

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

SCA Case No:636/23  
High Court Case No:18156/2019

<b>CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY</b>	First Appellant
<b>EXECUTIVE MAYOR CITY OF JOHANNESBURG</b>	Second Appellant
<b>CITY MANAGER, CITY OF JOHANNESBURG</b>	Third Appellant
<b>DIRECTOR OF HOUSING, CITY OF JOHANNESBURG</b>	Fourth Appellant
and	
<b>OCCUPIERS OF PORTION 971 OF THE FARM RANDJESFONTEIN NO 405</b>	First Respondent
<b>RYCLOFF BELEGGINGS (EDMS) BEPERK</b>	Second Respondent
<b>THE INTERNATIONAL COMMISSION OF JURISTS</b>	<i>Amicus Curiae</i>

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**AMICUS CURIAE'S WRITTEN SUBMISSIONS**

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**A. INTRODUCTION**

1. The International Commission of Jurists ("ICJ") was granted leave to join as amicus curiae by this Court.
2. The ICJ's chief submission is this: this Court ought to satisfy itself, first, that the City

of Johannesburg (First Appellant) has considered available locations where the occupiers can be provided with alternative accommodation that will allow the occupiers to continue with their reclaiming activities.

3. Once satisfied that the City has considered such options of alternative accommodation, this Court ought to grant an order of eviction that will enable the occupiers not only to have alternative accommodation but also allow the occupiers to earn a living by continuing with their reclaiming work and consequently live lives of dignity facilitated by being able to provide for themselves.

## **B. THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN SOUTH AFRICA**

4. Section 39(1) of the Constitution provides that courts “*must consider international law*” in interpreting rights in the Bill of Rights. Section 39(2) of the Constitution provides that courts must, when interpreting legislation, “*promote the spirit, purport and objects of the Bill of Rights*”.<sup>1</sup> Section 233 of the Constitution provides that courts must, when interpreting legislation, “*prefer any reasonable interpretation of the legislation that is consistent with international law*”.<sup>2</sup>
5. These provisions have consistently been interpreted by South African Courts to require the consideration of both binding and “non-binding” sources of international human rights law in the interpretation of both legislation and provisions of the Constitution itself.<sup>3</sup>

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<sup>1</sup> Constitution, s 39(1)-(2).

<sup>2</sup> Constitution, s 233.

<sup>3</sup> *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (17 March 2011), paras 106, 192. See also *S v Makwanyane and Another* [1995]

6. This requirement has necessarily been applicable in socio-economic rights litigation. In *Grootboom*, even before South Africa had ratified the ICESCR,<sup>4</sup> the Court indicated that the analysis and interpretation of the Committee on Economic, Social and Cultural Rights (CESCR), including its General Comments, are “*helpful in plumbing the meaning*” of the text of the constitutional right to adequate housing because “*there is no reason not to accept that it bears the same meaning in the Constitution as in the document from which it was so clearly derived.*”<sup>5</sup>
7. This position was further reinforced with South Africa’s ratification of the ICESCR on 12 January 2015.<sup>6</sup> Indeed, deepening the effective implementation of economic social and cultural rights is what the South African government sought to achieve by ratifying ICESCR. In a report to the Committee on Economic, Social and Cultural Rights (CESCR) submitted in 2017, South Africa indicated as much, noting that: “*South Africa’s accession of the ICESCR has and will continue to deepen the enforcement of socio-economic rights in the country*”.<sup>7</sup>
8. Moreover, South Africa’s existing obligations relating to socio-economic

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ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 at para 35; *S v Williams* 1995 (3) SA 632 (CC) at 639 in which the Court considered the jurisprudence of the United Nations Human Rights Committee, the European Commission and the European Court of Human Rights on the corresponding provisions in these treaties; *Ferreira v Levin* NO 1996 (1) SA 984 (CC) at 1035-6 and 1085; *S v Rens* 1996 (1) SA 1218 (CC) at 1225 in which the Court relied on a decision of the European Court of Human Rights on fairness in appellate proceedings; *Coetzee v Government of the Republic of South Africa* 1995 (4) SA 631 (CC) at 660-3 in which the international human rights norms were used to uphold a constitutional challenge to imprisonment for judgment debts. See also, International Commission of Jurists “A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa” (August 2019), available: <https://www.icj.org/wp-content/uploads/2019/08/South-Africa-Guide-ESCR-Publications-Thematic-Report-2019-ENG.pdf>.

<sup>4</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

<sup>5</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), para 45.

<sup>6</sup> Though South Africa had signed ICESCR as early as 3 October 1994.

<sup>7</sup> Committee on Economic, Social and Cultural, “Consideration of Reports Submitted by States parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights”, UN Doc. E/C.12/ZAF/1 (2017), para 5.

rights are contained in various other treaties to which it is party, including, as examples, the Convention on the Rights of the Child<sup>8</sup> and the African Charter on Human and People's Rights.<sup>9</sup>

9. In addition, particularly pertinent here are two general principles of international law, as expressed in the Vienna Convention on the Law of Treaties (VCLT): “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith” and States “may not *invoke the provisions of its internal law as a justification for a failure to perform a treaty*” obligation.<sup>10</sup> The Constitutional Court itself has recently affirmed that the binding nature of the “*main provisions*” of the VCLT as customary international law.<sup>11</sup>

10. It is submitted, however, that in this matter the Court needn't resolve any conflicts between international human rights law and domestic constitutional law at all. The Constitution and the applicable legislation are capable of reasonable interpretation consistent with South Africa's international legal obligations in terms of the rights to adequate housing and work.

11. Recently, in *Thubakgale v Ekurhuleni Metropolitan Municipality*,<sup>12</sup> Majiedt J reaffirmed the need for interpretations of constitutionally entrenched socio-

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<sup>8</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>9</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>10</sup> Vienna Convention on the Law of Treaties, May 23, 1969 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969), Articles 26-27.

<sup>11</sup> *Law Society of South Africa and Others v President of the Republic of South Africa and Others* (CCT67/18) [2018] ZACC 51; 2019 (3) BCLR 329 (CC); 2019 (3) SA 30 (CC) (11 December 2018), paras 34-9. Para 39: “But, it is now settled that its main provisions like articles 18 and 26 are part of the customary international law envisaged in section 232 of the Constitution.” It seems indisputable that Article 27 is also such a “main provision” of VCLT as it resolves a fundamental conflict otherwise existing between the application of domestic and international human rights law.

<sup>12</sup> [2021] ZACC 45; 2022 (8) BCLR 985 (CC) at para 111-112.

economic rights that are consistent with international law.<sup>13</sup>

12. Consequently, if this Court is persuaded to grant an eviction order, it ought to grant an eviction order that would allow the occupiers to continue with their work.

### **C. SOUTH AFRICA'S GENERAL OBLIGATIONS IN TERMS OF THE ICESCR**

13. With respect to the rights protected in ICESCR, Article 2(1) requires States to: *“take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means....”*. These obligations are largely consistent with South Africa's constitutional obligations to take “reasonable legislative and other measures” to ensure the “progressive realisation” of socio-economic rights within “available resources”.<sup>14</sup>

14. However, while States' obligations in terms of socio-economic rights are to be progressively realized, some aspects of these rights are of immediate application. , the CESCR clarifies that this *“should not be misinterpreted as depriving the obligation of all meaningful content”*. *The obligation to progressively realize rights “imposes an obligation to move as expeditiously and effectively as possible towards that goal”*. This necessarily means *“deliberately retrogressive measures”* are presumptively violations of the ICESCR and:

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<sup>13</sup> “Importantly, in interpreting socio-economic rights, courts must also have regard to international law such as the International Covenant on Economic, Social and Cultural Rights, which South Africa signed in 1994 and ratified in 2015 housing”.

<sup>14</sup> The Constitutional Court has itself interpreted some socio-economic rights to be “immediately realisable”. International human rights law places “immediate obligations” on States with regard to all such rights including the fulfilment of a minimum core or minimum level of access to all rights.

*“require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”<sup>15</sup>*

15. In international human rights law therefore, the duty to ensure “non-retrogression” is understood as placing an “immediate obligation” on States. This approach has been fully endorsed by the Constitutional Court in *Grootboom*, for example, as the Court found that “*housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses*” and explicitly endorses the CESCR Committee’s strong presumption against retrogressive measures.<sup>16</sup>

16. From a comparative law perspective,<sup>17</sup> in *Decision T-772 of 2003*<sup>18</sup> the Colombian Constitutional Court held the following in the context of its assessment of policies of the State which resulted in the deprivation of informal workers of their existing work opportunities.<sup>19</sup>

17. Citing the ICESCR and its authoritative interpretation by the CESCR, the Court affirmed that the State held a duty not to adopt retrogressive measures which would reduce existing levels of access to socio-economic rights.

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<sup>15</sup> General Comment 3, para 9.

<sup>16</sup> *Grootboom*, para 45. Cited again with approval in *Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) ; 2010 (4) SA 1 (CC) (8 October 2009), para 40 and footnote 31. See also S Liebenberg “Austerity in the midst of a pandemic: Pursuing accountability through the socio-economic rights doctrine of non-retrogression” (12 July 2021) *SAJHR* Vol 37(2), p 181-204.

<sup>17</sup> Constitution, s 39(1)(c) requires Court’s to consider foreign law when interpreting the Bill of Rights. See also *S v Makwanyane* [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391, para 37-

<sup>18</sup> The full decision is available here: <https://www.corteconstitucional.gov.co/relatoria/2003/t-772-03.htm> (In Spanish). Translation drawn from Manuel José Cepeda Espinosa and David Landau “Colombian Constitutional Law: Leading Cases” (2017), p 191-195.

<sup>19</sup> The Court acknowledged that: “[T] he petitioner’s concrete problem – which needs an urgent solution – derives from the deprivation by the authorities of the only means of personal and family subsistence that he has available in the context of a very high unemployment rate, a massive displacement of people towards the capital city, and high rates of poverty.”

18. The Court indicated that in the absence of formal employment opportunities, many people are compelled to make use of informal work opportunities to subsist and survive. It held that in these circumstances, the eviction of informal vendors, even if there is a legitimate public interest in doing so, must not take place in the absence of the provision of economic alternatives to such informal workers.<sup>20</sup>

19. In another decision of the Colombian Constitutional Court, *Decision T-291 of 2009*,<sup>21</sup> the Court built on this jurisprudence in the direct context of informal recyclers. In this matter the government had sought to close a “waste dump” at which recyclers were operating in pursuit of the legitimate government objective of ensuring environmental protection. Acknowledging that for many the “*waste dumps have represented their only chance at a livelihood in the cities*”, the Court held that the dump could not be closed prior to the adoption of an “*effective policy for the inclusion of Cali’s informal recyclers in the programs of collection, use and commercialization of waste, which strengthens their quality as entrepreneurs and their forms of collective organization*”.<sup>22</sup>

20. Both decisions affirm the need for Courts to protect the rights of informal workers when State policies and actions, irrespective of whether the objectives of such measures may be legitimate, displace them and/or restrict

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<sup>20</sup> *Id.*

<sup>21</sup> The full decision is available here <https://www.corteconstitucional.gov.co/relatoria/2009/t-291-09.htm> (In Spanish). See also ESCR Net “Colombia Constitutional Court T-291/09”, available: <https://www.escri-net.org/caselaw/2013/colombia-constitutional-court-t-29109>; Translation drawn from Manuel José Cepeda Espinosa and David Landau “Colombian Constitutional Law: Leading Cases” (2017), p 195-199.

<sup>22</sup> *Id.*

or reduce their existing access to employment. This is of direct relevance in the South African context where there are comparably high poverty and unemployment rates. The reclaimers' position in this matter requires that this Court should insist that the municipality ensure alternative accommodation that does not reduce their existing access to work in a very similar context.

21. In this matter it is submitted that, on the applicant's own admission, virtually all the reclaimers have no other access to employment opportunities outside of the informal reclaiming they undertake. It stands to reason, therefore, that their eviction to a location in which they are unable to operate as reclaimers would amount to an impermissible restriction on their "*ability to live without positive humiliation and degradation*" and leave them destitute.<sup>23</sup>

#### **D. THE RIGHT TO WORK IN INTERNATIONAL HUMAN RIGHTS LAW**

22. Both the right *to* work and rights *at* work are protected under of Articles 6-8 of ICESCR. Article 6 (1) requires States to "*recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts*" and to "*take appropriate steps to safeguard this right*".<sup>24</sup> Article 7 requires States to ensure that all people can make "*a decent living for themselves and their families*."<sup>25</sup> Article 11 more broadly obliges States to take measures to provide for the "*continuous improvement of living conditions*" of all people.<sup>26</sup> The right to work is similarly protected under the African Charter on Human and Peoples' Rights.<sup>27</sup>

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<sup>23</sup> Minister of Home Affairs and Others v Watchenuka and Others (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA); 2004 (2) BCLR 120 (SCA); 2004 (4) SA 326 (SCA) (28 November 2003), para 32.

<sup>24</sup> ICESCR, Article 6(1).

<sup>25</sup> Id, Article 7(a)(ii).

<sup>26</sup> ICESCR, Article 11.

<sup>27</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at:



23. This right to work has been authoritatively interpreted by the CESCR in its jurisprudence and most specifically in its General Comment 18 (Right to Work)<sup>28</sup> and General Comment 23 (Just and Favourable Conditions of Work).<sup>29</sup> The right is not, in the strict sense, a right to a job or “an absolute and unconditional right to obtain employment,” the right to work does include a right to not be “unfairly deprived” of existing employment.<sup>30</sup>

24. Indeed, in *Port Elizabeth Municipality* the Constitutional Court affirmed that marginalized persons should not be “discouraged from regarding themselves as helpless victims, lacking the possibilities of personal moral agency” and praised the “tenacity and ingenuity” of people in much the same position of the reclaimers in “***making homes out of discarded material and finding work and sending their children to school***” as a “tribute to their capacity for survival and adaptation”. It concluded that:

*“Justice and equity oblige them to rely on this same resourcefulness in seeking a solution to their plight and to explore all reasonable possibilities of securing suitable alternative accommodation or land.”<sup>31</sup>*

25. Moreover, the rights protected in terms of Articles 6-8 of ICESCR expressly apply to “everyone”, and the CESCR has emphasized that all workers, whether they are employed in “informal” or “formal” forms of employment, must enjoy the protections afforded by the right to work.<sup>32</sup>

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<https://www.refworld.org/docid/3ae6b3630.html> [accessed 29 June 2020], Article 15.

<sup>28</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, available at: <https://www.refworld.org/docid/4415453b4.html> [accessed 29 June 2020].

<sup>29</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23, available at: <https://www.refworld.org/docid/5550a0b14.html> [accessed 29 June 2020].

<sup>30</sup> *Id.*

<sup>31</sup> *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004), para 41.

<sup>32</sup> General Comment 23, para 5.

26. In clarifying the content and scope of the rights of informal workers, important guidance is contained in by the International Labour Organization's Recommendation 204.<sup>33</sup> Amongst other things the ILO recommends that States "*promote decent work and the rights of migrant workers*"<sup>34</sup> and "*take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy*".<sup>35</sup>
27. The substantial protections afforded by the right to work therefore apply to the informal waste reclaimers whose eviction is sought in the present proceedings. Most importantly for the present context the CESCR, in General Comment 18, confirms that application of the principle of non-retrogression in the context of the right to work.<sup>36</sup>
28. If measures are taken which inhibit the occupiers' current employment as informal reclaimers, then the municipality carries a burden to justify such "deliberately retrogressive measures" including by showing that "all alternatives" have been considered in the context of the "totality of the rights provided in the Covenant" including the rights to work, adequate housing and human dignity, a component of which is the ability to work.
29. The eviction of the reclaimers in the absence of the provision of alternative accommodation which would allow the reclaimers to ply their trade are likely to

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<sup>33</sup> International Labour Organization "Recommendation Concerning The Transition From The Informal To The Formal Economy" (2014).

<sup>34</sup> Id, 15(e).

<sup>35</sup> Id, 16.

<sup>36</sup> Indicating that: "If any deliberately retrogressive steps are taken, States parties have the burden of proving that they have been introduced after consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the States parties' maximum available resources."

render most of them unemployed and incapable of making a decent living for themselves and their families.

30. Through their own “tenacity and ingenuity” and in the context of high unemployment rates,<sup>37</sup> the reclaimers have contributed to the realization of their own rights by making provision for rudimentary housing and employment opportunities. The granting of an eviction order that would reduce their access to work and/or housing would result in a reduction of their already limited ability to access employment and therefore violate their right to work. In terms of international human rights law, a court order granting their eviction under such circumstances would amount to a “retrogressive measure”, decreasing their access to work and is thus presumptively unlawful.<sup>38</sup>

#### **E. THE RIGHT TO HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW**

31. The right to adequate housing is protected under Article 11 of ICESCR as a component part of the right to an adequate standard of living.<sup>39</sup> The African Commission on Human and Peoples Rights has interpreted the African Charter to encompass “the right to housing or shelter” as the “corollary of the combination” several provisions of the Charter.<sup>40</sup>

32. The right to adequate housing has been authoritatively interpreted by the CDESCR in its jurisprudence and, most specifically in General Comment 4

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<sup>37</sup> Statistics South Africa, Quarterly Labour Force Survey Quarter 4: 2023 (20 February 2024), available: <https://www.statssa.gov.za/publications/P0211/P02114thQuarter2023.pdf> records an unemployment rate of 32.1% countrywide on the narrow definition of unemployment and an unemployment rate of 41.4% on the expanded definition.

<sup>38</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, available at: <https://www.refworld.org/docid/4415453b4.html> [accessed 29 June 2020], para 21.

<sup>39</sup> The right is also protected in terms of other treaties binding on South Africa including, as examples: Convention on the Rights of the Child (Article 27) and the Convention on the Rights of Persons with Disabilities (Article 28).

<sup>40</sup> *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria 155/96*: [https://www.achpr.org/public/Document/file/English/achpr30\\_155\\_96\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf), para 61.

("The Right to Adequate Housing")<sup>41</sup> and General Comment 7 ("Forced Evictions").<sup>42</sup> As the CESCR has made clear, including through these General Comments, the right to adequate housing includes the following components: legal security of tenure; availability of services, materials, facilities; affordability of housing; habitability of housing; accessibility of housing; suitable location of housing; and cultural adequacy of housing. Housing is not considered "adequate" and capable of giving effect to the right if it does not comply with all these elements.

33. Of most direct importance to this matter is "location".<sup>43</sup>

34. This requirement, as with all other components of the right to adequate housing, applies to housing of both a temporary and permanent nature. An interpretation of the right to housing consistently with South Africa's obligations to ensure the right to work reinforces the importance of ensuring that the reclaimers do not face reduced access to employment because of their eviction and relocation.

35. It is therefore submitted that if an order of eviction is granted against the reclaimers, that the Court should ensure that the occupiers are able to not only have shelter from the elements but are also housing where they are able to continue to earn a living through their reclaiming activities.

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<sup>41</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html> [accessed 29 June 2020].

<sup>42</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, available at: <https://www.refworld.org/docid/47a70799d.html> [accessed 29 June 2020].

<sup>43</sup> In respect of which the CESCR Committee indicates the following: "Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households."

## F. CHILDREN'S RIGHTS

36. The Constitution provides for a separate and unqualified right of children to “shelter”<sup>44</sup> in addition to the right to adequate housing. In terms of the CRC also obliges South Africa to “*take appropriate measures to assist parents and others responsible for the child*” in, among other things, “*provid[ing] material assistance and support programmes, particularly with regard to nutrition, clothing and housing*”.<sup>45</sup>

37. In its concluding observations to South Africa, the CRC Committee expressed concern about the “*lack of affordable and adequate housing is resulting in the creation of informal settlements, and the practice of forced evictions from such settlements*”.<sup>46</sup> It therefore recommended that South Africa take effective measures “*to ensure access by all children to adequate and affordable housing*” and “*to prevent forced evictions ... taking guidance from the basic principles and guidelines on development-based evictions and displacement*”.<sup>47</sup>

38. The Guidelines referred to indicate that “*resettlement*” upon eviction must “*ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources*”.<sup>48</sup>

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<sup>44</sup> Constitution, section 28(1)(c).

<sup>45</sup> CRC, Article 27(3)

<sup>46</sup> CRC Committee “Concluding observations on the second periodic report of South Africa” (27 October 2016) CRC/C/ZAF/CO/2, available: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRC/C/ZAF/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRC/C/ZAF/CO/2&Lang=En), para 57(b).

<sup>47</sup> Id, para 58 (b)-(c).

<sup>48</sup> Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living “Basic Principles And Guidelines On Development Based Evictions And Displacement” A/HRC/4/18 [https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf), para 56(b).

39. Other guidance from the (now former) UN Special Rapporteur on the Right to Housing of the United Nations Human Rights Council emphasizes the need to “apply the principle of the best interests of the child and, where appropriate, including children in relevant decision-making” and that children suffer “disproportionately” from evictions.<sup>49</sup>

40. In its General Comment on children in street situations, the CRC Committee highlights the need, from a children’s rights perspective, for “*state support to parents and caregivers, particularly in relation to subsidized, adequate housing and income generation.*”<sup>50</sup> The Committee emphasizes, in particular, that children “*living in informal or illegal housing, should not be subject to forced evictions prior to the provision of adequate alternative accommodation*” and that “*States are required to make appropriate provisions for affected children*” so as to “*minimize the negative impacts of displacement*”.<sup>51</sup>

41. Generally speaking, and especially in the post-eviction context, children do not have the same capacity as their parents, without State support, to meet their housing rights needs or create the means of sustenance for themselves using the resources available to them in their new environment.<sup>52</sup>

42. By diminishing their parent’s access to work, the occupiers’ children’s rights are

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<sup>49</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, Leilani Farha “Guidelines for the Implementation of the Right to Adequate Housing” (26 December 2019) A/HRC/43/43, available: <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F43&Language=E&DeviceType=Desktop&LangRequested=False>, (para 48(d)(i)), UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions*, E/1998/22, 20 May 1997, <https://www.refworld.org/legal/general/cescr/1997/en/53063> [accessed 21 February 2024] para 10.

<sup>50</sup> CRC, “General comment No. 21 (2017) on children in street situations CRC/C/GC/21, available: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-21-2017-children-street>, para 49.

<sup>51</sup> *Id.*, para 51.

<sup>52</sup> A Nolan, “Security of tenure from a children’s rights perspective” ESR Review vol 7 no 3, available [https://journals.co.za/doi/pdf/10.10520/AJA1684260X\\_261](https://journals.co.za/doi/pdf/10.10520/AJA1684260X_261), p 1.

therefore also impacted negatively. In determining the justice and equity of the eviction, and the terms upon which it can take place, we submit the Court should also consider the impact on children of diminishing their parent's means of making a living.

## **G. CONCLUSION**

43. Overall, it is submitted that allowing for an eviction order in the absence of the provision of alternative accommodation suitable for the reclaimers' work, amounts to a violation of their constitutionally and internationally protected human rights, including adequate housing and work. It would do so by reducing the occupiers' existing access to work and housing, despite South Africa carrying obligations to assist and support occupiers in their position. This would amount to a retrogressive measure without sufficient justification.
44. The reclaimers, having shown tenacity and ingenuity to ensure access to housing and work by their own means to provide for themselves and their children. This Court should not, we submit, intervene to allow the further retrogression of their rights under already trying circumstances.

**Adv A de Vos SC**

**Chambers**

**Plettenberg Bay**