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(Conference draft)

“Developmental State No Birth Right: South Africa’s Post-1994 Economic Development  
Story”

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## **Abstract**

This paper explores how South Africa despite having one of the most lauded constitutions and legal frameworks in the world, has been unable to advance as a developmental state in economic development and institutional building endeavours. The contention of this paper is that the South African government, prioritising law and development, did so at the expense of institutional building for economic development purposes. Law and development is conceptualised in this paper as States prioritising liberal actions such as separation of powers (judiciary, executive and legislature) and human rights. Consequently, this paper is not arguing against some of the tenants characterising the law and development agenda. Rather it asks, did South Africa lose its credentials as a possible developmental state by prioritising law and development initiatives over building developmental state institutions for local economic development purposes in particular? Ultimately, this paper contends that for South Africa to become a functional developmental state it needs to reconsider its constitutional/law and development aspirations, in favour of reconfiguring government institutions to prioritise economic development.

## ***Introduction***

The Republic of South Africa (RSA) has an internationally acclaimed constitution. This acclamation stems from the constitution’s mandate to liberal values and human rights, in the face of its brutal past. South Africa enacted the constitution in 1996 through a negotiated settlement between a white dictatorial regime and an elected majority African and black political party apparatus. In forgoing a racially motivated civil war, the South African government led by the majority party in the parliament the African National Congress (ANC) for the last twenty years has sought to be a beacon of human rights and liberal values. However, this paper contends that this aspiration by the constitution and government has meant South Africa has failed to become a functional Development state premised on economic development. The adherence to a liberally defined agenda as seen in the multitude of clauses, government actions and institutions has been at the expense of creating institutions that prioritise economic development for the majority of Africans primarily and Blacks generally. A black in South Africa refers to three social groups historically, African (indigenous peoples), Coloured (mix race) and Indians (Asian decent)<sup>1</sup>.

## ***Background and problem***

South Africa, much like other African States, is characterised by a history of white European colonial rule. This misrule saw African people’s wealth in the form of land and other assets forcibly taken away from them and repatriated to Europe in most cases (Rodney 1973)<sup>2</sup>. However, unlike other African States, such as the Democratic Republic of the Congo or the Federal Republic of Nigeria, the colonialist in South Africa did not leave Congo (More 2012)<sup>3</sup>. Rather they stayed and have become a symbol of South Africa’s colonial and Apartheid past, and also of South Africa’s multicultural present and possible future. It is against this backdrop that South Africa, in the early 1990’s, saw all political parties and various civil society groupings coming together and forging a social compact<sup>1</sup>, in the form of the Republic of South Africa’s constitution 1996.

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<sup>1</sup> Seekings, J. 2010. Race, class and inequality in the South African City. Centre for social Science Research. Social Surveys Unit. CSSR Working Paper No. 283. November.

<sup>2</sup> Rodney, W. 1973. How Europe Underdeveloped Africa. Bogle-L’Ouverture Publications, London and Tanzanian Publishing House, Dar-Es-Salaam 1973, Transcript from 6<sup>th</sup> reprint, 1983; Transcribed: by Joaquin Arriola.

<sup>3</sup> More, M. 2012. Fanon and the Land Question in (Post) Apartheid South Africa. Chapter Fourteen. Accessed on the 18 April 2016, <http://www.churchland.org.za/wp-content/uploads/2012/11/More-Fanon-and-Land.pdf>.

It was envisioned that the South African constitution would act as a catalyst - reforming the South African society and State. The role of the constitution was to repeal three centuries of ill-gotten legislative advantage that white South Africans had accumulated over indigenous Africans and black people. Coomans’s explains;

*“The Constitution must be viewed against the background of the past, in particular the era of Apartheid and its legacy, and the determination of the drafters of the Constitution to overcome this deplorable history and work towards a society based on democratic values, social justice and fundamental human rights. This development has been characterized as “transformative constitutionalism”, a process aimed at transforming a society in “a democratic, participatory and egalitarian direction”, in which large-scale social change is to be achieved through non-violent political processes based on the rule of law” (Coomans 2005:168)<sup>4</sup>.*

The aim of having a catalytic document or living constitution by the South African State has been welcomed by international legal experts such as the United States of America’s Supreme Court Justice Ruth Bader-Ginsberg (Moseneke 2012)<sup>5</sup>. Bader-Ginsberg argued that the Egyptian State, in trying to move forward from its current socio-political problems, should look to the South African constitution as a guide regarding how to construct their new society and constitution. While the Supreme Judge did not elaborate on the exact reasons for encouraging the usage of the South African constitution, South Africa’s Deputy Chief Justice Dikgang Moseneke gave his own thoughts why the Supreme Court Justice would encourage its usage within the field of law. Moseneke (2012) listed seven key characteristics shaping the RSA Constitutional approach, (a) Emphatically transformative (b) Constitutional supremacy and the rule of law and judicial review (c) Social justice - socio-economic rights (pro-poor stance) (d) Affirmation of Diversity (e) Value drenched constitutionalism (moral citizenship) (f) Institutional integrity and (g) International norms. While each of these characteristics require an in-depth explanation a simple reading of them, does give one insight into what the South African constitution aims to promote and uphold.

Therefore, this paper contends that Law and Development within the South Africa context, refers to the pre-eminence of the stated seven characteristics of the RSA Constitution as laid out by Moseneke (2012). Moreover, this paper argues that Law and Development in the case of the South Africa government has led to the prioritisation of an agenda that promotes liberal

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<sup>4</sup> Coomans, F. 2005. Reviewing Implementation of Social and Economic Rights: An Assessment of the “Reasonableness” Test as Developed by the South African Constitutional Court. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. ZaöRV 65, 167-196.

<sup>5</sup> Moseneke, D. 2012. A Journey from the Heart of Apartheid Darkness Towards a Just Society: Salient Features of the Budding Constitutionalism and Jurisprudence of South Africa. This publication is the written version of the thirty-second annual Philip A. Hart Memorial Lecture, delivered at Georgetown University Law Center on April 4.

values like Human Rights and separation of powers in both the domestic and international fields of influence. However, as lauded as the Law and Development approach is, this paper contends that a contradiction exists between this approach and the South African government’s economic development policy agenda. Before this discussion, this it is important to give a brief account of what is meant by economic development and development.

This papers main concern with regards to development, centres on economic development, which will conceptualised later in this paper. Development is a broad and complex concept. Mkandawire (2010:7)<sup>6</sup> brilliantly argues that trying to pin down one all-encompassing definition of development is problematic for numerous reasons. Firstly, it traverses numerous academic disciplines and secondly this can lead to different and conflicting conceptions of development. Therefore this paper; having consulted Thomas (2000:774)<sup>7</sup>, Kanbur (2005:7)<sup>8</sup>, Ake (2000)<sup>9</sup> and others; conceptualises development as the deliberate action in the form of public policy by government primarily to improve legal, social, education, economic, technological and political situations of states. Economic development on the other hand can be articulated as simply the prioritisation and desire of the state to ensure that; human capital is advanced in areas such as Science, Public Administration/Management, Engineering (Ranis 2004)<sup>10</sup>; selected public institutions are improved and well managed; private sector business (preferably small business) are encouraged to grow in order to expand the government’s tax base and limit unemployment (Todaro and Smith 2010)<sup>11</sup>. It is for this reason that this paper will focus heavily on the actions of the South African State in terms of its policy making and the execution of economic development policies.

To begin with it can be argued that the first and only time the South African government tried to create an economic development policy that adheres to its Law and Development philosophy, was in the late 1990’s. The policy that was formulated was known as the

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<sup>6</sup> Mkandawire, T. 2010. Running while others walk: knowledge and the challenge of Africa’s development. In: LSE African Initiative inaugural lecture, 27 April 2010, Sheikh Zayed Theatre, New Academic Building, The London School of Economics and Political Science, London, UK

<sup>7</sup> Thomas, A. 2000. Development as practice in a liberal capitalist world. Development Policy and Practice, The Open University, Milton Keynes, UK. *Journal of International Development*, J. Int. Dev. 12, 773-787.

<sup>8</sup> Kanbur, R. 2005. The Development of Development Thinking. Lecture. July, accessed on the 19 June 2016, <http://www.arts.cornell.edu/poverty/kanbur/ISECLecture.pdf>.

<sup>9</sup> Ake, C. 2000. Democracy and Development in Africa. Maryland: Brookings Institution.

<sup>10</sup> Ranis, G. 2004. Human Development and Economic Growth. Center Discussion Paper No 887. May. Yale University.

<sup>11</sup> Todaro, M and Smith, S. 2010. Economic Development 11th edition. Addison-Wesley Pearson.

Reconstruction and Development Programme (RDP). The RDP came about due to the assistance of the ANC’s political allies like the Congress of South African Trade Unions, South African Communist Party and South African National Civic Organisation (ANC 1994)<sup>12</sup>. It was operationalised by the ANC through a series of programmes that leveraged government apparatuses to provide impoverished citizens with affordable or free social services e.g. free housing, free health care and schooling. It is for this reason that various scholars, social activists and ANC aligned partners hail the RDP as the perfect embodiment of the RSA Constitution’s Law and Development approach (Visser 2004<sup>13</sup>, Bond 2005)<sup>14</sup>. Yet, the RDP did not see the implementation of many of its stated objectives and was unable to attain the overall vision for the underdeveloped and poor Africans and black citizens. This is because in 1996 the RDP was replaced by a macroeconomic policy framework called the Growth, Employment and Redistribution (GEAR).

It is important to note various reasons have been advanced as to why the RDP was replaced. For some, the ANC lost its nerve in the face of subtle threats from the local white private sector and international financiers (Dollery and Snowball 2003)<sup>15</sup>. Or as argued by others, the ANC did not have an adequate tax base to fund the ambitious programmes envisioned in the RDP, coupled with the government inheriting a purposefully bankrupted state (DPME 2014)<sup>16</sup>. Yet, the focus and contention of this paper is that the RDP, like subsequent policies, failed because of the government’s inability to confront on-going tensions that exist in South Africa’s economic development and public policy thinking.

The first example of an unresolved tension or problem stems from the democratic transition in 1994. This is due to the South African government’s inability to design and clearly provide an economic development policy position for South Africa. Following the RDP, the GEAR

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<sup>12</sup> African National Congress (ANC). 1994. RDP White Paper: Discussion Document. Discussion Documents. Accessed on the 20 April 2016, <http://www.anc.org.za/show.php?id=232#1.1>.

<sup>13</sup> Visser, W. 2004. Shifting RDP into GEAR. The ANC Government’s dilemma in providing an Equitable System of social security for the “NEW” South Africa. University of Stellenbosch, South Africa. Paper presented at the 40<sup>th</sup> ITH Linzer Konferenz, 17 September.

<sup>14</sup> Bond, P. 2005. *Elite Transition: from Apartheid to Neoliberalism in South Africa*. Second edition. London: Pluto and Pietermaritzburg: University of KwaZulu-Natal Press.

<sup>15</sup> Dollery, B and Snowball, J. 2003. *Government Failure and State Incapacity: The South African Public Sector in the 1990s*. Working Paper Series in Economics. University of New England School of Economics.

<sup>16</sup> Department of Planning, Monitoring and Evaluation (DPME). 2014. *Twenty Year Review South Africa 1994 to 2014*. The Presidency of the Republic of South Africa.

policy was a reaction to problems in international markets (2004:8)<sup>17</sup>. The new policy was not clearly explained, and in some instances saw government sell-off valuable State Owned Entities resulting in increased unemployment in some of the most vulnerable areas of South Africa. This reaction to international markets, rather than positive action, meant that the government also compounded a secondary tension - namely the problem of race based and geographical inequality. This tension is highlighted and extended upon by President Thabo Mbeki in his *‘Two Nations Thesis’*.

The thesis simply argued that South Africa, despite having a highly extolled constitution and attempting to implement the RDP, was still a country characterised by a rich white minority and an African and black majority that was struggling economically. Mbeki (1998:3)<sup>18</sup> argued

*“...One of these nations is white, relatively prosperous, regardless of gender or geographical dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure...all members of this nation have the possibility to exercise their right to equal opportunity, the development of opportunity, and the development opportunities to which the Constitution of 1993 committed our country...The second...is black and poor, the worst affected being women in rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. It has virtually no possibility to exercise what in reality amounts to a theoretical right to equal opportunity...”*

This observation though seventeen years old, still characterises South Africa’s economic development outlook. International and local research reports validate this point by explaining, (a) unemployment and lack of quality education affects African and black youths the most (StatSA 2016)<sup>19</sup> (b) African and black citizens struggle to enter into the formal employment sectors (OECD 2015)<sup>20</sup> and (c) the country’s economy is still predicated on international economies buying dwindling natural resources e.g. gold, diamonds, coal (IMF 2015)<sup>21</sup>. Therefore the value of GEAR is neither in its successes nor numerous failures. Rather GEAR’s value is in the fact that the South African government quickly realised that the Law and Development approach it utilised, is unable to answer critical questions about

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<sup>17</sup> Visser, W. 2004. Shifting RDP into GEAR. The ANC Government’s dilemma in providing an Equitable System of social security for the “NEW” South Africa. University of Stellenbosch, South Africa. Paper presented at the 40<sup>th</sup> ITH Linzer Konferenz, 17 September.

<sup>18</sup> Mbeki, T. 1998. Statement of Deputy President Thabo Mbeki at the Opening of the Debate in the National Assembly, on "Reconciliation and Nation Building". National Assembly, Cape Town. May.

<sup>19</sup> Statistics South Africa (StatSA). 2016. Vulnerable Groups Series I: The Social Profile of the Youth, 2009-2014. Pretoria.

<sup>20</sup> The Organisation for Economic Co-operation and Development (OECD). 2015. OECD Economic Surveys South Africa. Paris.

<sup>21</sup> International Monetary Fund (IMF). 2015. Sub-Saharan Africa Dealing with the Gathering Clouds. World Economic and Financial Surveys. Regional Economic Outlook. Washington.

constructing policies and institutions that quickly and purposefully address economic development.

The value of GEAR, as argued by this paper, lies in the fact that it purposefully highlighted the role of the government and aim of becoming a Developmental State (Ncube et al 2012)<sup>22</sup>. This quest to become a Developmental State has characterised the ANC’s policy discussions and government policy outcomes, from 1996-2011. Though Netshitenzhe argues that policies like ‘Ready to Govern’ (1992) illustrate briefly the ANC’s desire to be a Developmental State (2007)<sup>23</sup>. The ‘Ready to Govern’ policy articulated the ANC’s pre-government socioeconomic and political vision. It articulated how the ANC would transform the State’s economy, social ills and unfair land distribution based on race through creating a democratic State (Houston and Muthien 2000:38)<sup>24</sup>. The ANC’s early desire to utilise various government apparatus to advance South Africa’s socioeconomic development, in Netshitenzhe eyes qualifies it as a Developmental State.

Notwithstanding when the concept was officially adopted, the South African government thought it important to be a Developmental State. This paper contends this move to a Development State presents two problems. Firstly, does the intent of becoming a Developmental state indicate the Law and Development approach conceptualised is incorrect and needs rethinking? Secondly, did the intention to be a Developmental State have the requisite institutional and policy support by government?

### ***Conceptual and literature definitions and underpinnings***

This section focuses on three key guiding concepts informing this paper; Developmental State, Economic Development, and selected Law and Development ideas. The ideas expressed in this segment will serve to inform readers about the history of the concepts and also relate them to the South African context.

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<sup>22</sup> Ncube, M. Shimeles, A and Verdier-Chouchane, A. 2012. South Africa’s Quest for Inclusive Development. African Development Bank. Working Paper No. 150. May.

<sup>23</sup> African National Congress (ANC). 2007. Strategy and Tactics of the ANC: Building A National Democratic Society. National Conference. Accessed on 20 April 2016, <http://www.anc.org.za/show.php?id=2535>.

<sup>24</sup> Muthien, Y. Khosa, M and Magubane, B. 2000. Democracy and Governance Review: Mandela’s Legacy 1994-1999. Human Sciences Research Council. Pretoria. Chapter 3, South Africa.

### *Developmental State*

The concept of the Developmental State has its literary origins in the work of Chalmers Johnson’s (1989)<sup>25</sup> analysis of Japan’s rapid economic development and growth in the 1900’s. Kasahara (2013:10)<sup>26</sup> explains Johnson’s insight regarding the developmental state, declaring;

*“much of Japan’s remarkable industrial development during the 1925–1975 period was achieved thanks to the role of its state’s leadership...the industrial policy undertaken by the Japanese developmental State consists of two basic components: industrial rationalization policy and industrial structure policy. Industrial rationalization policy, which focuses on the micro aspect of the national economy, includes detailed measures for the operation of specific industrial sectors or individual firms...industrial structure policy was based on...the proportion of agriculture, mining, manufacturing, and services in the country’s total production; and within manufacturing it concerns the percentages of light and heavy as well as of labour-intensive and knowledge-intensive sectors”.*

The concept of a developmental state was therefore an insight into how governments, not only in Japan, but in Asia began to direct macro- and micro-economic planning and development. Yet, this section of the paper seeks to argue that despite the early work of Johnson and later authors like Yun-Han Chu (1989)<sup>27</sup>, Onis (1991)<sup>28</sup>, Evans (1995)<sup>29</sup>, Woo-Cummings (1999)<sup>30</sup> and Sinha (2003)<sup>31</sup>, which focussed on the Asian examples, it can be argued that in terms of application, the concept has its roots in Post-Independence African States. For instance a closer analysis of the economic development policies and ideas of Kwame Nkrumah’s Ghana (Botchwey 2010:9)<sup>32</sup>, Abdel Nasser’s Egypt (Nagarajan 2013:24)<sup>33</sup> and in a more uneven manner the perverse National Party of Apartheid South Africa (Natrass and Seekings 2010:5)<sup>34</sup>, illustrate rudimentary elements of being prototypical developmental states.

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<sup>25</sup> Johnson C (1982). MITI and the Japanese Miracle: The growth of industrial policy, 1925–1975. Stanford, Stanford University Press.

<sup>26</sup> Kasahara, S. 2013. The Asian Developmental State and the Flying Geese Paradigm. United Nations Conference on Trade and Development (UNCTAD). November. Geneva. No 213.

<sup>27</sup> Yun-Han Chu. 1989. State Structure and Economic Adjustment of the East Asian Newly Industrialized Countries. International Organization. 43 (4). Autumn. Pp. 647-72.

<sup>28</sup> Onis, Z. 1991. The Logic of the Developmental State. Comparative Politics. No 24. October. Pp. 109-26.

<sup>29</sup> Evans, P. 1995. Embedded Autonomy: States and Industrial Transformation. Princeton, NJ: Princeton University Press.

<sup>30</sup> Woo-Cummings, M. 1999. The Development State. Ithaca, NY: Cornell University Press.

<sup>31</sup> Sinha, A. 2003. Rethinking the Developmental State Model: Divided Leviathan and Subnational Comparisons in India. Comparative Politics. Vol. 35, No. 4. July. Pp. 459-476.

<sup>32</sup> Botchwey, K. 2010. The Relevance of Kwame Nkrumah’s Legacy in Ghana’s Contemporary Political Economy. September. The Kwame Nkrumah Memorial Lecture Series. University of Cape Coast.

<sup>33</sup> Nagarajan, K. 2013. Egypt’s Political Economy and the Downfall of the Mubarak Regime. International Journal of Humanities and Social Science. May. Vol 3. No 10. Special Issue.

<sup>34</sup> Natrass, N and Seekings, J. 2010. State, Business and Growth in Post-Apartheid South Africa. Discussion Paper Series. Thirty Four. January. IPPG Discussion Papers.

Argued more forcibly Ghanaian, Egyptian and Apartheid South African officials used similar policy methods as those of developmental states that are currently studied. Firstly, the Egyptian government nationalised a key economic resource in the form of the Aswan Dam to engineer the economic development of the State. Waterbury (1983:4)<sup>35</sup> explains that, “*The Aswan Dam symbolized rationality in resource management, national sovereignty and strength, and the leading role of the state in finding technocratic solutions to Egypt’s socioeconomic problems. All are closely interlinked*”. Moreover, the nationalisation of the Aswan Dam included creating mass employment and utilising five year plans to guide government planning.

Similarly, Ghana approached its economic development planning through utilising public enterprises for industrialisation purposes. However, Ghana’s key developmental state characteristic can be said to be its purposive employment of technocrats in government apparatuses (Botchwey 2010:9)<sup>36</sup>. The use of technocrats is now an accepted feature of developmental states as it is argued that the complexities associated with economic development, require highly skilled and knowledgeable employees/technocrats. It is this papers position that part of the success of Asian Developmental states and States like Germany lies in the fact that they ensured their governments were manned by excellent technocrats and politicians that strive for technocratic excellence. Moreover, government and public policy processes lead towards increased reliance on technocratic solutions (Gerring and Thacker 2002:11)<sup>37</sup>. A prime example of this post-Ghana’s early rise is the State of Singapore. Singapore more than chasing economic growth, ensured its core strength became its well educated young citizens, who stayed and strengthened the civil service and were able to handle complex dynamics associated with socioeconomic development (Saxena 2011)<sup>38</sup>.

The inclusion of the South African Apartheid State as a potential developmental state in this paper, does so with the firm understanding that it was a white supremacist State that sought only to assist the economic development needs of a white minority. Yet, it is important to explore the developmental state characteristics that were prevalent in the South African

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<sup>35</sup> Waterbury, John. 1983. *The Egypt of Nasser and Sadat: The Political Economy of Two Regimes*. Princeton, N.J. Princeton University Press.

<sup>36</sup> Botchwey, K. 2010. *The Relevance of Kwame Nkrumah’s Legacy in Ghana’s Contemporary Political Economy*. September. The Kwame Nkrumah Memorial Lecture Series. University of Cape Coast.

<sup>37</sup> Gerring, J and Thacker, S. 2002. *Political Institutions and Human Development*. Originally prepared for delivery at the Northeast Universities Development Consortium Conference. Boston University. September.

<sup>38</sup> Saxena, N. 2011. *Virtuous Cycles: The Singapore Public and National Development*. United Nations Development Programme. Singapore.

regime of the time. One key characteristic is the usage of the private sector to shape and foster economic development. Natrass and Seekings (2010:5) explain,

*“Apartheid produced an almost entirely white business elite. This elite was highly concentrated in terms of corporate ownership and control. In 1994, the giant, mining-based Anglo American controlled 44% of the entire capitalisation of the Johannesburg Stock Exchange, whilst the top five corporate groups together controlled 84%... The apartheid state shaped the business environment directly through parastatals in (especially) rail and air transport, iron and steel, electricity, and telecommunications, and continues to do so today, albeit on a smaller scale”.*

These and other actions ensured that the South African Apartheid state was one of the most economically developed countries on the continent and highly ranked globally (OECD/Afdb 2002:275)<sup>39</sup>. The abovementioned points illustrate this segments early position, namely that the concept of a Developmental State can be said to be part of Africa’s early Post-liberation period. Thus this contention teases out two points about the South African government’s mission, post-1994, to be a developmental state.

Firstly, what policy positions or human capital developments were formulated and implemented to make the post-1994 South Africa a functional developmental state? Did the government also invest in any major economic development projects to address unemployment? Secondly, has the Law and Development agenda, as advanced in the constitution, been analysed to ascertain if it promotes the case of South Africa being a developmental state or not – in terms of either the Asian or Post-Independence African manner. Is there empirical data to formulate an answer?

### *Economic Development*

Economic development is a key concept in this paper, and is often used in different contexts depending on the literature as indicated earlier in this paper. It is thus important to clarify the term and provide context for its usage in this paper. This paper will explore selected ideas related to economic development. However readers should be aware that a broader body of knowledge and thinkers have examined this subject, and authors like Adedeji (1984)<sup>40</sup>, Amin (1990)<sup>41</sup>, Frank (1996)<sup>42</sup>, Rodney (1973)<sup>43</sup>, (Schumacher 1973)<sup>44</sup> can be consulted for further information.

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<sup>39</sup> The Organisation for Economic Co-operation and Development (OECD) and The African Development Bank Group (AfDB).2002. African Economic Outlook. Accessed on the 30 April 2016, <http://www.oecd.org/southafrica/1826412.pdf>.

<sup>40</sup> Adedeji, A. 1984. The Monrovia Strategy and the Lagos Plan of Action: Five Years After. November. Text of a paper presented at the ECA/Dalhousie University Conference on the Lagos Plan of Action and Africa’s Future International Relations. Halifax, Nova Scotia, Canada.

<sup>41</sup> Samir, A. 1990. Delinking: Towards a Polycentric World. London: Zed Books.

Economic development is a broad concept and thus has various definitions. As such Nafziger introduces and highlights two of the finest ideas and thinkers explaining economic development, and states;

*“According to Seers (1979) the purpose of development is to reduce poverty, inequality, and unemployment. For Sen (1999), development involves reducing deprivation or broadening choice. Deprivation represents a multidimensional view of poverty that includes hunger, illiteracy, illness and poor health, powerlessness, voicelessness, insecurity, humiliation, and a lack of access to basic infrastructure”*(2006:3)<sup>45</sup>.

Therefore using Seers (1969)<sup>46</sup> and Sen’s (1999)<sup>47</sup>, forementioned ideas, this paper contends that a working definition of economic development can be crafted. Economic development is a government institution-led/guided policy process that is concerned with ensuring development is shaped to address various economic problems. These problems include unemployment, development of human capital, growth of individual and company wealth, and the development of physical structures to complement these endeavours. Liu’s own definition supports this working definition, by explaining *“There are two basic components to economic development—engagement with markets and market actors to create growth, and purposeful organizing of the right assets and capacities to improve, sustain, and extend that growth to more participants”* (2016:11)<sup>48</sup>. Yet, it is crucial to clarify that this working definition is a more refined and modern understanding of economic development. This contemporary view differs from Deaton’s (2010:4)<sup>49</sup> understanding which emanates from the;

*“...famous 1954 paper, Arthur Lewis (p. 155) wrote that “the central problem in the theory of economic development is to understand the process by which a community which was previously saving, and investing, 4 or 5 per cent of its national income or less converts itself into an economy where voluntary saving is running at about 12 to 15 per cent of national income or more. This is the central problem because the central fact of economic development is rapid capital accumulation”*.

This original definition or embryonic definition is one that sees economic development through the lenses of statistics, mathematics and financial indices such as Gross Domestic Product (GDP). Yet, such a measurement approach is very misleading and sometimes short-sighted in understanding economic development, as wealth and development are conflated.

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<sup>42</sup> Frank, A. 1966. *The Development of Underdevelopment*. Monthly Review Press.

<sup>43</sup> Rodney, W. 1973. *How Europe Underdeveloped Africa*. Bogle-L'Ouverture Publications, London and Tanzanian Publishing House, Dar-Es-Salaam 1973, Transcript from 6th reprint, 1983; Transcribed: by Joaquin Arriola.

<sup>44</sup> Schumacher, E. 1973. *Small Is Beautiful: A Study of Economics As If People Mattered*.

<sup>45</sup> Nafziger, W. 2006. *From Seers to Sen. The Meaning of Economic Development*. February. United Nations University. Research Paper No. 2006/20.

<sup>46</sup> Seers, D. 1969. *The Meaning of Development*, *International Development Review*. 11(4): 3-4.

<sup>47</sup> Sen, A.K. 1999. *Development as Freedom*, Alfred A. Knopf: New York.

<sup>48</sup> Liu, A. 2016. *Remaking economic development*. The Brookings Institution. Metropolitan Policy Programme.

<sup>49</sup> Deaton, A. 2010. *Understanding the Mechanisms of Economic Development*. *Journal of Economic Perspectives*. Volume 24. Number 3. Summer. Pp. 3–16.

This is seen in the fact that certain countries have high GDP numbers, but lack Human Development Index (HDI), fail to achieve Millennium Development Goals (MDG) indices, have poor the Gini coefficient, have poor air quality or have sacrificed their environment for better looking GDP numbers (Deaton 2010:14)<sup>50</sup>. It is for this reason this paper’s economic development definition encapsulates and argues for a broad set of indices, like educational development, living conditions, infrastructure (physical, informational and soft), employment and quality of life type indices.

A critical assessment of the South African context highlights that economic development has never been properly explained or defined by the ANC in government Post-1994. Moreover, one of the arguments against South Africa being a developmental state lies in the fact that, for the past two decades, there has been no clear policy position explaining its economic development trajectory. Gumede supports this contention by stating;

*“The post-apartheid South African development experience appears to be following footsteps of the post-colonial African development experience. Within two decades of political independence, glaring cracks and intractable development dilemmas became accentuated. This is as a result of political independence not being accompanied by robust reconfiguration of post-independent societies”*  
(Gumede 2016:45)<sup>51</sup>.

It needs to be noted that South Africa is a state with tremendous economic development potential in the form of mineral resources, elite human capital, well designed banking financial instruments and global appeal (MGI 2015)<sup>52</sup>. However, despite this documented potential, South Africa has been unable to truly deliver the type of economic development needed to address its numerous historical and ongoing problems. Yet, many of the plaudits the South African State has received are attributed to the Law and Development direction selected by the state.

### *Law and Development*

Law and Development as a concept has its roots in the work of Trubek and Galanter (1974)<sup>53</sup>. The definition of the concept is best encapsulated by Burg (1977:505-506)<sup>54</sup> who explains that

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<sup>50</sup> Deaton, A. 2010. Understanding the Mechanisms of Economic Development. Journal of Economic Perspectives. Volume 24. Number 3. Summer. Pp. 3–16.

<sup>51</sup> Gumede, V. 2016. Post-apartheid South Africa: Economic and Social Inclusion. Amherst, New York. Cambria Press.

<sup>52</sup> McKinsey Global Institute (MGI). 2015. South Africa’s Big Five Bold Priorities For Inclusive Growth. September. Mckinsey&Company.

<sup>53</sup> Trubek, D and Galanter, M. 1974. Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development. Wisconsin Law Review. Pp. 1062–1101.

the Law and Development concept, “*sees law as a force which can be molded and manipulated to alter human behavior and achieve development*”. The concept came after the period of the 1950s and 1960s, when the idea of Modernisation played a preeminent role in development discourse (Tamanaha 2009:209)<sup>55</sup>. Yet, the Law and Development concept in its first iteration did not last very long and has continued to make various iterations.

Davis and Trebilcock (1999:10)<sup>56</sup> argue the Law and Development concept took on various iterations and lost traction and relevance due to numerous reasons. One of the reasons presented for the failure of the concept is that as an originator of the concept, the United States of America (USA), failed to practice the stated tenants of the concept. This is seen in how the USA’s government handled individuals and societies involved in the Civil Rights movement and the Vietnam War (1999:14). Secondly, the concept came to be seen as a tool by which Western States transplanted their beliefs in the form of legal arguments and institutions onto developing states governments and societies (1999:21). Within the context of Africa, the Law and Development agenda came in the form of the Washington Consensus more generally, and the Structural Adjustment Programmes (SAP) specifically (Manuel 2003)<sup>57</sup>. The SAP is heavily criticised on the African continent (Mkandawire and Soludo 1999:113)<sup>58</sup> because it greatly and incorrectly called for the State (government) to play a lessor role in development and ultimately allow for external private sector businesses to do the work of the State.

These and other problems came to shape and ultimately halt the early version of the Law and Development agenda. However, a new iteration of the concept began to take hold among thinkers and institutions. Ginsburg says of this refined iteration;

*“Today, the relationship of law and economic development is again at the very forefront of development policymaking, as government agencies, international organizations, and the non-profit sector advocate the need for strengthening the rule of law in developing countries. Although it is probably a mischaracterization to assert that the new activity is institutionally and*

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<sup>54</sup> Burg, E. 1977. Law and Development: A Review of the Literature and a Critique of ‘Scholar in Self-Estrangement. 25 AM. J. COMP. L. 492, 505-6.

<sup>55</sup> Tamanaha, B. 2009. The Primacy of Society and the Failures of Law and Development. St. John’s Univ. Legal Studies Research Paper Series. Paper No. 09-0172. Accessed on 18 June 2016, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1406999](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406999) (link).

<sup>56</sup> Davis, K and Trebilcock, M. 1999. What Role Do Legal Institutions Play in Development? Draft prepared for the International Monetary Fund’s Conference on Second Generation Reforms, November 8–9.

<sup>57</sup> Manuel, T. 2003. Africa and the Washington Consensus: Finding the Right Path. Finance and Development. September.

<sup>58</sup> Mkandawire, T., and Soludo, C. 1999. Our continent, our future: African perspectives on structural adjustment. Trenton, NJ, and Asmara, Eritrea: Africa World Press.

*intellectually cohesive enough to form a "movement," it is clear that legal institutions occupy a central place in development assistance again" (2000:830)<sup>59</sup>.*

This paper agrees with Ginsburg that the Law and Development agenda, or a reformed version, of it is back in use and is relevant. Yet, it is important to understand why the concept has returned, which is linked to its new primary focus. Namely, a focus on systems of law or legality that aims to achieve economic growth or market orientated economic growth. This focus here still sees a country’s development path as one linked to Western capitalist markets and thinkers, and the development of a particular legal framework within which business can operate. Examples of this assertion are seen in how developing countries particularly from Africa, South America and other developing regions sign up to various treaties and institutions to open up their fledging economies (Gumede 2014.)<sup>60</sup>. This new iteration of the Law and Development concept is thus still very weak according to this paper, for two reasons.

Firstly, it is over reliant on seeking to link good economic growth with Western style legal practices and institutions. This paper contends that this line of argument has been shown to be lacking when one analyses the achievements of developmental states like the People Republic of China (PRC) or the Republic of Singapore (Tamanaha 2009:210)<sup>61</sup>. Secondly, this concept is too quick to equate the establishment of legal ideas and institutions with development. Davis and Trebilcock explain this contention, stating;

*"What conclusions can we confidently draw from our review of the evidence on the relationship between law and development? Despite the contemporary focus in many development circles on enhancing legal system capacity in developing countries, a frank answer is that we know far too little. Much of the rigorous empirical work (reflected in our review of the aggregate evidence) is too unrefined to support robust policy inferences" (1999:106).*

These two weaknesses, clearly illustrate the fact that no obvious links can be drawn between law and development. Finally, it is argued in this paper that Law and Development as a concept has taken on countless iterations as seen in the fact that it encompasses and is used in many academic disciplines like Economics, Finance, Public Governance, Law and others. However, this paper contends that the above-mentioned ideas related to Law and Development in South Africa speak to a particular facet of the concept that is not really linked to debates about economic development. The South African experience of Law and

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<sup>59</sup> Ginsburg, T. 2000. Does Law Matter for Economic Development? Law & Society Review. Vol. 34. No. 3. Pp 829-856.

<sup>60</sup> Gumede, V. 2014. Thought Leadership, Thought Liberation, and Critical Consciousness for Africa’s Development and a Just World. Professor and Head of the Thabo Mbeki African Leadership Institute Inaugural Professorial Lecture. 19 March. Senate Hall, Unisa.

<sup>61</sup> Tamanaha, B. 2009. The Primacy of Society and the Failures of Law and Development. St. John’s Univ. Legal Studies Research Paper Series. Paper No. 09-0172. Accessed on 18 June 2016, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1406999](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406999) (link).

Development, appears to be merely a fascination with the implementation of legal development ideas and institutions. Legal development, as defined by Tamanaha (using Thomas Carothers), can be characterised as being a equation of sorts involving, “*drafting legal codes; training legal officials (police, prosecutors, and judges); solidifying law schools and the legal profession; and enhancing legal access for citizens*” (2009:213). Moreover, the form of Law and Development particular to South Africa has greatly prized the creation and application of a liberal constitution.

Therefore, when this paper refers to Law and Development in South Africa it refers to the creation of legal institutions and ideas of a liberal persuasion. These liberal legal ideas and institutions it is argued, did not interrogate or seek to refine what type of economic development was needed post 1994. Rather, it was assumed liberal legal institutions and ideas give effect to economic development.

### ***Caveat***

Before presenting the final discussions concerning the contentions of this paper, it is important to articulate a few caveats relating to South Africa’s Developmental state trajectory and claim. Firstly, South Africa’s Developmental state trajectory is unique in that the ANC, as the governing party, self-identified itself as a Developmental state. This self-identification is different from the Asian experience, in one key respect. Namely, that the success of Asian States like Malaysia, Singapore, Japan in their endeavour with economic development resulted in external analysts and entities conceptualising them as Developmental states (Johnson 1982)<sup>62</sup>. Therefore, the desire by the ANC and South African government to be Developmental states was more aspirational than a realistic description of their actions related to their economic development endeavours.

Secondly, this desire to be a Developmental State never dealt with the fundamental differences that existed between Asian Developmental states and South Africa’s legal and social context. One of the key differences that was inadequately noted by the South African state, was the fact that South Africa built its policy, institutions and social fabric around being a liberal democracy in a post-Cold War world (Maharaj 2008)<sup>63</sup>. This action meant that, unlike Asian States such as China, Malaysia and South Korea initially, the South Africa

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<sup>62</sup>Johnson C (1982). MITI and the Japanese Miracle: The growth of industrial policy, 1925–1975. Stanford, Stanford University Press.

<sup>63</sup> Maharaj, M.2008. The ANC and South Africa’s Negotiated Transition to Democracy and Peace. Berghof Transitions Series. Resistance/Liberation Movements and Transition to Politics. Editors, Veronique Dudouet and David Bloomfield. Berghof Research Center for Constructive Conflict Management.

political landscape prioritised liberal ideas like Human Rights, minority rights and other such related concepts in policy and legal actions.

Thirdly, due to the above decision wanting to be a liberal democracy in Post-Cold War world, South Africa embroiled itself in new forms of development discourses and actions. This paper argues the visible actions of this choice resulted in government embarking on legal and policy outcomes like, major spending on (a) public housing, (b) social security grants for the elderly, single women with children, (c) and in some cases stronger labour laws that advocate for worker rights (Brockerhoff 2013)<sup>64</sup>. It is important to note that this paper, greatly admires some of the features of the South African social security system. However, these features cannot be said to be long-term solutions to South Africa’s economic development problem. Moreover, for them to succeed the South African government’s Treasury needs additional tax income. This can only occur if the South African government and other actors succeed in producing an economic development path that assists private business and related partners to succeed.

Finally, the caveats noted above all point to one key issue. Namely that not enough exploration went into understanding what being a functional Asian-type Developmental state would and could mean for South Africa. This previously stated point does take into account the good work conducted by Edigheji (2010)<sup>65</sup>, Fine (2013)<sup>66</sup>, Turok (2008)<sup>67</sup> and others. Yet, at a governmental and ANC (party political level) the Developmental state concept never received the requisite research and institutional support. Rather what occurred was that the concept within the context of South Africa came to mean many different things (NPC 2010:407)<sup>68</sup>. Yet, these things all spoke to social development rather than economic development.

These aforementioned caveats were presented in order to briefly, give insight into how certain proponents of South Africa being a Developmental state might argue. However, this paper now returns to closing out its main arguments against South Africa being considered a

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<sup>64</sup> Brockerhoff, S.2013. A Review of the Development of Social Security Policy in South Africa. July. The Studies in Poverty and Inequality Institute (SPII).

<sup>65</sup> Edigheji, O.2010. Constructing a democratic developmental state in South Africa: potential and challenges. Human Sciences Research Council Press (HSRC). Pretoria.

<sup>66</sup> Fine, B. 2013. Beyond the developmental state. *The African Communist*, 4<sup>th</sup> Quarter. Issue Number 186.

<sup>67</sup> Turok, B. 2008. Wealth Doesn't Trickle Down: The Case for a Developmental State in South Africa. Institute for African Alternatives and the Africa Institute.

<sup>68</sup> National Planning Commission (NPC). 2010. National Development Plan 2030. The Presidency of South Africa. Pretoria.

functional Developmental state. The end result of the two points raised, *Institutions’ lack focus* and *lack of policy clarity on economic development* have resulted in the South African government being and operating influx.

### **Closing Discussion**

The following discussion will provide two arguments that confirm the two main contentions of this paper. Namely, that the South African government, prioritising law and development did so at the expense of institutional building for economic development purposes and that this then resulted in South Africa being unable to be a functional developmental state.

#### ➤ *Institutions’ lack of focus*

One of the key characteristics of a developmental state is its ability to have dedicated and strategic economic development led institutions. Singapore has the Economic Development Board, Ministry of National Development, Ministry of Trade and Industry, and Japan has the Ministry of International Trade, and post 2001, the Ministry of Economy, Trade and Industry. These national government institutions have been directed and designed to try guide and shape economic development in the form of policies and institutions-from top level to local levels.

South Africa on the other hand chose a three-tier government system, based on an agreement between the old regime and incoming regime (Bojabotseha 2011)<sup>69</sup>. The result, as of 2016, sees government operate with 72 (35 full ministers and 37 deputy ministers) National ministries, 105 Provincial departments, 278 Local departments (SAG)<sup>70</sup> and approximately 128 State Owned Entities (GCIS 2016)<sup>71</sup>.

As previously stated the State of South Africa faces numerous problems. As the countries newest and supposed lead policy plan explains, *“The unemployment rate should fall from 24.9 percent in June 2012 to 14 percent by 2020 and to 6 percent by 2030. This requires an additional 11 million jobs. Total employment should rise from 13 million to 24 million”*

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<sup>69</sup> Bojabotseha, T. 2011. Dualism and the social formation of South Africa. African Journal of Hospitality, Tourism and Leisure. Vol. 1, No 3. Department of Communication and Education, Vaal University of Technology. Pp 1-8.

<sup>70</sup> South African Government. (SAG). 2016. Government leaders. Accessed on the 20 June 2016, <http://www.gov.za/about-government/leaders>.

<sup>71</sup> The Government Communication and Information System (GCIS). 2016. State-owned enterprises. Accessed on 21 June 2016, <http://www.gcis.gov.za/content/resourcecentre/contactdirectory/government-structures-and-parastatals>.

(NPC 2010:64)<sup>72</sup>. It is important to note, that South Africa is not unique in facing the problem of unemployment or low levels of economic development.

Yet, an analysis of structure of the governments clearly indicates two key problems. Firstly, the government in the form of civil servants, especially those that lead public policy processes and politicians do not carry the relevant academic qualification (World Bank 2011:97)<sup>73</sup> or it is not known exactly the levels of education (PSC 2007:11)<sup>74</sup>. This problem though not fully researched and covered in South Africa can be said to be seen in the problems found by the Auditor General of South Africa, who in various reports cities the lack of management skills as a reason for government being unable to render basic services in municipalities and other government structures (AGSA 2014:62)<sup>75</sup>. It is this segments contention that government currently is not able to deal with basic services such as building houses, running a municipality, reconciling municipal accounts and such services. These short comings at a local and provincial level of South Africa, clearly illustrate the fact that the civil service or would be technocracy is not operating at the level needed to address the most basic of services in South Africa. More worryingly for this paper, the lack of a high functioning technocracy means that economic development can never be addressed properly in South Africa.

The second problem associated with the structure of South Africa’s government, relates to its costing of the political apparatus. It is important to clearly explain that there is nothing wrong with paying technocrats servants and politicians well. However, the reference to well needs to have the requisite definition of its meaning and clearly stated outputs, outcomes that validate the amount paid to both sets of government personal. In this regard Singapore again, as a Developmental State sets a good example of how to strike this balance between paying technocrats and politicians well. As Elisabeth Paul (2010:17)<sup>76</sup> explains, “*In Singapore, civil service salaries are commensurate with those offered by the private sector. Significant social prestige attaches to employment in the higher ranks of the civil service and senior staff is richly rewarded for its efforts, with civil service salaries being amongst the highest in the*

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<sup>72</sup> National Planning Commission. 2010. National Development Plan 2030. The Presidency of South Africa. Pretoria.

<sup>73</sup> The World Bank. 2011. Accountability in Public Services in South Africa. Selected Issues. March. Washington.

<sup>74</sup> The Public Service Commission (PSC).2007. Oversight Report on the Verification of Qualifications in the Public Service. November. Pretoria.

<sup>75</sup> .Auditor-General of South Africa (AGSA) .2014.Section 3: Financial Management. Accessed on the 21 June 2016, <https://www.agsa.co.za/Portals/0/PFMA/201415/Part%206%20Section%203%20Financial%20management%20PFMA%202014-15%20Consolidated%20GR.pdf>.

<sup>76</sup> Paul, E. 2010. Capacity is Development. United Nations Development Programme. New York.

*world. Perhaps as a consequence, corruption among civil servants occurs infrequently*”. This paper therefore has no problems with technocrats being paid high salaries, if there is a commiserate return to citizens in the form of high functioning institutions and good public policy processes existing.

The concern of this paper as it relates to South Africa is that the pay is not commiserating with an adequate outcome, in either basic services as argued earlier and public policy is not addressing the problem of poor economic development. For instance local government which has become a site of great failure after two decades of democracy (Alexander and Kane-Berman 2014:1)<sup>77</sup>, is providing large amounts of money/salaries to political personal in the form of councillors and technocrats. The salary of a councillor (Executive and Non-Executive) can vary depending on the type of municipality he/she works in, it ranges from R832197 to R457210 (DCG 2015:9)<sup>78</sup>. Yet, it is important to note that this pay is not linked to councillors having any educational achievements or work experience, but rather the political party and votes they receive.

More worryingly though is the fact that technocrats are also sometimes operating as lead agents in development, yet do not carry the requisite skills as in Singapore. Koma (2010:115)<sup>79</sup> explains that,

“According to Local Government Sector Education and Training Authority (LGSETA) Report published in 2007, 31% of municipal managers have qualifications other than those related to finance, legal, public administration, planning and development and 28% of chief financial officers do not hold finance related qualifications. Equally, 35% of technical managers are without engineering qualifications. This state of affairs could clearly impact negatively on the performance of municipalities in question as these senior municipal executives are expected to provide expert views and opinions to the political structures and political office-bearers operating within municipalities such as mayoral committees, the executive mayors and mayors”.

This problem is worrying, especially when one remembers that local government officials are tasked with ensuring critical duties like installation of bulk infrastructure (storm drainage, electrification services, waste infrastructure ) and assistance of Local Economic Development (small to medium enterprises, poverty reduction measures) occurs. Compounding this problem is that Provincial government which is supposed to keep oversight of local

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<sup>77</sup> Alexander, G and Kane-Berman, J.2014. The 80/20 Report: Local Government in 80 Indicators After 20 Years of Democracy. The South African Institute of Race Relations.

<sup>78</sup> Department of Cooperative Governance (DCG).2015. Remuneration of Public Office Bearers Act, 1998. 1998 ACT NO. 20 OF 1998. March.

<sup>79</sup> Koma, S. 2010. The state of local government in South Africa: issues, trends and options. Journal of Public Administration. Vol 45 no 11. June.

government is limited in what it can do, because of its salary structure. The National Treasury of South Africa (2016:91)<sup>80</sup> stated that, “*Over the medium term, the percentage of provincial budgets allocated to salaries is expected to increase from 59.7 per cent to 61 per cent, mainly for the salaries of teachers and healthcare workers. Compensation as a share of provincial budgets ranges from a low of 53 per cent in the Western Cape to a high of 72 per cent in Limpopo*”. The payment of teachers and health professionals is a critical service for South Africa. Yet this paper contends that if the correct long term planning had existed, this scenario would not have materialised. Rather what should have been done is ensure that local government operates to bolster local businesses and increase its revenue base. However, for this to have occurred the National government would have also had to ensure its cost structure is able to absorb the problems occurring at Local and Provincial levels.

As of 2015 onward it has been estimated, that “*South Africa’s public servants will cost the country an estimated R61 billion, thanks to a three-year deal to increase government wages*” (BusinessTech.2015)<sup>81</sup>. It is important to note that official government communications have not explicitly confirmed or denied this given figure. This paper though finds it alarming that a government that seeks to operate as a Developmental state would be unable to control its salary costs. Moreover, the salary costs are never linked to a mandate to provide Developmental state type policies and results in the area of economic development. Rather, as Figure 1 shows, they seek to advance political office bearers and a particular type of economic development agenda. The end result or growing problem is that, people like

“Mike Schüssler of economists.co.za estimated, using Stats SA data, that the state wage bill was actually 12.9% of GDP and could be as much as 14% if state-owned entities are factored in. In 2011 the state pay packet was R346 billion and this year it is estimated to reach R378.3 billion. An International Monetary Fund study estimated that South Africa’s civil service cost on average 10% of GDP between 2006 and 2010. Nigeria, South Africa’s closest- African economic rival, spent 4%, Egypt 6.9% and Rwanda 3.5%. Schüssler said in the mid-2000s the state’s wage bill had dropped to 9% of GDP, but then started climbing again” (City-Press.2016)<sup>82</sup>.

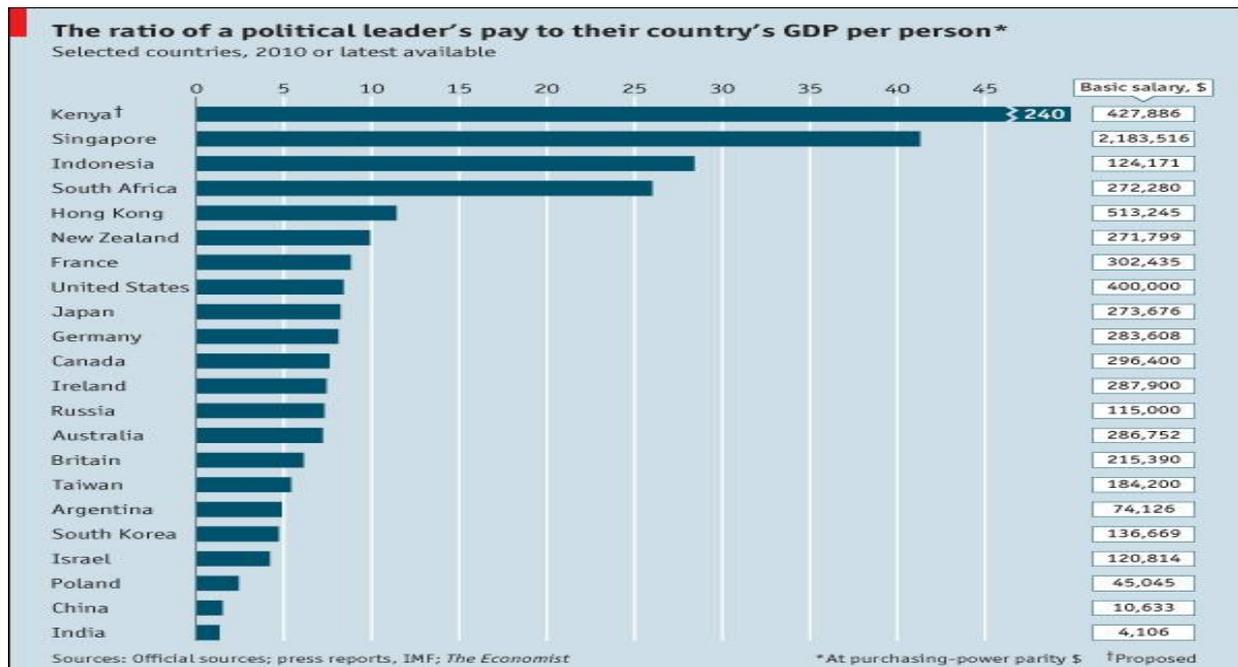
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<sup>80</sup> National Treasury.2016. Budget Review 2016. Republic of South Africa. February. Pretoria.

<sup>81</sup> BusinessTech.2015. .SA smacked with R61 billion government wage bill .Website.Accessed on the 20 June 2016, <http://businesstech.co.za/news/government/90202/sa-smacked-with-r61-billion-government-wage-bill/>.

<sup>82</sup> City-Press.2012. What civil servants cost you. Newspaper. Accessed on the 20 June 2016, <http://www.news24.com/Archives/City-Press/What-civil-servants-cost-you-20150429>.

**Figure 1**



(The Economist)<sup>83</sup>

This segment from the onset argued that two results can be gleaned from how the structure of the South African government operates. Both these presented analysis illustrate one key outcome. Namely that the South African governments institutional design and operation, is not one attuned to making it a Developmental state. Moreover, no clear institutional focus is given or can be given to thinking and implementing economic development.

In addition to this the constitution has operationalised Human Rights inspired institutions, for example the Human Rights Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Commission for Gender Equality (SAG 2016)<sup>84</sup>. This paper contends that a closer analysis of all these institutions shows a lack of strategic planning and thinking around economic development. To begin with all three spheres of government and SoE’s have been given the constitutional mandate to engage in formulating and implementing economic development activities. This results in duplication of policies and activities, as well as wastage of financial and human capital. Moreover, the capital being spent is distributed to a large number of institutions that

<sup>83</sup> The Economist. 2010. Leaders of the fee world. How much a country's leader is paid compared to GDP per person. Accessed on the 21 June 2016, <http://www.economist.com/node/16525240>.

<sup>84</sup> South African Government (SAG). 2016. Structure and functions of the South African Government. Accessed on the 15 June 2016, <http://www.gov.za/about-government/government-system/structure-and-functions-south-African-government>.

should not be entrusted with fostering economic development (Bhorat et al 2013:8)<sup>85</sup>. Thus, a lack of focus in government institutions and the absence of a clear development policy, spurred on by the design of the constitution, disqualifies South Africa from being a functional developmental state.

➤ *Lack of policy clarity on economic development*

The natural outcome of having so many government institutions lacking in focus and direction is unclear policy outcomes or - as this paper argues - policy confusion in operationalising economic development.

Fedderke (2014:6)<sup>86</sup> explains that the South African economy is one that operates as a developed state, but is in reality a developing state. This has meant that the policies created in South Africa do not speak to any particular economic development path i.e. industrialisation, services, tourism and the like. Every sphere of government sees varying institutions trying to use a unique form of policy or development priority, or duplicate an industry for capitalisation. The end result has seen the South African government formulate volumes (Bhorat et al 2013:7)<sup>87</sup> of macroeconomic policies, all trying to do different things, yet often poorly implemented, and then replaced with an alternative policy before results can be shown. This lack of policy clarity on what economic direction should guide South Africa, means economic development is still a misunderstood and poorly defined concept. Moreover, the government seems unable to move from providing the tools associated with a welfare state such as grants and free housing, and shift to fostering and shaping economic development. This argument is supported by a reading of the South African constitution’s Chapter 2 Bill of Rights. This bedrock of the constitution - though well-meaning - articulates and guides the South African government and institutions into acting as a welfare state, and does not critically decipher and implement chosen economic development policies.

Currently the South African government has formulated, and is implementing, a new policy, what it refers to as its master plan - the National Development Plan (NDP). A long term plan akin to those found in developmental states of Singapore, China, Malaysia (Onis 1991:111).

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<sup>85</sup> Bhorat, H. Hirsch, A. Kanbur, R and Ncube, M. 2013. Economic Policy in South Africa Past, Present, and Future. December. Editors’ introduction to the forthcoming Oxford University Press Oxford Companion to the Economics of South Africa.

<sup>86</sup> Fedderke, J. 2014. Exploring Unbalanced Growth in South Africa: Understanding the Sectoral Structure of the South African Economy. South African Reserve Bank. Working Paper Series, WP/14/07. October. Authorised for distribution by Chris Loewald.

<sup>87</sup> Bhorat, H. Hirsch, A. Kanbur, R and Ncube, M. 2013. Economic Policy in South Africa Past, Present, and Future. December. Editors’ introduction to the forthcoming Oxford University Press Oxford Companion to the Economics of South Africa.

Yet, the plan does not speak to all three spheres of government planning and funding around it, nor does it have a clear implementation focussed arm. The NDP itself refers to numerous ideas and possibilities for economic development in South Africa, but fails to articulate a clear, singular understanding and application of economic development. In addition to this the NDP explicitly, albeit unconsciously, declares South Africa a failed developmental state by now aiming to be a capable state (NPC 2010:57)<sup>88</sup>. Again no explanation is given for what constitutes a capable state. What is clear is that economic development means numerous things in South Africa with no overarching understanding of its application.

### **End Result of status quo**

The end result of the two points raised, *Institutions’ lack focus* and *lack of policy clarity on economic development* and others not discussed here is that the South African economic landscape looks very precarious currently. This precarious position needs to be understood to be due to a mixture of internal problems, as has been explained throughout this paper. Yet, also critical to South Africa’s problems is external factors like the global economic recession of 2008, weak recovery from this problem and other related external factors (World Bank 2015:9)<sup>89</sup>. Too begin with,

*“Employment estimates over the period 2001-2012, suggest five broad trends. Firstly, that workers in the primary sectors were losers in the period: The Agriculture and Mining sectors were the only two sectors which experienced declines in employment in the period as more than half a million jobs were lost in Agriculture in the period between 2001 and 2012... Secondly, this period (and indeed that for the post-1994 period as a whole) is characterized by a lacklustre performance in the manufacturing sector...Thirdly, the real driver of relative and absolute employment growth in this period has been within the tertiary sector. Hence, the financial services and community services sectors created 782 thousand and 1 million jobs respectively in the period...The results for the tertiary sector give way to a fourth important sub-trend since 2000, namely that public sector employment (which is dominant in community services) has grown very rapidly, at the expense of private sector employment. Fifthly and finally, financial services employment growth reveals, upon more detailed statistical analysis, the growth of temporary employment service providers as a source of ‘alternative contract’ employment amongst firms wanting to bypass the labour regulatory regime” (Bhorat et al 2013:3:5)<sup>90</sup>.*

These problems associated with employment, clearly correlate what this paper has been contended. Namely, that the South African government at a policy level has been unable to think critically about economic development for the majority of South Africans and South Africa. The history of all Developmental states has been characterised by high employment

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<sup>88</sup> National Planning Commission (NPC). 2010. National Development Plan 2030  
Our Future-make it work. The Presidency of the Republic of South Africa.

<sup>89</sup> The International Bank for Reconstruction and Development/The World Bank. 2015. South Africa Economic Update: Jobs and South Africa’s Changing Demographics. Washington, DC.

<sup>90</sup> Bhorat, H. Hirsch, A. Kanbur, R and Ncube, M. 2013. Economic Policy in South Africa Past, Present, and Future. December. Editors’ introduction to the forthcoming Oxford University Press Oxford Companion to the Economics of South Africa.

numbers, and more critically employment that used manufacturing and other industries to grow. Yet, as the above information from Borat et al explains manufacturing in South Africa is not progressing. This is despite the fact that various government policies like (IPAPS and New Growth Path)<sup>91</sup> and private researchers argue for a reformed manufacturing sector and that South Africa in reforming its manufacturing and mining sectors can create new forms of employment (Oosthuizen et al 2015:2)<sup>92</sup>. And, this form of critique can be said to apply to various other economic sectors in South Africa.

What is more problematic for South Africa’s future is the fact that at the local government level, lack of clear economic development has seen social unrest become part and parcel of South Africa’s political landscape. The social unrest in the form of peaceful protest and sometimes violent protest is often led by young unemployed black youth (World Bank 2011:22)<sup>93</sup>. If these trends seen at local government were to continue, this paper contends no amount of short term plans like Wage subsidies for the young (Levinsohn et al 2014)<sup>94</sup> or a National minimum wage (ILO 2015)<sup>95</sup>, will stem the problem of angry black unemployed youth concerns and subsequent unintended consequences. This paper now moves towards its conclusion and recommendation.

### **Conclusion and Recommendations**

In the previous analysis of concepts, it was argued that South Africa’s Law and Development focus, is one based on the creation of legal development institutions in various forms. So while the government and constitution is lauded for protecting minority rights, private property and other liberal ideas, Economic Development is neglected. The reality of South Africa’s problems regarding the lack of strategic and guided economic development goes unattended and will eventually see South Africa face heightened socioeconomic problems, linked to the lack of economic development. This is especially true at local level where citizens are unable to actively engage with economic development and the relevant institutions are missing from their lives. Therefore, this paper argues for three

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<sup>91</sup> Deloitte & Touche. 2013 Enhancing Manufacturing competitiveness in South Africa. Deloitte Manufacturing Competitiveness Report.

<sup>92</sup> Oosthuizen, M. Pooe, T and Durant, K. 2015. Alternative Future Scenarios for South African Mining, Manufacturing and Financial Services. Future of Business in South Africa Project Centre for Business Analysis and Research. Gordon Institute of Business Science. Sandton.

<sup>93</sup> The World Bank. 2011. Accountability in Public Services in South Africa. Selected Issues. March. Washington.

<sup>94</sup> Levinsohn, J. Rankin, N. Roberts, G and Schöer, V. 2014. Wage subsidies and youth employment in South Africa: Evidence from a randomised control trial. Stellenbosch Economic Working Papers: 02/14.

<sup>95</sup> International Labour Organization (ILO). 2015. Towards a South African National Minimum Wage. Geneva.

recommendations for actualising economic development in South Africa and moving it towards actually operating as developmental state - not being self-proclaimed one.

Firstly, what is required is both a government admission that the desire to be a developmental state has failed, and new thinking about what type of state is needed going forward. This should allow for proper analysis on what constitutes economic development in a South African context. Secondly, a shift of emphasis away from the legal supremacy of the South African constitution’s liberal agenda and legal development agenda. This does not mean moving away from upholding the rule of law. Rather it means re-framing the Law and Development agenda to prioritise economic development. Thirdly, strategic downscaling and merging of institutions across government should be a priority. The end result should see three national institutions administering and implementing economic development, and one independent institution overseeing and planning their actions and plans - a National Planning Ministry. The first ministry should operate to work on taxation and large business matters. A second ministry should be focused on enabling, funding and making room for small to medium enterprises and entrepreneurs in strategic and selected sectors.

Finally, a ministry should be established that will aim to ensure South Africa can be a major export economy firstly on the continent, and globally. This ministry will be entrusted with finding new markets for South African goods and services under a reformed manufacturing regime. Critical to this ministry’s existence will be trying to ensure that South Africa’s reformed State Owned Entities can move towards trying to assist the region of Southern Africa to build its economic bases. This shift will force the South African government to now start using research based policy methods when deciding how to operate the government. Ultimately, these recommendations will be depended on the type of new leadership that leads them firstly, South Africa secondly and the African National Congress if it is still the governing party. This paper is under no illusion as to the fact that the Developmental state or even non-Developmental states that succeeded with economic development had the requisite leadership, whether they were democratic or not.

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<sup>i</sup> “Social compacts exist in various forms and can be explicit or implicit. An example of the latter is encapsulated in the so-called ‘American Dream’, of the opportunity for social mobility for all individuals who persevere and work hard”. Liuz, J. 2014. A Social Compact for Long Term Inclusive Economic Growth. The Journal of the Helen Suzman Foundation. Issue 73. August.