services as encapsulated in the act and the constitution.

### **3.5 Social Assistance Act**

Social Assistance Act 13 of 2004,<sup>97</sup> places a duty on the state to administrate the social assistance and payment of social grants to deserving recipients.<sup>98</sup> The act further state that the minister, must outsource money from parliament to provide for child support, care dependency grant, foster child grant, disability grant, an older person's grant, war veteran's grant and grant in aid. <sup>99</sup> It can be deduced from the provisions of the act that it places a duty on the government to provide financial support to its people, although not all but those who cannot afford and falls under the specified classes or categories above. Since it is clear that the population in South Africa is growing at a rapid pace as captured in terms of Statistics South Africa, which provide that the current population is at 55.91 million,<sup>100</sup> and further taking into account the rise in unemployment, poor service delivery and corruption among other factors, it therefore means majority of people who cannot afford to pay for basic services, the government must subsidise such people with the limited resources within its disposal. Now, the adequate mechanism that the government can employ will be to control the population so that the resources synchronize with the population.

### **3.6 The Choice of Termination of Pregnancy Act**

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<sup>95</sup> Children's Act 38 of 2005.

<sup>96</sup> S 2(c) and (d), Children Act.

<sup>97</sup> Social Assistance Act 13 of 2004.

<sup>98</sup> S 3 (a) and (b), Social Assistance Act.

<sup>99</sup> S 4 (a-g), Social Assistance Act.

<sup>100</sup> Statistics South Africa. [www.statssa.gov.za](http://www.statssa.gov.za)

The preamble of the Act state that the Act repeals the restrictive inaccessible provisions of the previous act, and promote reproductive rights and extend freedom of choice, by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy.<sup>101</sup> The Act recognizes the woman's right to choose and provide her with the choice over what she would like to happen with her body, I, therefore, submit that the Act can be used as a foundation for formulating population control legislation. Already we have an Act that allows the women to limit their reproduction through abortion, it can be taken a step further by drafting legislation that will deal with controlling population to complement the current Act that deals with abortion.

In the case of *Christian Lawyers Association v Minister of Health*,<sup>102</sup> the Choice of Termination of Pregnancy Act came under court scrutiny. The high court had to decide on the constitutionality of the Choice on Termination of Pregnancy Act, which legally afforded and allowed abortion in South Africa. The Christian Lawyers Association argued that the Act is not in line with the Constitution, in fact, it violates one of the fundamental provisions of the Constitution, which is the right to life,<sup>103</sup> as encapsulate in section 11 of the Bill of Rights of the Constitution. The government in its responded argued that constitutional rights don't apply to foetuses and that there was no case to answer to. The court accepts the government's argument and the case was dismissed. One would agree that this case is to some extent deal with population control in a form of abortion, although not directly linked to the limiting reproductive right. It can equally be said that an abortion is one of the controls to control the population.

In the case of *Joseph and Others v City of Johannesburg and Others*,<sup>104</sup> the court had to decide on whether it was legal for the city of Johannesburg municipality to terminate the electricity of Mr Leon Joseph, further if such termination is in contravention with the Constitution. In the submission, the applicant (Leon Joseph) alluded that his rights in terms of the Constitution were materially and adversely affected by the City of

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<sup>101</sup> The Choice of Termination of Pregnancy Act, 92 of 1996.

<sup>102</sup> *Christian Lawyers Association V Minister of Health* 1998.

<sup>103</sup> S 11, The Constitution.

<sup>104</sup> *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) (9 October 2009).

Johannesburg. The applicant relied on section 26:<sup>105</sup> the right to housing and section 10:<sup>106</sup> the right to dignity respectively of the Constitution. Further, he also relied on the Housing Act 107 of 1997, which solidifies that it is the duty of the government to in particular local government to ensure access to adequate housing which is coupled by services, inter alia, electrical services.

The court in its judgement ordered that the termination of electricity supply by the City to Mr Leon Joseph Ennerdale Mansion is declared to be unlawful. This judgement, therefore, infers that since housing, it's a right, the government must realise it as such and together with the services coupled with it, such as electricity services.

### **3.6.1 International Instruments**

South Africa is a party state to the International Covenant on Economic, Social and Cultural Rights (*hereinafter, referred to as The Covenant*),<sup>107</sup> therefore resolution and decision passed by the Covenant are binding on the South African government. Article 11 of the Covenant provide that, state parties to the Covenant must ensure through the implementation of measures that it betters and improve the quality of living standard of its people, by providing adequate housing and food.<sup>108</sup> Further article 13.2,<sup>109</sup> state that party state must provide free primary education for all. Although secondary and higher education should be made accessible to all, it must be done so, with the future aim of progressively introducing it free for all. Also, the African Charter on Human and People Rights,<sup>110</sup> proclaims in terms of article 17, that education is a right and as such, signatory states must recognise it and realise it.

Article 13.2 of the Covenant, article 17 of the Charter are reinforced by article 26 of United Nations: The Universal Declaration of Human Rights, which entails that, primary

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<sup>105</sup> S 26, The Constitution.

<sup>106</sup> Ibid, footnote 105 above, s 10.

<sup>107</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 21 June 2018]

<sup>108</sup> Ibid, footnote 107 above, p 19.

<sup>109</sup> Ibid, footnote 1007 above, p 21.

<sup>110</sup> African Charter on Human and People Rights, article 17, p 3.

<[www. African Charter on Human and People Rights .com](http://www.AfricanCharteronHumanandPeopleRights.com)> accessed 20 June 2018

education must be free and compulsory. Section 29: the right to education in terms of the Constitution<sup>111</sup> is complemented both by, articles 11,13.2 of the Covenant, article 17 of the Charter and Article 26 of United Nations, which directly poses duties to signatory countries to provide services to its people in line with the provisions of the articles. South Africa as a party state to both the United Nations and The Covenant, it, therefore, implies that the South African government is not only bound by domestic laws but also bound by international laws to give effect to the provision of the Bill of Rights.

### **3.7 Conclusion**

Ultimately, the government has the constitutional and statutory obligations to provide basic services to its people. It therefore means, although there is a rise in population, unemployment and poverty, government must still find means within its limited resources to ensure that constitutional and statutory provisions are being complied with, such as providing access to free quality education in terms of s 29,<sup>112</sup> access to public quality health care in terms of s 27<sup>113</sup> and also access to housing in terms of s 26 of the Constitution<sup>114</sup>. All these provisions of the Bill of Rights impose a positive duty upon the state to act in line with the Constitution. However, the realisation of these socio-economic rights can be expedited by formulating population control policies, as the population is inter alia one of the central factors that hinder or contribute to socio-economic challenges in the country.

Statutorily the South African government can enact or draw up policy or regulations that seek to regulate the population. From a statutory perspective, the South African government is permitted through parliament to draft a bill that will regulate population. Already there is a section 36 in the Constitution which allows and permits the state to limit any rights including those in the Bill of Rights.<sup>115</sup> Thus s 36 can be used as a bedrock to formulate policies that regulate population for the purposes of curing and addressing socio-economic challenges in South Africa.

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<sup>111</sup> S 29, The Constitution.

<sup>112</sup> Ibid, footnote 111 above.

<sup>113</sup> Ibid, footnote 111 above, s 27.

<sup>114</sup> Ibid, footnote 111 above, s26.

<sup>115</sup> Ibid, footnote 111 above s 36.

## **CHAPTER 4: THE RIGHT TO REPRODUCTIVE HEALTH AND SOCIO-ECONOMIC DEVELOPMENT**

### **4.1 Introduction**

This chapter seeks to interrogate and investigate the right to reproductive health and its linkage to socio-economic development. Further, the chapter will enquire on the matter, such as the right to reproductive health and overpopulation, the impact of population on state-sponsored security, the right to reproductive health and access to education, adequate housing and health care. The chapter will also investigate if population mitigate or aggravate the betterment of socio-economic development in South Africa. Lastly, the chapter we look into the potential impact of limiting the right to procreate.

### **4.2 The Right to Reproductive Health on Overpopulation**

According to section 27 (1) (b) of the Constitution,<sup>116</sup> it provides that everyone has the right to access to health care, including reproductive health care. The provision, therefore, entails that everyone can procreate any number of children they so wish or desire. The state, therefore, has a positive duty to respect, protect, promote and fulfil this provisions in the Bill of Rights.

According to Kate,<sup>117</sup> she avers that, the right to reproductive health is not a fundamental human right and moreover the right is not even an indefeasible right.<sup>118</sup> She argues that the right to reproductive health must be regulated by global agreements which its primary objective will be to stabilize the world population. She also provides that if needs be, countries must take coercive measures to limit the right to reproductive health to ensure controlled and stabilized population. She alludes that freedom of reproductive rights leads to an expansion in population growth which leads to the burden on the global ecosystem and resources.<sup>119</sup> She also argues that the trends in population growth suggest that the

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<sup>116</sup> S 27 (1) (b), The Constitution.

<sup>117</sup> Kates CA. (2004), Reproductive Liberty and Overpopulation, Environmental Values, Vol 13, No 1, p 51.

<sup>118</sup> Ibid, footnote 117 above, p 51.

<sup>119</sup> Ibid, footnote 117 above, p 51.

world will be faced with terrible incurable and irreparable problem due to this phenomenon of population growth.<sup>120</sup>

Lastly, that, population tends to grow rapidly in less developed countries, as such there is no monitoring on population growth and as a result, such countries remain poor and less developed since the current resources can barely cater for the current population, now, when the population increase it just causes more burden to the state and scarcity in resources becomes even worse.<sup>121</sup>

### **4.3 The Impact of Overpopulation on State-Sponsored Security**

Statistics South Africa <sup>122</sup> recorded that the current population is at 56,52 million as of 31 July 2017.<sup>123</sup> On the other hand, the South African Social Security Agency<sup>124</sup> has recorded that the number of social grant dependents on state has increased, from December of 2016 the number of social grants dependents in totality was at 17,094,331 and in July 2017 the number have increased to 17,330,034,<sup>125</sup> which translate into 235,703 new social grants dependents, on the other side of the coin, Lesiba Mothata,<sup>126</sup> criticize Melusi Gigaba's budget speech, he alludes that "despite the high direct and indirect tax burden, it is clear that South Africa will be faced with declining tax revenue, from both personal income tax, value added tax (VAT) and corporate taxes".<sup>127</sup> This, therefore, suggests that the South African fiscal is not doing well. Now, looking at the increase in population which leads to increase in dependents on state-sponsored security and decline in tax revenue, it can be concluded that, overpopulation has a negative effect on state-sponsored security as rapid population growth results in a burden on the state to cater to more number of people in terms of state-sponsored security.

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<sup>120</sup> Ibid, footnote 117 above, p 52.

<sup>121</sup> Ibid, footnote 117 above, p 53.

<sup>122</sup> Statistics South Africa. Statistical release P0302 mid-year population estimate, 2016 <statssa.gov.za/publication/P0302216.PDF> accessed 03 September 2017.

<sup>123</sup> Ibid, footnote 123 above.

<sup>124</sup> South African Social Security Agency [www.sassa.gov.za/index\\*phpstatisticalreport](http://www.sassa.gov.za/index*phpstatisticalreport) accessed 11 July 2018.

<sup>125</sup> Ibid, footnote 124 above.

<sup>126</sup> Mothata L (2017) "Fiscal policy directly affects citizens' well-being: *Which is why the country will be hanging on Gigaba's every word when he delivers next week's medium-term budget policy statement*". 22 October 2017, Business Live < <https://www.businesslive.co.za/bd/opinion/2017-10-22-fiscal-policy-directly-affects-citizens-well-being/> > Accessed 7 July 2018.

<sup>127</sup> Ibid, footnote 126 above.

### **(a) Overpopulation and Access to Social Welfare**

White Paper for Social Welfare<sup>128</sup> records that the expansion in population negatively impacts on access to welfare for South African people. The paper further records that, provinces are not adequately resourced with social welfare services. This notion of inadequate resources in provinces is illustrated in the paper by providing an example that, social work ratio among the provinces particularly Eastern Cape, North West, Mpumalanga and Limpopo range from 1:8 089 and 1: 20 402, these provinces are recorded to have been under-resourced as far as the social services are concerned.<sup>129</sup> The White Paper further advance an argument that, access to social welfare services to the people of South Africa will not be improved by economic growth, economic growth must be coupled by population stability and equitable division of resources.<sup>130</sup>

Marietta<sup>131</sup> concurs with the view advanced in the White Paper document, she avers that limiting population size will assist in access to social welfare services. She goes further and advances that, lack of access to social welfare services is caused by overpopulation or overcrowding of people in a particular area or province, which leads to the burden of social welfare resources in that particular area and as results, that translates into inadequate access to social welfare services.<sup>132</sup>

### **(b) Overpopulation and Access to Education**

Section 29 of The Constitution<sup>133</sup> entails that everyone has the right to basic education and further, the state must through reasonable measures progressively make education available to everyone. The provision of section 29 imposes an obligatory duty on the state to ensure that access to education is available to everyone.

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<sup>128</sup> South Africa (1997) Department of Welfare. *Principles, guidelines, recommendations, proposed policies and programmes for developmental social welfare in South Africa*. August 1997.

<sup>129</sup> Ibid, footnote 128 above, p 32.

<sup>130</sup> Ibid, footnote 129 above, p 9.

<sup>131</sup> Marietta AC (1988) "Optimal Population Growth and Social Welfare Function" *Eastern Economic Journal*, Vol. 14, No. 3, pp. 229-238.

<sup>132</sup> Ibid, footnote 131 above, p 229.

<sup>133</sup> S 29, The Constitution.

Sellor,<sup>134</sup> allude that, overpopulation has an antagonistic influence on learners. This is due to the fact that overpopulated school hinders the instructional planning and even lower the morale of both learners and teachers.<sup>135</sup> She provides that instead of teachers providing quality education in class they end spending that time to manage the overpopulated classrooms. The further overpopulated school experiences a high rate of absenteeism which leads to a high failure rate in those schools. She further advances that overpopulated school's facilities are sometimes not able to cater for learners as a results such schools are sometimes compelled to use non-educational facilities such as lunchroom or media centres and because these venues are non-academic they are more often than not, not equipped with educational tools, such as whiteboards, desks, projectors and other educational tools, then this leads in decline of quality of education offered.<sup>136</sup>

Arnette<sup>137</sup> concurs with Sellor, although she articulates her view from a perspective of what she terms as educational idealism. She avers that if schools are overpopulated, not enough teachers and lack of educational resources to cater for learners, such situations lead to a breed of drug use and gangster mentalities. She also alludes that population growth would mean more funding in the education system, but because of population growth without economic growth that will lead to a lack of funding in the education system. As a result, the quality of education will be compromised.

Moreover, Arnette advances that due to population growth and lack of funding, certain educational activities and sports will be cut off. Lastly, she avers that lack of proper educational facilities and overpopulation or overcrowded school leads to learners dropping out which translate into those learners being ineligible to qualify to go to universities which minimize their chances of being employed and resulting in the possibility of poverty.<sup>138</sup>

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<sup>134</sup> Sellors A. Education in school affecting test score.

< <http://education.seattlepi.com/overpopulation-schools-affecting-test-scores-2121.html>> Accessed 10 July 2018

<sup>135</sup> Ibid, footnote 134 above, p 1.

<sup>136</sup> Ibid, footnote 134 above, p 2.

<sup>137</sup> Arnette S. "How population growth affect the educational system".28 June 2018 <<https://classroom.synonym.com/population-growth-affects-educational-system-6164071.html>> accessed 12 July 2018.

<sup>138</sup> Ibid, footnote 137 above.



Satbir Singh Bedi <sup>139</sup> commented on the issue overpopulation and education wherein she asserts that lack of education can lead to overpopulation and equally, overpopulation can lead to lack of education. She elaborated further by advancing that poor people tend to have more children with the view that, that will translate in more earning in terms of state social grants, which actually is the opposite because more children will result in overpopulation. Further, he alludes that due to costly educational fees, parents of many children find themselves in a position in which they cannot afford to pay for their children's education and thus overpopulation lead to people remaining uneducated.

According to the Provincial Department of education of Western Cape, <sup>140</sup> says that school are under severe strains due to overcrowding of learners in the classroom. The department further allude that 130 000 learners have been relocated to Western Cape over a period of 5 years in 2017 alone, 21 962 learners have also been relocated to Western Cape and this number of learners represent a cost of R 338 million. The department added that due to the high volume of the influx of learners, this then requires the National Treasury to increase their budget to cater for the high number of those learners. <sup>141</sup> However, that was not the case, according to Equal Education Organisation (EEO) <sup>142</sup> in a media statement, it reported that quality of education is compromised due to the cut of the budget. In 2017 the budget of Education Infrastructure Grant (EID) which is tasked and responsible for educational infrastructure in South Africa was reduced from R10 046 billion to R9 918 billion in 2018. Which therefore informs that overpopulation will affect the quality of education on the basis of lack of financial resources.

### **(c) Overpopulation and Access to Health Care**

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<sup>139</sup> Satbir Singh Bedi.” Lack of education leads to overpopulation and vice versa”. 22 July 2013 <<http://www.merineews.com/article/lack-of-education-leads-to-overpopulation-and-vice-versa/15888267.shtml>> accessed 12 July 2018.

<sup>140</sup> Media statement:2008/19: Budget hurts the poor by hiking VAT and slashing basic education funding. <[https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#\\_ftnref2](https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#_ftnref2)> accessed 12 July 2018.

<sup>141</sup> Ibid, footnote 140 above.

<sup>142</sup> Ibid, footnote 140 above.

Abudeen and Yan Hoi,<sup>143</sup> avert that the increase in population will significantly affect the access to health care services, they allude that the expansion in population must be accompanied by an expansion in health care facilities and increase in health care funding. Both authors agree that the increase in population will results in an increase in health care cost, this effects will be due to the high volume of health care utilization, such as high demand in primary health care, emergency room service and many other health services. The authors further articulate that they acknowledge that population growth is in some instances caused by foreign national migrants, however, this still results in population growth and it bears the very same effects.<sup>144</sup>

Feldman<sup>145</sup> concurs with the latter authors, he alludes that, despite the promotion of health care services, they should also be an emphasis on population controls, since the population is inter alia the factors that hinder the achieving broad-based rural primary health care services.

Krans,<sup>146</sup> provide that in the United States there is one birth in every eight seconds and one death every twelve seconds, which then suggest that, the number of people is expanding as opposed to the declining. Further, Krans quotes Mora, who alleges that most authors trivialized the issue overpopulation, forgetting that overpopulation has a biological impact and it's a fundamental effect on human welfare. Camilo Mora, further alludes that in the United States, 11 billion US dollars of tax payer's money is spent every year as a result of unwanted and unplanned pregnancies. He avers that overpopulation does not only negatively affect the economy of the country, but it also has an effect on the health of the people, he states that diseases like Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (HIV/AIDS) will continue to spread, because people don't have adequate access to health care, therefore they don't have access to

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<sup>143</sup> Ansari Abudeen and Leong Yan Hoi. "Impact of population increase on our health care system". 22 January 2014. [http://yoursdp.org/publ/perspectives/impact\\_of\\_population\\_increase\\_on\\_our\\_healthcare\\_system/2-1-0-1428](http://yoursdp.org/publ/perspectives/impact_of_population_increase_on_our_healthcare_system/2-1-0-1428) accessed 16 July 2018.

<sup>144</sup> Ibid, footnote 143 above.

<sup>145</sup> Feldman, Shelley (1987). "Overpopulation as Crisis: Redirecting Health Care Services in Rural Bangladesh. "International Journal of Health Services. Vol 17(issue 1): p 113.

<sup>146</sup> Brian Krans (2014). "Overpopulation: An Overlooked Factor in Global Health". 19 March 2014. <https://www.healthline.com/health-news/overpopulation-driving-global-health-crisis-031914> Accessed 16 July 2018.

health services like contraceptives and the lack of such health care services thereof, results in high pregnancy rate which inevitably lead to overpopulation.<sup>147</sup>

On the hand always,<sup>148</sup> was quoted in health 24, alluding that, women still encounter challenges to access to health care, as some women have to travel far to reach a clinic and often the queues are too long and moreover the services are slow.<sup>149</sup> In essence, Tukwayo suggests that there is already inadequate access to health care services and the current health care facilities are not within reach in many parts of the country as results that lead to lack of access to health care services.

#### **(d) Overpopulation and Access to Adequate Housing**

Section 7(2) of chapter 2 of The Constitution,<sup>150</sup> it obliges the state to respect, protect, promote and fulfil the rights in the Bill of Rights and its constitutional mandate and Section 26 of provides that everyone has the right to housing,<sup>151</sup> which then imposes an obligation on the state to provide housing for everyone.

White Paper<sup>152</sup> elaborate on the provisions of section 7 of The Constitution, it provides that, “respect”<sup>153</sup> as an element of the provision of section 7, means that the state has an obligation to respect among other section 27 of The Constitution, in other words, the state must not impair a person’s constitutional right, rather the state must seek to advance the realization of these rights. The second element “protect”, this constitutes a duty upon the state to ensure that positive actions are taken to ensure that among others section 26 of The Constitution is progressively realized. The third element “promote”, the state must among other section in The Constitution endorse the provision of section 26. The last

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<sup>147</sup> Ibid, footnote 146 above.

<sup>148</sup> Nomalizo Tukwayo (2008).” Unwanted pregnancies rife” *Twenty-eight million US women are at risk of having unwanted pregnancies, researchers say. In South Africa the number is also high, but for different reasons.* 15 May 2008<<https://www.health24.com/Lifestyle/Contraception/About-contraception/Unwanted-pregnancies-rife-20120721>> Accessed 18 July 2018.

<sup>149</sup> Ibid, footnote 148 above.

<sup>150</sup> S 7 (2), The Constitution.

<sup>151</sup> Ibid s 26.

<sup>152</sup> Tissington K. (2011). A resource guide to housing in South Africa 19094-2010: Legislation, Policy, Programmes and Practice.

<sup>153</sup> Ibid, footnote 152 above, p 42.

element of section 7 “fulfil”,<sup>154</sup> this provision requires the state to bear out the provisions of The Constitution.

The White Paper further avert that the right to housing is a fundamental right of socio-economic rights which seeks to advance and uplift the standard of living of the people of South Africa. Accordingly, the White Paper, provide that in 1994, housing backlog was ta 1.5 million units.<sup>155</sup> From 1994 to 2010 the backlog increased from 1,5 million to 2.1 million. This growth, therefore, translates into 12 million South African are in need of houses. Therefore, from these figures, it can be deduced that the increase in population, without economic growth and employment growth, translate into an increase in state-sponsored houses.

The Finance and Fiscal Commission (FFC),<sup>156</sup> supported the narrative similar to that expressed in the White Paper. The FFC provided that South Africa will need about R800 billion to adequately address the issue of housing backlog, this is due to the rising number of people who require state-sponsored houses.<sup>157</sup> Former Human Settlement minister, Tokyo Sexwale alluded that factors that hinder housing delivery in South Africa, among them were “continued high population growth”.<sup>158</sup> Noah’s<sup>159</sup> views coincide with that of Tokyo Sexwale. He avers that escalating population growth is among the obstacles that impede on the expedition of housing delivery in South Africa.<sup>160</sup> He advances that population growth is a straining factor on housing delivery since South African population growth is not in line with the state capacity.<sup>161</sup> He provides that between the year 1995 to 2005 the demand for housing rose to 45%, which made it difficult for the state to keep abreast with the demand as population increased at a rapid pace.<sup>162</sup>

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<sup>154</sup> Ibid, footnote 152 above, p 43.

<sup>155</sup> Ibid, footnote 152 above, p 33.

<sup>156</sup> Fuller Centre for housing, Western Cape. Housing delivery in South Africa. Draft Report: Housing Delivery 2014.

<sup>157</sup> Ibid, footnote 156 above, p 14.

<sup>158</sup> Ibid, footnote 156 above, p 17.

<sup>159</sup> Marutlulle NK. Obstacle to housing delivery in Ekurhuleni Metropolitan Municipality: A critical review of output and input.

<sup>160</sup> Ibid, footnote above 159, p 141.

<sup>161</sup> Ibid, footnote above 159, p 147.

<sup>162</sup> Ibid, footnote above 159, p 147-148.

Lastly, Marutelle also points out that, urbanization also causes overpopulation or overcrowding in urban areas, which strains the resources of those urban municipalities and which consequently results in slow delivery of houses.<sup>163</sup>

#### **4.4 The Potential Impact of Limiting the Right to Procreate**

According to Conly,<sup>164</sup> she states that limiting the right to procreate is morally acceptable, she avers that when the state limits the right to procreate is not an infringement, because you still exercise the right, only within certain confinement. She substantiates that by giving an example that “United Nations Universal Declaration, provides that everyone has the right to work, however that right does not entail that everyone has the right to the best job or the job that they want, rather it entails that everyone has the right to a basic job”. Thus, it must not be construed that because the right is classified as a fundamental right then that right is absolute.<sup>165</sup>

Lastly, she advances that having fewer children enable the parents to provide for those children’s education, health care and other welfare needs and as a result of that that’s beneficial for both children and parents. She concludes by stating that limiting the right to procreate also lower crime rate, increase the access to clean and safe water, results in access to adequate health care services and schools are no longer overcrowded.<sup>166</sup>

#### **4.6 Conclusion**

In conclusion, it can be deduced from various authors that there is a significant positive impact for limiting the right to procreate. A majority of authors are in consensus that there are significant impact and advantages in limiting the right to procreate and controlling population growth. Sarah Conly avers that the cost for overpopulation is much greater than the cost that the state will spend on state intervention in limiting the right to

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<sup>163</sup> Ibid, footnote above 159, p 148.

<sup>164</sup> Conly S. (2005).” The right to procreate: Merits and Limits”. *American Philosophical Quarterly*, Vol 41, No 2,p 105.

<sup>165</sup> Ibid, footnote 164 above, p 106.

<sup>166</sup> Ibid, footnote 164 above.

procreate.<sup>167</sup> Robison<sup>168</sup> asserts that limiting the right to procreate might have a negative impact, however, the positive impact, outweigh the negative impacts. He further alludes that, the controlled population will result in, among other, providing quality education and access to quality health care services.<sup>169</sup>

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<sup>167</sup> Ibid, footnote 164 above, p 114.

<sup>168</sup> Robison JA (2015) “Provisional Thoughts on limiting the Right to Procreate” *Potchefstroom Electronic Law Journal*, Vol 18, No 2.

<sup>169</sup> Ibid, footnote 168 above, p 357.

## **CHAPTER 5: COMPARATIVE ANALYSIS: SOUTH AFRICA AND CHINA**

### **5.1 Introduction**

South Africa like any other country faces socio-economic challenges. It is frequently reported in the media about the socio-economic challenges that South Africans faces on daily basis. Among these challenges faced by South African people is lack of access to adequate housing, clean drinking water, health care services, high level of poverty and the high unemployment rate, to name a few. This chapter will, therefore, focus on comparing and contrasting China and South Africa's socio-economic challenges. Further, the chapter will analyse and investigate China One-Child Policy and inquire if One Child Policy has mitigated or aggravated the socio-economic challenges of China and whether South Africa can employ a policy of similar nature to address its socio-economic challenges.

### **5.2 China One-Child Policy in Perspective**

Jiang<sup>170</sup> asserts that, since the establishment of the People Republic of China (PRC) in 1949, the People Republic of China has been concerned with China hasty population growth. The People Republic of China then introduced a number of population control policies. These policies were introduced with the aim to curb the rapid population growth in China. In September of 1979, China's 5<sup>th</sup> National People's Congress took a resolution to adopt One-Child Policy. Subsequent to the adoption of one child policy in 1979, the Chinese Communist Party (CCP) initiated a campaign to implement one child policy countrywide. The fundamental objective of the campaign was too conscientious the Chinese people about the significance of one-child policy and how the one-child policy will assist China with regard to its imminent population explosion of the 1970s.

During the 1970s the government of China led by Deng Xiaoping of China Communist Party advocated for population control measures, informed by Malthusian's theory, that considered population growth to be a grave problem of the modern world. Henceforth, the government of China began to associate population growth with challenges that China

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<sup>170</sup> Lijing J. (2011). China's one child policy. < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1116810/>> accessed 27July 2018.

was facing, such as poverty, unemployment, inadequate health system and education. The Chinese government then established, the Office of Population Theory Research (OPTR) in 1974 located in Beijing College of Economics. The objective of the OPTR was to examine and analyse western countries' population challenges and design a policy to address China population crisis and challenges.

Lijing quotes Jian, who in the 1980s estimated that China's population will increase from 650 to 700 million people. Song Jian's calculation suggests that China's population has surpassed its carrying capacity. Therefore, Song Jian was pro-one child policy. Due to his credentials as a mathematician, the Chinese government had more reasons based on his theory and calculation to fully impose and implement the one-child policy on the people of China. Further, in 1979, the National People's Congress which came up with one child policy issued a letter that urged and encouraged that families to have one child and families with two children not to procreate anymore.<sup>171</sup>

According to Connett,<sup>172</sup> the People Republic of China government during the implementation of China one-child policy enticed Chinese people who comply with the provisions of the policy by giving them rewards, such as, health care subsidies, guaranteed retirement income and state government housing. On the other hand, Wendy Connette alludes that, one child policy gave the administrator authority to fine parents who don't comply with the provisions of the policy to fine them 10% of their income as a penalty for the next 14 years for each out of a planned child.<sup>173</sup>

Penny Kane supports the utterance of Connette, Penny alludes that on top taking 10% of the income of parents who don't comply, other penalties imposed were including confiscation of belongings and dismissal from work.<sup>174</sup>

### **5.2.1 Reasons for Introduction: One Child-Policy**

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<sup>171</sup> Ibid, footnote 170 above.

<sup>172</sup> Wendy Connett: Understanding China's Former One Child Policy. Updated June 25, 2018 — 5:00 PM EDT <https://www.investopedia.com/articles/investing/120114/understanding-chinas-one-child-policy.asp>. Accessed 14 July 2018.

<sup>173</sup> Ibid, footnote 172 above.

<sup>174</sup> Penny Kane. (1999) China one child family policy. P 992-994



Penny Kane asserts that the reasons for China to introduce one-child policy were a response to socio-economic challenges that China was faced with, which the Chinese government associated them with rapid population growth. As a result of the explosion of the Chinese population, a substantial strain was on the Chinese government to cater and meet the needs of its people.<sup>175</sup>

Hesketh<sup>176</sup> mentions that one child policy was as a result of Chinese government believing that population control and measures will translate into economic growth and also improve the standard of living of Chinese people. Yang<sup>177</sup> provides that, the fundamental motive behind the introduction of one-child policy was to improve child well-being of Chinese children. He alludes that the Chinese government took a significant effort to curb population growth in exchange for a better health and education for Chinese children. He continues by alluding that, less population implies that resources of China will be sufficient both at national, community and household level to cater for Chinese children. He closes by mentioning that, due to less number of children and sufficient resources will be at their disposal to nourish and better their physical and intellectual development.<sup>178</sup>

Sudbeck<sup>179</sup> elaborates on the rationale why one child policy was adopted in China. He avers that the implementation of the one-child policy was as a result of overpopulation which was taking place in China, which caused great economic hardship and environmental degradation. Sudbeck argues that in 1949 China's population was stable and the Chinese government at the time were able to provide its people with better health care and there was a decrease in infant mortality and increase in life expectancy before the explosion of population hence 1979 one child policy was adopted.<sup>180</sup>

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<sup>175</sup> Ibid, footnote 174 above.

<sup>176</sup> Hesketh T. (2005). The effect of china one child policy after 25 years. "*Health Policy Reports*". P 1171

<sup>177</sup> Yang J. (2006). Has the one child policy improved adolescent educational wellbeing in china?

<sup>178</sup> Ibid, footnote 177 above, p 1.

<sup>179</sup> Sudbeck K. (2012). The effect of China's one child policy: The significance for Chinese women. *Nebraska Anthropology*. Vol 27. P 43-60.

<sup>180</sup> Ibid, footnote 179 above, p 45.

Beal Hodges et al<sup>181</sup> concurs with Yang. She avers that the employment of China one-child policy was to promote and enhance Chinese children's wellbeing. She states that fewer children result in high quality of health, nutrition, education and the overall wellbeing of a child. She also quotes the Chinese one-child policy slogan "your sheng you yu" which means "give birth to fewer children but give them better care and education".<sup>182</sup> Lastly, she asserts that the decrease in the number of children will mean more resources for the current children, that will increase in the quality of service provided to each child.<sup>183</sup>

## 5.2.2 Achievements: China One Child Policy

Lozeau<sup>184</sup> asserts that, due to the limitation of Chinese population growth, they have been a significant increase in Chinese economic growth. He alludes that according to the Asian Development Bank Country Economic Review (ADB CER) in 2002, have rated China standard of living to have increased due to population due to the one-child policy.<sup>185</sup> He also alludes that as a result of China one-child policy, China has managed to progress in the field of technology, which allowed the Chinese people to increase their income per capita.<sup>186</sup> Lozeau also advances that, due to the controlled population in China, a lot of people in China now have access to quality education and that translate into more productive labourer which has a positive impact on the economy.<sup>187</sup>

Kristen Sudebeck alludes that, China one-child policy which has been in force for more than thirty years has indirectly benefited Chinese women. She mentions that, traditionally, the Chinese culture revered sons as opposed to daughters. As sons were expected to carry the family legacy.<sup>188</sup> She, however, asserts that female children who were born as

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<sup>181</sup> Hodges MB et al. (2011). The Impact of China's 'One-Child' Policy on the Educational Attainment of Adolescents." *The Journal of Interdisciplinary Economics*", Vol. 23, pp. 201-221

<sup>182</sup> Ibid p 202.

<sup>183</sup> Ibid p 203.

<sup>184</sup> Brandon L. (2007). The effect of population performance in China and India." *Brussels Journal of International Studies*", Vol 4.

<sup>185</sup> Ibid, footnote 184 above, p 2.

<sup>186</sup> Ibid, footnote 184 above, p 3.

<sup>187</sup> Ibid, footnote 184 above, p 5.

<sup>188</sup> The Laxenburg Declaration on Population and Sustainable Development, Statement of global expert panel. (October 2011), at p 1.

<file:///D:/rreginald/print%20materials/Laxenburg%20Declaration%20on%20Population%20%20Development\_final\_logos%20.pdf> accessed 12 July 2017, p 43.

a result of one-child policy and are the only child in their family, allowed them to be effective members of the society. Moreover, such a female child is afforded a quality education and also are involved in the nontraditional jobs outside their homes.<sup>189</sup> In fact, she proclaims that the decline in fertility rate has translated in the increase of women in labour force participation.<sup>190</sup> Sudbeck conclude by averring that, although China one-child policy might in some way infringe on the right to procreate of Chinese women, she equally believes that, the one-child policy was more advantageous to Chinese women as it afforded them equal social and economic status in the Chinese community, which was something that was deemed to be unattainable goal for women in China.<sup>191</sup> Huang et al<sup>192</sup> concur with Sudbeck, Huang avers that there is been a rise in schooling attainment of women in China. As a result of one child policy, there has been a significant expansion of women participation in the Chinese economy and political landscape.<sup>193</sup> Wei Huang reiterated that one child policy motivated Chinese women to delay getting married and having children. They instead, invested their time in educational attainment and that allowed them to be independent. That led to an influx of Chinese women entering in the job market which afforded them to no longer perceive men as the superior since they too are afforded the same opportunities.<sup>194</sup>

Zhang<sup>195</sup> mentions that one child policy yields positive results. The one-child policy has improved the quality of human capital in China. He points out that one-child policy has brought about the rise in educational attainment level in China.<sup>196</sup> This can be seen from the increase in children schooling attainment by 4 per cent and the probability of attending

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<sup>188</sup> Hall K and Sambu W Income and social grant-children living in poverty (Children's Institute, University of Cape Town).

<sup>189</sup> Ibid, footnote 188 above, p 44.

<sup>190</sup> Ibid, footnote, 188 above p 53.

<sup>191</sup> Ibid, footnote 188 above p 54.

<sup>192</sup>Huang, W et al. (2015). The Great Expectations: Impact of One-Child Policy on Education of *Girls*. IZA Discussion Paper No. 9301.

<sup>193</sup> Ibid, footnote 192 above, p 1.

<sup>194</sup> Ibid, footnote 192 above, p 2.

<sup>195</sup> Zhang J. (2017). The Evolution of China's One-Child Policy and Its Effects on Family Outcomes." *Journal of Economic Perspectives*". Vol 31, No 1.

<sup>196</sup> Ibid, footnote 195 above, p 153.

university by not less than 9 per cent. Further, the one-child policy improved the quality of health care by at least 4 per cent.<sup>197</sup>

Li and Song<sup>198</sup> indicate that one child policy brought about positive changes for the Chinese people. Among these achievements is access to quality health care services. Zhang Li and Ziwei Song advance that, reduction Chinese population which was as a consequence of one-child policy resulted in programmes such as family planning, which afforded the Chinese women access to wide range of public health care benefits. Lastly, the author also agrees with Brandon Lozeou, they affirm that population control in China significantly gave rise to optimistic stimulus in the economic growth of China.<sup>199</sup>

Li and Ziwei Song further advance that, since the implementation of one-child policy, China opened its door to foreign investors, which was in contrary to their earlier socialistic views on China's economic system. As a result of the open door policy, the economy of China grew. The GDP grew at the rate of 10 per cent a year. In fact, Zhang and Ziwei proclaim that the GDP of China increased by 58 times in 2014 compared to 1979. Lastly, Zhang and Wei reiterate that the population policy allowed and afforded China to be the second largest economic hub in the world after the United State of America.<sup>200</sup>

### **5.2.3 One Child Policy: Impact On Population Growth**

One child policy had a significant population on China's population. According to the meeting of People of the Republic of China to the United Nation Office at Geneva, it is documented that 15 years after the founding of the People's Republic of China to 1964, China population was recorded to have increased from 500 million to 700 million.<sup>201</sup> This period was considered to one of the high-speed population growth in China. In early 1973 the Chinese government began to introduce family planning programmes and at that time the Chinese population had increased again from 900 million to 1.2 billion within a period

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<sup>197</sup> Ibid, footnote 159 above, p 152.

<sup>198</sup> Li, Z. et al. (2016). Impacts of China's One-child Policy on Public Health in China: An Overview." *China Health Review*". P1-13.

<sup>199</sup> Ibid, footnote 198 above, p 2.

<sup>200</sup> Ibid, footnote 189 above, p 4.

<sup>201</sup> Family planning in china." *Permanent mission of the people's republic of china to the United Nations office at Geneva and other international organizations in Switzerland*" Information Office of the State Council of the People's Republic of China. August 1995, Beijing. p 2. < <http://www.china-un.ch> > accessed 25 March 2017.

of 3 years, from 1973 to 1975. However, upon the people of China understanding the importance of one-child policy and adhering to the provisions and terms of one-child policy, there has been a significant decrease in the number of birth, which steadily reduced the trend of China rapid population increase. As a result of the decline in birth rate, the population became compatible with the country's economic and social development goals.<sup>202</sup> Sudbeck mentions that China one-child policy had a major impact on the Chinese population growth, she avers that due to the one-child policy, they have been a serious decline in projected China's population growth. She further articulates that the success of China's one-child policy must equally be attributed to the administrators of the policy who ensured that it was enforced properly at national, communal and household level.<sup>203</sup>

According to Hesketh and Wei Xing, they assert that the Chinese one-child policy is responsible for reducing China's population from 250 million to 300 million birth. They further advance that children born per women declined from 2.9 in 1979 to 1.7 in 2004, which translated into a significant population decrease.<sup>204</sup> Hesketh and Xing further assert that due to one child policy people of China have now adjusted to a small family culture. In fact, Hesketh and Xing proclaim that data illustrate that about 35 per cent of women question in China, preferred to only have one child and 57 per cent questioned preferred to have two children. Further, they advance that about 75 per cent women from wealthy Chinese province such as Jiangsu, stated that one child is enough irrespective of the gender of that child.<sup>205</sup> Whereas, poorer provinces such as Yunnan, about 55 per cent of the woman were happy to have one child, provided is a boy and 30 percentages of those women preferred to one child provided is a girl. Hesketh and Xing claim that this illustrates that the Chinese were slowly and gradually getting accustomed to one child policy and moving from a bigger family culture to smaller family culture.<sup>206</sup>

Kane provide that, population growth rate in the 1980s was projected to be at 1.8 per cent, however, due to administrators of one-child policy's commitment to the cause of

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<sup>202</sup> Ibid, footnote 201 above, p 3.

<sup>203</sup> The Laxenburg Declaration, p 46.

<sup>204</sup> Hesketh T. (2005). The effect of china one child policy after 25 years. "Health Policy Reports". p 1172.

<sup>205</sup> Ibid, footnote 204 above, p 1174.

<sup>206</sup> Ibid, footnote 204 above, p 1175.

population reduction, population growth in 1980 was actually at 1 per cent less than 1.8 per cent which was earlier projected to be the population growth rate during that year.<sup>207</sup> Penny Kane also concurs with Hesketh and Wei Xing, she affirms that due to the implementation of one-child policy, there has been a population reduction of about 250 million birth.<sup>208</sup> Fang and Kian Leong<sup>209</sup> allude that upon the introduction of the one-child policy, China's population declined. They further advance that, the population of China in 1990 declined to less than 1 per cent and in the year 2005 it drastically declined to 0.5 per cent. They also allude that China's one-child policy didn't not only assist the Chinese government in the reduction of the population but during the year of 1990 to 2005 the economy China grew at 10 per cent rate annually.<sup>210</sup>

Additionally, Fang and Leong proclaim that between the year of 1971 to 2005 0.4 babies were eliminated as a consequence of one-child policy. Moreover, in the year of 2011, five years before the policy was lifted, China population dropped at 0.52 per cent.<sup>211</sup> On the other hand, the fertility rate decrease from 2.8 birth per woman to 1.8 birth per woman.<sup>212</sup> Lastly, Fang and Leong affirm that under the one-child policy, there was a slow and controlled population growth which resulted in the growth of China's GDP.<sup>213</sup> Sheng and Settles<sup>214</sup> concurs with Fang and Leong, they too assert that, as much as they were a lot of criticism, both good and bad about one-child policy, it is significant that it is acknowledged that the policy has succeeded in achieving its purpose of reducing population in China.<sup>215</sup> Lastly, Sheng and Settles breaks down how the one-child policy has greatly reduced the population in China. They illustrate that the population decreased from 11.6 per cent in 1979 to 5.9 per cent in 2005. Sheng and Settle also concur with

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<sup>207</sup>Penny Kane. (1999) China one child family policy, p 3.

<sup>208</sup> Ibid, footnote 207 above, p 7.

<sup>209</sup> Fang Q and Leong C. Impact of population growth and one child policy on economic growth of China. P 1-25.

<sup>210</sup> Ibid, footnote 209 above, p 4.

<sup>211</sup> Ibid, footnote 209 above, p 6.

<sup>212</sup> Ibid, footnote 209 above, p 7.

<sup>213</sup> Ibid, footnote 209 above, p 18.

<sup>214</sup> Sheng X and Settles BH. (2008). The one child policy and its impact on Chinese families." This paper is partially based on a previous one prepared for XV World Congress of Sociology, Brisbane, Australia, July, 7-13, 2002. Research Committee on Family". P 1-36.

<sup>215</sup> Ibid, footnote 214 above, p 1.

Fang and Kian Leong; they reaffirm that birth rate in 1979 which was at 2.8 per cent reduced to 1.8 per cent in 2001.<sup>216</sup>

### **5.3 COMPARATIVE STUDY: CHINA AND SOUTH AFRICA**

#### **5.3.1. Improve Access to Housing**

One of the fundamental motives behind China one-child policy was to ensure that the Chinese government is in a position to provide houses for its people.<sup>217</sup> Henceforth, they adopted one child policy. The South African government also faces challenges of housing delivery in South Africa. The former minister of human settlement Mr Tokyo Sexwale advanced that, rapid population growth hampers the delivery of quality housing in South Africa. Moreover, rapid population growth also impedes on the expedition of housing deliver for South African people.<sup>218</sup>

#### **5.3.2 Improve Access to Education**

South Africa like China has a challenge of adequately providing quality education to its people. The South African provincial department of education of Western Cape has recorded that schools are under severe pressure which consequently came about rapid population growth, which then led to overcrowding of learners in the classrooms. The department proclaims that the rise in overcrowding of learner requires more budget to cater for those learners.<sup>219</sup>

#### **5.3.3 Improve Access to Health Care**

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<sup>216</sup> Ibid, footnote 214 above, p 5.

<sup>217</sup> Ibid see footnote 172 above.

<sup>218</sup> Marutlulle NK. Obstacle to housing delivery in Ekurhuleni Metropolitan Municipality: A critical review of output and input

<sup>219</sup> Media statement:2008/19: Budget hurts the poor by hiking VAT and slashing basic education funding. <[https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#\\_ftnref2](https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#_ftnref2)> accessed 12 July 2018.

South Africa like China also experience challenges in the health sector, it has been affirmed by various authors such as Abudeen who proclaims that the explosion of population in South Africa hinder adequate access to health services. Further, funding is required for the government to construct new and capacitated health facilities to cater for the booming population growth. In China, the leader of communist party Xiaoping insisted that lack of quality health care in China was attributed to an increase in the Chinese population.<sup>220</sup>

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<sup>220</sup> Lijing J. (2011). China's one child policy. < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1116810/>> accessed 27July 2018.



## **CHAPTER 6: CONCLUSION AND RECOMMENDATIONS**

### **6.1 Conclusion**

South African people have for many years been oppressed due to apartheid laws. The majority of South African have been denied access to participate in the economy of the country. As a result of the oppression of South African people from apartheid laws, many South African believed that post-apartheid South Africa, they will overcome their socio-economic challenges. However, many South African to date, still faces socio-economic challenges, they still lack access to basic services, such as lack of access to adequate housing, clean fresh drinking water, adequate access to quality education, access to health care and rise in the rate of unemployment. These socio-economic challenges faced by South African people are illustrated through strikes and marches across the country, strikes and marches such as the fees must fall movement, wherein the students of higher learning marched to compel the government to provide free quality education for all. The Vhowani strike, wherein the Vhowani residents marched to their local municipality demanding that the municipality provide them with adequate services such as water and proper roads within their areas. On the other hand, the Grootboom case illustrated that there is still people who lack access to proper housing. The Mazibuko case demonstrates that they are still South African whom post-democracy still don't have access to safe clean drinking water. These are examples that are illustrative of the fact that even post-apartheid and in the state of Constitutional dispensation there are South African who still do not have access to basic services.

Therefore, the aim and objective of this study was to examine the feasibility of limiting the right to reproductive health or the right to procreate with the view of assisting the South African government to at least design policies which fundamentally seek to control and stabilize the population growth in South Africa, which is among the factors that limits the ability of the state in terms of providing essential basic socio-economic services to people.

The study has illustrated that unregulated population growth can become an obstacle that impedes the state's capacity to provide adequate socio-economic services to the people. The study also demonstrates that rapid population growth tempers with access to quality

education as provided by various authors such as Sarrah Arnette who concurred with Alysa Sellor who articulated that overpopulation leads to overcrowding in an educational institution which results in the compromise of quality of education which is offered in such educational institutions. Also, the study shows that overpopulation hinders the delivery of housing in South Africa as mentioned by the former human settlement minister Tokyo Sexwale, who alluded that, rapid population growth makes it difficult for the government to provide houses for everyone. The study also demonstrates that a lack of access to adequate health care can be attributed to rapid population growth. Authors such as Ansari Abudeen affirms this notion, she asserts that rapid population growth strains the health care facilities. She also articulates that rapid population growth must be accompanied by the expansion of health care facilities and the health care funding must equally be increased.

On a positive note, the study shows that the regulated population has significant benefits. In summary, benefits which will result due to regulated population inter alia are low mortality rate, access to quality education, quality housing, low employment rate, access to quality health care services and a decrease in poverty level. In essence, the study elucidates that there will at least be enough distribution of resources to the people. Chapter 1 summarily shows that how overpopulation is a challenge that seeks to impede and undermine the standard of living of people if not regulated. Chapter 2 provides the theoretical framework which addresses the background and challenges of rapid population growth as captured by Amartya Sen and Martha Nussbaum who provide what they term as “capabilities approach”, which illustrates the fundamental needs required by human beings for survival, such as providing people with quality life by ensuring that they have access to basic social and economic services. The chapter also touches on the South African realities or challenges that ordinary South Africans face every day, challenges such as poverty and rise in the unemployment rate.

Chapter 3 provides obligations that the state bears in respect of its people, which emanate from the Constitution and other legislation such as Children’s Act 38 of 2005, Social Assistance Act 59 of 1992 and The termination of Pregnancy Act 92 of 1996. Chapter 4 clearly demonstrates the link and effects between overpopulation and health care, states

sponsored security and social welfare among other state-sponsored services. Lastly, chapter 5, shows that there are significant advantageous effects on limiting the right to reproductive health or procreates and the feasibility of such limitation thereof. Fundamentally, the chapter shows that regulated or controlled population afford the state to be in a position to provide essential basic services to its people, as illustrated by China's One Child Policy. Which demonstrate that upon the introduction and implementation of One Child Policy in China there has been a drastic and tremendous positive change that came about as a result of the One Child Policy. Changes such as reduction in birth rate, access to education and growth and stability in the economy of China.

## **6.2 Recommendations**

The state of South Africa needs to formulate a policy which will strive to regulate South African population. The formulation of such policy will be imperative and necessary for the well-being of South African people. It is evident from this study that the unregulated population and rapid population growth have a negative impact on the country's social and economic development.

Therefore, this study makes the following recommendations:

- South African must enact long-term population control policy that seeks to control and regulate population growth.
- The South African government must enact legislation that will impose sanctions on persons who fail to comply with the provisions of population control legislations or policies.
- The state must also invest in population control measures such as the access and availability of contraception in public health care facilities.
- The state must invest in educational programs that seek to advance and educate both young children and adults about the risks of having uncontrolled and unregulated population growth in schools and in national radio stations and television.
- The South African government must refrain from having a multiplicity of immigration legislations which contradicts one another, they ought to have a clear

and comprehensive legislation on immigration which is strictly implemented since unregulated immigration also contributes to unregulated population growth.

- Lastly, the South African government must stop appearing to be content with overpopulation, which manifests in various ways such as the unlimited provision of free social assistance through social grants.

## **BIBLIOGRAPHY**

### **Articles**

Brandon, L (2007). The effects of population growth on economic performance in China and India. *Brussel journals of international studies*. Vol 4, No. 1, pp.1-8.

Conly S. (2005). "The right to procreate: Merits and Limits". *American Philosophical Quarterly*, Vol 41, No: 2, pp.105-106.

Fang Q and Leong C. Impact of population growth and one-child policy on the economic growth of China. July 2014, Social Science Research Network.

Feldman, Shelley (1987). "Overpopulation as Crisis: Redirecting Health Care Services in Rural Bangladesh. *International Journal of Health Services*, Vol 17, No 1, pp.113-131.

Hall, K and Sambu, W. (2002). *Income and social grand-children living in poverty*. Children's Institute, University of Cape Town.

Hartmann, B. (1995). *Reproductive rights and wrongs: The global politics of population control*. Boston: South End. Press.

Hesketh T. (2005). The effect of China one-child policy after 25 years. *Health Policy Reports*, pp.1171-1175.

Hodges MB et al. (2011). The Impact of China's 'One-Child' Policy on the Educational Attainment of Adolescents. *The Journal of Interdisciplinary Economics*, Vol. 23, pp. 201-221.

Kates CA. (2004), Reproductive Liberty and Overpopulation, *Environmental Values*, Vol 13, No 1, pp.51-53.

Lace, G (2010). Reproductive health as human rights. *Case western reserve law review*. Vol. 60, No. 4, pp.964-965.

Li Z et al. (2016). Impacts of China's One-child Policy on Public Health in China: An Overview. *China Health Review*, Vol. 7, No.2, pp.1-13.

Lijing J. (2011). China's one-child policy.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1116810/> accessed 27 July 2018.

MacNamara R.S. (1984). Time bomb or myth: The population problem. *Foreign Affairs*, pp.1116-1131.

Marietta AC (1988) "Optimal Population Growth and Social Welfare Function" *Eastern Economic Journal*, Vol. 14, No. 3, pp. 229-238.

Marutlulle NK. (2015). The obstacle to housing delivery in Ekurhuleni Metropolitan Municipality: A critical review of output and input. Vol 3. No. 4, pp.141-163.

Nussbaum, MC (1997). Capabilities and Human Rights. *Fordham Law Review*, Sudbeck K. (2012). The effect of China's one-child policy: The significance for Chinese women. *Nebraska Anthropology*. Vol. 27, pp.43-60. Vol. 66, No. 2, pp. 273-200.

Penny Kane. (1999) China one-child family policy BMJ. P 992-994.

Robeyns, Ingrid, "The Capability Approach", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward.Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2016/entries/capability-approach/>>. Accessed 26 May 2018.

Robison JA. (2015). Provisional Thoughts on limiting the Right to Procreate. *Potchefstroom Electronic Law Journal*, Vol 18, No. 2, pp.332-362.

Rust, D.L (2010). The Ethics of controlling population growth in the developing world. *Intersect Stanford University*. Vol 3 No.1, pp. 69-78.

Sheng X and Settles BH. (2008). The one-child policy and its impact on Chinese families." This paper is partially based on a previous one prepared for XV World Congress of Sociology, Brisbane, Australia, July 7-13, 2002. Research Committee on Family.

Soukenya, G. (2006). To what extent can government control Birth Rate. Kingston School, Barcelona. April 9<sup>th</sup> 2006.

Sudbeck K. (2012). The effect of China's one-child policy: The significance for Chinese women. *Nebraska Anthropology*. Vol. 27, pp.43-60.

United Nation, (2008). *The Millennium Development Goal Report*. New York: United Nations.

Yang J. (2006). Has the one-child policy improved adolescent educational well-being in China? *CHNS Discussion Paper 2006*.

Zhang J. (2017). The Evolution of China's One-Child Policy and Its Effects on Family Outcomes." *Journal of Economic Perspectives*". Vol 31, No 1, pp.152-153.

## **Books**

Alburg DS, Kelly AC and Mason KO (eds), (1996), *The Impact of population growth on well-being in developing countries*: Berlin; Springer.

Brown LR, Gardner G and Halweil B (2000), *Beyond Malthus nineteen dimensions of the population challenges: sixteen dimensions of the population problem*. London: Earthscan.

Mars J, (2016). *How corporate owners are killing us*. New York: Harper Collins Publishers

## **Case law**

*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998 (11) BCLR 1434 (T), 1998 (4) SA 1113 (T)

*The government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19,2001 (1) SA 46,2000 (11) BCLR 1169 (4 October 2000).

*Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) (9 October 2009).

*Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28,2010 (3) BCLR 239 (CC), 2010 (4) SA 1(CC) (8 October 2009).

*Minister of Health and Others v Treatment Action Campaign and Others* (No 1) (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002).

### **Dissertations**

Makale Thandi *Service Delivery in South African Rural Municipality*. (LLM Dissertation 2015 Stellenbosch).

### **Internet articles**

African National Congress

[www.anc.org.za/documents/Manifestos/any-author/any-yea](http://www.anc.org.za/documents/Manifestos/any-author/any-yea) (Accessed 3 June 2018).

Arnette S. "How population growth affects the educational system". 28 June 2018 <<https://classroom.synonym.com/population-growth-affects-educational-system-6164071.html>> (Accessed 12 July 2018).

Family planning in China." *Permanent Mission of the people's republic of China to the United Nations Office at Geneva and other international organizations in Switzerland*" Information Office of the State Council of the People's Republic of China. August 1995, Beijing. p 2. < <http://www.china-un.ch> > (Accessed 25 March 2017).

Media statement:2008/19: Budget hurts the poor by hiking VAT and slashing basic education funding. < [https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#\\_ftnref2](https://equaleducation.org.za/2018/02/22/media-statement-201819-budget-hurts-the-poor-by-hiking-vat-and-slashing-basic-education-funding/#_ftnref2)> (Accessed 12 July 2018).

Soukenya, G (2006). To what extent can government control Birth Rate. Kingston School, Barcelona. April 9<sup>th</sup> 2006.

<https://geographyfieldwork.com/GovernmentBirthControl.htm>



Satbir Singh Bedi. Lack of education leads to overpopulation and vice versa. 22 July 2013  
<<http://www.merineews.com/article/lack-of-education-leads-to-overpopulation-and-vice-versa/15888267.shtml>> (Accessed 12 July 2018).

Sellors A. Education in school affecting test score.  
<<http://education.seattlepi.com/overpopulation-schools-affecting-test-scores-2121.html>>  
(Accessed 10 July 2018).

South African Social Security Agency [www.sassa.gov.za/index\\*phpstatistical\\_report](http://www.sassa.gov.za/index.php/statistical_report)  
(Accessed 11 July 2018).

Statistics South Africa. Statistical release P0302 mid-year population estimate, 2016  
<[statssa.gov.za/publication/P0302216.PDF](http://statssa.gov.za/publication/P0302216.PDF)> (Accessed 27 June 2018).

UN General Assembly, International Covenant on Economic, Social and Cultural Rights,  
16 December 1966, United Nations, Treaty Series, vol. 993, available at  
<http://www.refworld.org/docid/3ae6b36c0.html> (Accessed 21 June 2018).

## **Legislation**

Children's Act 38 of 2005.

Constitution of the Republic of South Africa, 1996.

Housing Act 107 of 1997.

Social Assistance Act 13 of 2004.

The Choice of Termination of Pregnancy Act 92 of 1996.

The Local Government: Municipal Systems Act 32 of 2000.

## Newspaper Articles

Brian Krans (2014). Overpopulation: An Overlooked Factor in Global Health. 19 March 2014. <https://www.healthline.com/health-news/overpopulation-driving-global-health-crisis-031914> (Accessed 16 July 2018).

Chutel L" Post-apartheid South Africa is failing the very people it liberated" 25 August 2017 Quartz Africa.

Mothata L (2017). Fiscal policy directly affects citizens' well-being: *Which is why the country will be hanging on Gigaba's every word when he delivers next week's medium-term budget policy statement.* 22 October 2017, Business Live <<https://www.businesslive.co.za/bd/opinion/2017-10-22-fiscal-policy-directly-affects-citizens-well-being/>> (Accessed 7 July 2018).

Mqamelo J (2013) "burning issues of SA's population growth: time to look an elephant in the eye" 26 February 2018.

Nomalizo Tukwayo (2008)." Unwanted pregnancies rife" *Twenty-eight million US women are at risk of having unwanted pregnancies, researchers say. In South Africa the number is also high, but for different reasons.* 15 May 2008 <<https://www.health24.com/Lifestyle/Contraception/About-contraception/Unwanted-pregnancies-rife-20120721>> (Accessed 18 July 2018).

Wendy Connett: Understanding China's Former One Child Policy. Updated June 25, 2018 — 5:00 PM EDT <https://www.investopedia.com/articles/investing/120114/understanding-chinas-one-child-policy.asp>. (Accessed 14 July 2018).

## Reports

African Charter on Human and People Rights, article 17, p 3. <[www. African Charter on Human and People Rights .com](http://www.AfricanCharteronHumanandPeopleRights.com)> (Accessed 20 June 2018).

Financial and Fiscal Commission, 2012-2013, Technical Report.

Fuller Centre for housing, Western Cape. Housing delivery in South Africa. Draft Report: Housing Delivery 2014. pp.14-17.

Huang W et al. (2015). The Great Expectations: Impact of One-Child Policy on Education of *Girls*. IZA Discussion Paper No. 9301. pp.1-2.

Lehola PJ (2016). Education series volume 3: educational enrollment and achievement, Report No:92-01-01.

Population and development in Africa, prepared by the Organization of African, Unity (OAU) and Economic Commission for Africa (ECA)

< <http://www.un.org/popin/icpd/conference/bkg/pop.html> > (Accessed May 14, 2017).

Population Matters for Sustainable Development, prepared by the Population and Development Branch, Technical Division, United Nation Population Fund (UNFPA), by Michael, H. Jose, MG and Schensu, D.

South Africa (1997) Department of Welfare. *Principles, guidelines, recommendations, proposed policies and programmes for developmental social welfare in South Africa*. August 1997.

South Africa, Ministry Welfare and Population. 1997. White paper on population policy (No 19230). Pretoria: Government Printer

The Laxenburg Declaration on Population and Sustainable Development. Statement of the global expert panel" (October 2011)

The Universal Declaration on Human Rights,10 December 1948 < <http://www.un.org/en/universal-declaration-human-rights/>> (Accessed at 03 September 2017).

Tissington K. (2011). A resource guide to housing in South Africa 19094-2010: Legislation, Policy, Programmes and Practice. P14-42.

United Nations, International Conference and Population Development, 18 October 1994  
< A/CONF.171/13: Report of the ICPD (94/10/18) (385k)> (Accessed May 14, 2017).