

# THE INTRINSIC ROLE OF THE DEVELOPMENT FACILITATION ACT IN ACCELERATING THE DELIVERY OF LAND DEVELOPMENT TO THE BLACK MAJORITY INPOST-APARTHEID SOUTH AFRICA

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## ABSTRACT

*Post-apartheid South Africa introduced various transformative legislation to accelerate and speedup land development projects and land justice for the previously denied and disadvantaged black South Africans. One of these progressive transformative legislation is the Development Facilitation Act 67 of 1995 (DFA). However, the reality is that most of the land in the country is still owned by the white minority, who were previously advantaged during apartheid era and continue to be advantaged and benefit broadly in the post-apartheid South Africa. This paper examines the DFA by evaluating its strengths and weaknesses in addressing the past land and development segregations and denial against the black majority in post-apartheid era.*

**Keywords:** Land development, Skilled-Personnel, Apartheid, Exclusion, Black Majority, South Africa

## INTRODUCTION

Nowadays, the delivery of developmental agenda of any democratic society is at the center of the day to day discourse by individuals, corporations, politicians and communities. In order to provide and deliver the requisite developments in the society, there is need for effective strategy that fully integrates the aspirations, voices, needs, and support of the citizens and society at large (Schieffer & Lessem, 2016). Thus, the accomplishment of the delivery of robust and improved development agenda requires the enlistment and support of all spheres and arms of government in a country (Evans, 1996). In South Africa, in order to accomplish the delivery of robust development as envisaged in the Constitution of the Republic of South Africa, 1996, all spheres of the government are enjoined to work together. Similarly, the executive, legislature and the judiciary have to work toward ensuring that while discharging their functions, the people are at the center of their objectives. Therefore, everything needs to be done to ensure that the development seeks to improve the standard of living of the people in the society. The international community also gives tacit approval to better delivery of developmental projects to the citizens by the government and state parties of the international community (Blair, 2000).

The relationship and synergy between government involvement and private co-operative efforts in development are impetus for the government and the communities to enhance each other's developmental efforts (Crook & Sverrisson, 1999). This synergy which is complemented with embeddedness is needed for fostering societies characterized by formidable egalitarian social structures and robust, coherent state bureaucracies.

Against this backdrop, the government is expected to take proactive steps to ensure that interventions on the delivery of development projects are actually implemented and done appropriately (Kusek & Rist, 2004). Its pertinent to point out that what has been the barrier to broad delivery of basic development services, particular to the black African majority in the rural

communities, and those who live in the informal township settlements in South Africa was the apartheid spatial planning laws which segregated blacks from whites (Turok, 2012). While the white areas were properly planned, the black areas were not. Consequently, as soon as South Africa became a democratic country in 1994, the country immediately embarked on various processes of dismantling the apartheid and colonially inspired tainted spatial planning systems which broadly discriminated against the black majority by segregating them and denying them all socioeconomic goods and services, basic service delivery and developments (Van Wyk & Oranje, 2014). In order to address apartheid segregation laws and policies that gave oxygen to segregation, discrimination inequality and exclusivity, the democratic government which came to power in 1994 introduced the Development Facilitation Act published in October 1994 to override the planning legislation that was developed during the apartheid era (Van Wyk & Oranje, 2014). Thereafter, this led to the enactment into law of a transformative post-apartheid spatial planning system known as the Development Facilitation Act 67 of 1995 (DFA). The purposes of the DFA are to introduce a progressive spatial planning ethos, containing the idea of efficient, integrated and sustainable land development in the interests of all people that inhabit South Africa; to introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development projects and programmes relating to land in all provinces in South Africa. Similarly, the national Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) was promulgated to effectively dismantle the apartheid special segregation and divisions by creating a single, integrated spatial planning systems and more coherent and inclusive approaches to land and land development in municipalities. The significance of the SPLUMA was reinforced in the National Development Plan 2030 (NDP) (Van Wyk & Oranje, 2014). The NDP offers a long-term perspective by identifying diverse roles to be played by all sectors of the South African society in order to achieve set goals such as the elimination of poverty, reduce inequality and attain equality by 2030. These are possible if there is broad inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout society.

The DFA is primarily aimed at low-income housing delivery having “the capacity to cut through a number of constraints to speedy development and facilitate the release of end-user finance earlier in the development stream” (Emdon, 1994). In support of this assertion, Rigby and Diab noted that “the Development Facilitation Act 67 of 1995 was introduced to expedite land development in South Africa and to overcome the complex land tenure issues created by the disparate planning legislation of the apartheid era” in (Rigby & Diab, 2003). The uniqueness of the DFA is that it established Development Tribunals each province in South Africa “to deal with any matter brought before it, grant urgent interim relief pending the making of a final order by the tribunal; conduct any necessary investigation; determine any time period within which any act in relation to land development is to be performed by a person.”

The DFA was passed with the main aim of speeding up land development projects in post-apartheid South Africa (Rigby & Diab, 2003). Section 3 of the DFA is important because it provides the general principles that must be taken into consideration in any project involving land development. The section lists different factors that must be considered based on laws and policies when development projects are being undertaking. The DFA explicitly provides that policies contribute to the correction of the historically distorted spatial patterns of settlement in South Africa where there was an optimum use of existing infrastructure in excess of current needs. While the DFA is the basis of development projects, the Reconstruction and Development Programme (RDP) is an important South African socio-economic policy framework implemented by the ruling African National Congress (ANC) government purposely to address the massive socio-economic problems and deficits of the defunct apartheid regime (Bikam, 2016). Although the RDP was introduced a year before the DFA, to a certain extent, they interrelate and support each other. Both aim to deliver contemporary developmental projects for the neglected and denied black majority in South Africa.

## METHODOLOGY

The study used a qualitative non-empirical approach by sourcing and applying contemporary legal data consisting of a detailed analysis of the DFA, legislation and scholarly writings relevant and related to the subject matter being researched. A content analysis method was used to analyze the significance of the DFA in accelerating and speeding up the delivery of land and development projects to the previously denied black majority in South Africa. The result shows both the strength and weaknesses of the DFA since its introduction in 1995.

### **Articulating the Purposes and Contents of the DFA**

The DFA deals with legal principle, procedures, institutions, applications and documents applicable to land development in South Africa (Berrisford, 2011). In term of section 3, the DFA explicitly articulates what the development principles are, and how they are applicable throughout South Africa as a set of uniform legal principles binding on all spheres of government and everyone in South Africa (Du Plessis, 2014). Section 2 supports section 3 by stating that the principles should support development the policy, administrative practice and laws and broadly speaking, support effective integrated planning, the optimal use of existing resources, the promotion of sustainable development, the requirement that land use should be judged on its merits and many more.

While section 3 of the DFA sets out the general principles for land development which apply to all land development in South Africa, Section 3(1)(a) reinforces the role of policy, administrative practice and laws in facilitating urban and rural land development in formal and informal existing and new settlements (Pienaar, 2002). Sections 3(1)(b) seek to promote legitimacy in land development issues and as such, stresses the need for law to promote and supervise the implementation of land development and discourages the illegal occupation of land, with due recognition of informal land development processes (Pieterse, 2007).

Section 3(1)(c) provide that policy, administrative practice and laws should promote efficient and integrated land development. The section goes further to outline how this may be achieved. To this end, they must promote the integration of the social, economic, institutional and physical aspects of land development. The main crux of the subsections is to promote a diverse combination of land uses, in this way treating rural and urban land as equal in playing a role in development. Section 3(1)(c)(iii) provide that policies should promote the availability of residential and employment opportunities in close proximity to, or integrated with each other. This is to create conducive and convenient ways for rural masses who used to travel long distances to get to work as a result of spatial apartheid planning. To achieve this, the DFA stresses that policies should be introduced to correct various historically distorted spatial patterns of settlement in South Africa (Berrisford, 2011).

More importantly, Section 3(1)(C) (i) of the DFA encourage environmentally sustainable land development practices and processes (Van Wyk, 2007). To this end, it calls for the introduction of frameworks on sustainable environmental use and avoidance of harming the environment (Kihato, 2012).

The principles enunciated in DFA are of general application and very broad. They apply to both old and new development projects and programmes whether in the rural or urban areas. They have wider and unlimited scopes regarding all developmental projects in South Africa (Mogale, 2003). Interestingly, the DFA is not applicable to only the general principles of land development; it also contains the general principles for decision making and conflict resolution (Nel, 2001). In terms of Chapters II and III of the DFA, institutions like the Development and Planning Commission for advising the government on policy and laws concerning land development at

national and provincial levels and Development Tribunals were established (Oranje & Berrisford, 2012). The Tribunals are responsible for considering all development applications and they have been given wide-ranging powers to override certain legislation. More importantly, Chapter IV deals with Land Development Objectives, which form part of the Integrated Planning Process in which every local government body in the country must be actively involved in (McEwan, 2003). This process usually produces what is known as the Integrated Development Plan (IDP), being the roadmap for the development in the local sphere of government. As a matter of fact, the IDP is the “centerpiece of planning in post-apartheid South Africa with the intention to provide strategic guidance to newly constructed municipalities, and to link and coordinate the many different sectoral plans and planning processes. The IDP has multiple and diverse origins, and is the product of both international trends and influences the specific South African context” (Harrison, 2001). Even though there have been stark criticism of the implementation of the IDP at the local sphere of government, integrated development planning should be understood as an incremental learning process (Harrison, 2001).

More importantly, the DFA, with a key role in land registration, shortens ordinary land development procedures. The DFA is expected to bring about quick and uniform land development for low-income communities. In order to accomplish this, it will, to a large extent depend on the composition and functioning of the Development Tribunals. The Development Tribunals are empowered to make decisions and resolve conflicts in respect of land development projects. They also facilitate the formulation and the implementation of land development objectives (Pycroft, 1998).

The DFA was enacted to address different land injustices, but the irony is that land injustice still prevalent in South Africa, and they are further exacerbated by poor capacity in municipalities to plan for and take decisions around land development (Phuhlisani, 2017). While section 3 of the DFA seeks to ensure that there is land justice for all, the problem is that to date, most of the land in the country are still owned by the previously advantaged white minority. Only few black elites, mostly males are able to benefit from the DFA.

## **FINDINGS AND DISCUSSION**

The DFA was enacted purposely to eliminate the past-apartheid land and development injustices throughout South Africa. The DFA is a potent land development tool and applies throughout South Africa. Therefore, the DFA seeks to deliver development projects to the indigents and poor in the local sphere of government and to the marginalised in the urban settlements. Particularly, in terms of section 2(b), the DFA is used to guide the administration of any development plan or zoning scheme in term of any law. Similarly, in terms of section 2 (c), the DFA is used as guidelines for land development and land use decisions. The discharge and the performance of all the functions and activities in the DFA are explicitly provided for in terms of section 2(d)(iv) of the DFA. More importantly, the DFA is usually relied on as a framework of legal principles used to take decision by the Land Tribunals. Similarly, it is equally the framework within which the Development and Planning Commission functions. The DFA is also being used as planning framework for the formulation and implementation of land development objectives in all the provinces. More importantly, it serves as a guide in the administration of the registration of land tenure rights in terms of the DFA. It is used to accelerate and sped up the RDP and other land development projects and programmes in South Africa. It is also used to declare development areas and guide the process of land development projects and programmes in the development areas. More importantly, the DFA deals with and resolves all land tenure matters referred to in Chapter VII of the DFA and also for the completion of land development application initially made and any other law prior to the commencement of the DFA. The role of the land tribunal is critical to

development projects, hence if there is any conflict, the tribunal should tackle it head on to resolve it in order not to stall development. More importantly, other transformative interventions such as the RDP and SPLUMA relevant to and supporting DFA in terms of accelerating delivery, are also critical because they strengthen the application of and delivery of the provisions and contents of the DFA. To effectively and efficiently implement the DFA, it is imperative to ensure that relevant people with skills, capacity and competencies are deployed to drive the implementation for effective and efficient delivery of land developmental projects in all the local governments in South Africa.

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