

## Title: Advancing Substantive Equality in South Africa: Elite Contestations Surrounding Constitutionalism, Gender and the Right to Social Assistance

Centring the right to social assistance in South Africa, this thesis interrogates elite contestations concerning the relationship between constitutionalism, socio-economic rights and social policy to elucidate how systemic inequalities manifest in contemporary South Africa. Structural inequality has increased since the end of apartheid, despite the establishment of a constitutional democracy in 1994, founded on principles of dignity, equality and social justice, and the recognition and justiciability of constitutionally protected civil, political, and socio-economic rights afforded to everyone in democratic South Africa. Poverty and inequality are systemic, racialised and gendered across numerous societal structures, impacting particularly black women, who remain socially excluded while confronting perilous lived realities. The research thus seeks to interrogate the contested legal, political, and socio-economic perspectives between elite actors that have informed the framing of contemporary social assistance policy in post-1994 South Africa, to gain a deeper understanding of the lacuna that exists between South Africa's constitutional aspirations and its unequal reality.

I develop and apply a critical human rights-based, socio-legal theoretical framework and methodology to explore the opportunities and limitations of socio-economic rights as a mechanism of redress for historical injustices that are a direct outcome of colonialism and apartheid in South Africa. My multidimensional and interdisciplinary analytical framework incorporates legal pluralism, intersectionality, and legal mobilisation approaches to analyse the conceptualisation, realisation, administration and protection of the right to social assistance in South Africa.

The methodology integrates legal consciousness and intersectionality to explore how elite actors – including state officials, lawyers, academics, and civil society actors – perceive the right to social assistance and their related human rights obligations, and the local and global factors that have influenced their decision-making processes. Through 23 semi-structured interviews, I analysed the power dynamics that inform these elites' perceptions of the role of constitutionally protected socio-economic rights in addressing systemic inequalities. Moreover, I developed a framework to conduct a human rights budget analysis to gain a deeper understanding of the state's budget priorities to tackle existing inequalities through the delivery of social assistance.

The main findings reveal that South Africa's current approach to realising the right to social assistance primarily as a poverty alleviating mechanism overlooks the power dynamics that informs socio-economic rights' realisation, thereby simultaneously advancing and hindering the achievement of substantive equality. In this

respect, stereotyping beneficiaries in social policymaking, coupled with perpetual administrative failures, significantly inhibits the advancement of substantive equality in South Africa. To counter the exclusion that emanates from current policymaking processes and their subsequent administration, legal mobilisation strategies can serve as legal, political, and social claims that not only protect socio-economic rights, but also reinforce the public's belief that the law and courts can play a substantive role in tackling systemic inequalities. Lastly, as a global human rights norm entrepreneur, South Africa's constitutional framework is not only a crucial mechanism of counter-power in the quest to advance substantive equality and social justice through the delivery of socio-economic rights domestically, but also in the international governance regime to foreground southern interests in combatting complex socio-economic issues that will directly impact an alternative future of world-making.

This thesis contributes to Development Studies in three main aspects: 1) proposing an innovative interdisciplinary framework and methodology to address the political, economic and social power dynamics that drive inequality in society, and that fall outside of the scope that institutionalised legal frameworks are envisioned to address; 2) exploring the transformative potential of the right to social assistance to address the multifaceted nature of systemic inequalities, that includes an integrated and comprehensive approach to poverty reduction and simultaneously the promotion of gender equality; and 3) elucidating the opportunities and limitations of governance structures inherited from colonialism and apartheid, despite South Africa's transition to democracy, to promote a transformative constitutionalism that advances substantive equality in South Africa, and Africa more broadly.