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Structural Interdicts as Judicial Remedies for Socio-Economic Rights Violations: Insights from Changing Tides 74 (Pty) Ltd v City of Johannesburg

Perintah Struktural sebagai Upaya Pemulihan Yudisial atas Pelanggaran Hak-Hak Sosial dan Ekonomi: Pembelajaran dari Changing Tides 74 (Pty) Ltd v City of Johannesburg

Lupwana Jean Jacques,✉ Carlos Joel Tchawouo Mbiada
University of Venda
✉Carlos.Tchawouombiada@univen.ac.za

ABSTRACT: This paper analyses the High Court's judgment in Changing Tides 74 (Pty) Ltd v City of Johannesburg, a landmark ruling on the intersection of delict law, constitutional rights, and state accountability for failing to comply with a court order to provide alternative accommodation to illegal occupiers. The dispute arose from the City of Johannesburg's (the City's) failure to comply with a 2012 court order, which compelled the City to provide emergency accommodation to unlawful occupiers prior to their eviction. The failure of the City resulted in the applicant suffering significant economic loss because it had to house the occupiers for three years. The Court found the City liable in delicts for its wrongful and negligent failure to comply with the 2012 court order. The court further found that such conduct infringed both the property rights of the applicant and the right to access to housing of the occupiers. Using a doctrinal legal research method, this research critically assesses the enforceability of structural interdicts, confirms the scope of constitutional delicts, and reemphasises the financial accountability of municipalities that fail to comply with court orders. The research also clarifies the extent of government entities' obligations concerning socioeconomic rights. By awarding over R12 million in damages and punitive costs, the court set a strong precedent for state compliance with socio-economic rights obligations. This paper also considers the broader socio-political implications of the ruling, especially its potential to catalyse reform in municipal governance, human rights enforcement, and intergovernmental relations in service delivery.

ABSTRAK: *Tulisan ini menganalisis putusan Pengadilan Tinggi dalam perkara Changing Tides 74 (Pty) Ltd v City of Johannesburg, sebuah putusan penting mengenai persinggungan antara perbuatan melawan hukum, hak konstitusional, dan tanggung jawab negara atas kegagalan mematuhi perintah pengadilan untuk menyediakan hunian alternatif bagi para penghuni ilegal. Sengketa ini timbul akibat kegagalan Pemerintah Kota Johannesburg untuk melaksanakan perintah pengadilan tahun 2012 yang mewajibkan Kota menyediakan hunian darurat bagi para penghuni tanpa hak sebelum penggusuran dilakukan. Kegagalan tersebut mengakibatkan pemohon menderita kerugian ekonomi yang signifikan karena harus menanggung penyediaan tempat tinggal bagi para penghuni tersebut selama tiga tahun. Pengadilan menyatakan Kota bertanggung jawab atas kegagalannya secara melawan hukum dan lalai dalam mematuhi perintah pengadilan tahun 2012 tersebut. Pengadilan juga menyatakan bahwa tindakan tersebut melanggar baik hak atas kekayaan pemohon maupun hak atas akses terhadap perumahan bagi para penghuni. Dengan menggunakan metode penelitian hukum doktrinal, kajian ini menilai secara kritis daya laku perintah struktural (structural interdicts), menegaskan cakupan delik konstitusional, serta menekankan kembali akuntabilitas keuangan pemerintah daerah yang gagal mematuhi perintah pengadilan. Penelitian ini juga memperjelas batas kewajiban entitas pemerintah terkait pemenuhan hak-hak sosial dan ekonomi. Dengan mengabulkan ganti rugi lebih dari 12 juta ZAR serta membebankan biaya perkara yang bersifat menghukum, pengadilan menetapkan preseden yang kuat bagi kepatuhan negara terhadap kewajiban hak-hak sosial dan ekonomi. Tulisan ini juga mempertimbangkan implikasi sosial-politik yang lebih luas dari putusan tersebut, khususnya potensinya dalam*

Keywords:
delict;
constitutional rights;
eviction;
illegal occupation;
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Kata Kunci:
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mendorong reformasi tata kelola pemerintahan daerah, penegakan hak asasi manusia, serta hubungan antarpemerintah dalam penyelenggaraan layanan publik.

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1. Introduction

Since the adoption of the Constitution of the Republic of South Africa in 1996, courts have gradually developed a legal framework that has given substantive content to socio-economic rights, including the rights to access adequate housing (Section 26), health (Section 27), and property (Section 25). Landmark cases such as *Government of the Republic of South Africa v Grootboom* (2001) (1) SA 46 1169 (CC), *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC) and *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) made it clear that socio economic rights impose positive obligations on the state, principally with regard to eviction. Even though these judgments outlined the state's normative obligations, they often failed to address the legal consequences for non-compliance, especially where non-compliance causes pure economic loss to a third party who is not the direct beneficiary of the socio-economic right in question. Simply put, these judgments left open the question of liability, ie whether the state could be held financially liable to third parties when its omissions caused economic loss. This void is crucial: the jurisprudential gap relates to how third-party economic actors may claim damages for non-compliance with socio-economic rights.

The unreported judgment in *Changing Tides 74 (Pty) Ltd v City of Johannesburg* [2024] ZAGPJHC (*Changing Tides)* marks a jurisprudential milestone in South African public and private law, particularly in the development of constitutional liability for non-compliance with court orders in the enforcement of socio-economic rights. For the first time, a South African court has awarded pecuniary damages to a property owner for the City's failure to comply with an eviction-related order. The case addresses complex issues at the intersection of administrative justice, state accountability, and the scope of judicially enforceable obligations arising from socio-economic rights within a constitutional democracy.

This paper examines legal issues arising out of the judgment of the South African High Court and proceeds as follows: section 2 outlines the facts of the case; section 3 discusses the main judgment findings; section 4 analyses the extended implications under South African law; section 5 explores enforcement and remedy frameworks; and section 6 concludes, with recommendations for legal and policy reform.

2. Findings and Discussion

he background to this dispute is inseparable from Johannesburg's chronic housing crisis and the phenomenon of "hijacked buildings," a term used to describe inner-city properties that have been abandoned by lawful owners and taken over by criminal syndicates or informal occupiers without legal title. Many of these buildings, such as Chung Hua Mansions, become overcrowded, lack basic services, and pose severe fire, health, and safety risks to their inhabitants and the surrounding communities. This urban reality presents municipalities with a challenging position, as they must balance the enforcement of property rights under Section 25 of the Constitution with the housing obligations under Section 26, while also highlighting the urgent need for lawful and well-coordinated eviction and relocation processes.

The material fact in the Changing Tides case was that one of its buildings, Chung Hua Mansions, an 11-storey building located at 191 Jeppe Street, Johannesburg, was hijacked and illegally occupied by approximately 249 men, women and children. On 14 June 2012, Changing Tides filed an application with the Gauteng High Court to evict the illegal occupiers. They were granted a court order by Claassen J, who ordered the eviction of the occupiers by no later than 15 February 2013, subject to the City of Johannesburg providing

temporary accommodation by no later than 30 January 2013.[1] The metropolitan municipality of Johannesburg failed to comply with the order, prompting the occupiers to launch an enforcement application against the City's Mayor, the City Manager, and the Head of the Housing Department on 19 December 2012.[2] An order issued by Lamont J on 6 February 2013 consolidated the occupiers' enforcement proceedings and reaffirmed the City's obligations to comply with Claassen's order, postponing the consolidated case to 9 April 2013.[3] The lack of compliance by the City led to a further enforcement order by Satchwell J on 3 April 2013, which the City unsuccessfully appealed up to the Constitutional Court.[4]

The City's repeated non-compliance with binding judicial orders over a protracted period is legally significant because it not only undermined the authority of the courts but also effectively prolonged both the unlawful occupation and the hazardous living conditions within the building. Each failure to act compounded the risk to occupiers and deepened the financial loss suffered by the owner. In eviction matters governed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE Act"), such inaction represents more than a mere administrative lapse; it potentially constitutes wrongful conduct giving rise to delictual liability, especially where the municipality is explicitly tasked with providing alternative accommodation before an eviction can proceed. This statutory duty, reinforced by Claassen J's order, meant that compliance was not discretionary.

In November 2015, Changing Tides sought a re-enrolment of the matter to compel the city to provide a firm relocation date and to require its officials to account under oath for their compliance efforts. The occupiers also sought a declaration of contempt of court. This prompted the city to provide emergency accommodation on 10 January 2016. The matter was later designated as a commercial case in November 2020, assigned and managed by Kathree-Setiloane J. During the hearing, Changing Tides contended that the City of Johannesburg's failure to comply with the court order not only caused it to suffer financial damages but was also wrongful and resulted in the infringement of the occupier's right to adequate housing in terms of section 26(1) of the Constitution[5] in that it left them to live in increasingly squalid and dangerous conditions. It also deprived Changing Tides of its right to property in contravention of section 25(1) of the Constitution.[6] On its part, the City of Johannesburg disputed that its conduct was wrongful, arguing that it had no available resources to comply with the Claassen order and had worked within the parameters of its available resources to effect the policy and constitutional imperative against homelessness. The City also pleaded that section 25(1) rights are not absolute, and that Changing Tides failed to allege deprivation of this right, nor that such deprivation was arbitrary. The court found the city guilty of wrongfulness and negligence, whose actions caused substantial damages in the amount of R12,374,993.00, which the city was ordered to pay, together with mora interest at 11.75% per annum.

The contextual justification addressed in this paper concerns the court's findings on the justiciability of socioeconomic rights and the positive obligation imposed on the state. In other words, the court decision in Changing Tides once again sent a strong signal that socioeconomic rights are not only justiciable but have also been recognised as positive rights.

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[1] ("the Claassen Order")
[2] Enforcement application 19 Dec 2012
[3] Lamont J order of 6 February 2013 consolidated the occupiers' enforcement proceedings and reaffirmed
[4] Satchwell J on 3 April 2013 further enforcement order.
[5] Section 26 provides: (1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
[6] Section 25(1) provides:

> No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

One of the most striking aspects of the judgment is its implicit acceptance that a municipality's positive obligations under sections 25 and 26 of the Constitution are enforceable not only by the direct beneficiaries of those rights but also by third parties whose proprietary or economic interests are adversely affected by state inaction. This doctrinal move extends the reach of constitutional delicts into largely untested terrain, raising questions about causation, wrongfulness, and the nature of the duty owed to non-beneficiary stakeholders. In prior cases, such as *Modderklip Boerdery (Pty) Ltd v President of the Republic of South Africa,*[7] the Constitutional Court fell short of granting delictual damages to a landowner for the state's failure to provide alternative accommodation to unlawful occupiers, opting instead for constitutional damages as "appropriate relief" under section 38. *Changing Tides* goes further, grounding its award in the ordinary law of delicts while infusing it with constitutional content.

The salient features are the applicant's argument that the City of Johannesburg's failure to comply with numerous court orders not only caused financial damages but was also wrongful and resulted in the infringement of both the occupier and owner's constitutional rights to adequate housing in terms of section 26(1) and property in contravention of section 25(1) of the Constitution. The contentions of the parties and the court's reasoning in Changing Tides raise various legal questions when addressing socioeconomic rights. These include the question of whether courts are entitled to rule on the scope of the government's positive obligations. The question is anchored in the understanding that national, regional, or international laws have developed approaches towards socioeconomic rights, and failure by the state or non-compliance by the state induces accountability. Thus, the issue of legal consequences for non-compliance, especially where non-compliance causes pure economic loss to a third party who is not the direct beneficiary of the socio-economic right in question.

A doctrinal research approach, also known as the desktop or non-empirical research method, is used. It relies more on the analysis of ordering and arranging legal instruments, case laws, and studies of legal institutions through rational deduction or legal perception. The study analyses sections 25(1) and 26(1) of the Constitution of South Africa, which prohibit eviction and deprivation of property, provide everyone with the right to access adequate housing, and state the obligation to take necessary measures for the progressive realisation of these rights.

The study also considers the human rights and socio-economic character of the right to property as an opportunity for strategic litigation. The chosen methodology also analyses the complementary relationship between the case at issue and previous case laws, such as *Government of the Republic of South Africa v Grootboom* (2001) (1) SA 46 1169 (CC), *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC) and *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC). Exploring the nexus between different case laws strengthens the argument in support of the justiciability of socioeconomic rights. Bearing in mind the principle and character of socioeconomic rights, particularly the need for available resources and the requirement of progressive realisation, the research anticipates that nowadays, socioeconomic rights impose positive obligations on states, consistent with the requirements of minimum core articulated by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR).

The dictum of international law represents a significant step forward in the models of strategic litigation necessary to promote greater accountability. The study also draws on third-party delicts to explain and understand the enforceability of socioeconomic rights, not only by the direct beneficiaries of those rights, but also by third parties whose proprietary or economic interests are adversely affected by state inaction.

[7] 2005 (5) SA 3 (CC).

2.1. Historical development of Socioeconomic rights and their justiciability in South Africa

The evolution of socio-economic rights in South Africa is inextricably linked to the development of public interest litigation and the broader transformation of the country's constitutional framework. This evolution is categorised into three distinct historical stages[8]: the period before 1994, the transitional phase between 1994 and 2000, and the post-2000 period. Each of these periods reflects a fundamental overhaul in the legal, political, and socio-economic landscape of South Africa, with corresponding implications for the recognition and enforcement of socio-economic rights.

Before 1994, South Africa was under an apartheid regime that systematically denied the majority of its black population basic human rights, including socio-economic entitlements such as access to housing, health care, education, and social security. This period was marked by the absence of a justiciable Bill of Rights, and the judiciary largely upheld racially discriminatory laws and policies. The legal system offered limited avenues for redress, particularly for marginalised communities. Public interest litigation was rare and constrained by the prevailing political order, which rendered the courts complicit in enforcing unjust apartheid legislation. As such, socio-economic rights were neither constitutionally guaranteed nor meaningfully justiciable.

The period between 1994 and 2000 marked a dramatic shift, following the adoption of the Interim Constitution in 1993 and the final Constitution in 1996. These constitutional developments entrenched a comprehensive Bill of Rights, which, for the first time in South African history, included enforceable socio-economic rights, such as the right to access adequate housing, healthcare, food, water, and social assistance. The establishment of the Constitutional Court[9] further enhanced the landscape for rights litigation, serving as a guardian of constitutional democracy and a forum for adjudicating socio-economic rights claims. The period was also marked by the Constitutional Court's initial efforts to define the nature and scope of these rights. While the court was cautious in its early jurisprudence, it laid the foundational principles that would govern future litigation, such as the requirement that the state adopt reasonable measures, within its available resources, to progressively realise socio-economic rights.

The period after 2000 witnessed a consolidation and expansion of the justiciability of socio-economic rights. The Constitutional Court began to articulate the normative content of these rights more clearly, as well as the obligations they impose on the state. This period is significant not only for the development of socio-economic rights jurisprudence but also for shaping the identity of the Constitutional Court and affirming the transformative ethos of the South African Constitution. The Constitution has often been lauded, both domestically and internationally, as one of the most progressive in the world, largely due to its robust protection of socioeconomic rights and its commitment to social justice and human dignity.[10]

Several landmark cases from this period have significantly shaped South Africa's socio-economic rights jurisprudence. In *National Coalition for Gay and Lesbian Equality v Minister of Justice*[11]. The Constitutional Court struck down the common-law offence of sodomy, reinforcing the principle of equality and laying the groundwork for further advancements in LGBTQ+ rights. In *Minister of Health v Treatment Action Campaign N2*,[12] the Constitutional Court compelled the government to make antiretroviral medication available to prevent mother-to-child transmission of HIV, thereby underscoring the state's duty to take reasonable measures to fulfil the right to have access to health. The *Soobramoney v Minister of Health (KwaZulu-Natal).*[13] In this case, although less expansive in its findings, it clarified the limits of the state's obligations in the context of

[8] Gilbert Marcus, *A Strategic Evaluation of Public Interest Litigation in South Africa* (The *Atlantic Philanthropies* 2008) 9.
[9] Section 166 of the Constitution of the Republic of South Africa, 1996.
[10] Heinz Klug, *The Constitution of South Africa: A Contextual Analysis*. (Bloomsbury Publishing 2010).
[11] 1999(1) SA 6 (CC).
[12] 2002 (5) SA 721 (CC).
[13] 1998(1) SA 765 (CC), 1997(12) 1696 (CC).

resource scarcity. Lastly, the seminal case of the *Government of the Republic of South Africa v Grootboom.*[14] This decision established that housing policies must be reasonable and cater to the needs of the most vulnerable, thereby anchoring socio-economic rights within a framework of reasonableness review.

Together, these cases and the broader judicial engagement with socio-economic rights reflect an evolving jurisprudence aimed at fostering substantive equality and human dignity. They also emphasise the crucial role of the judiciary in upholding constitutional commitments and fostering social transformation in a post-apartheid society. The *Grootboom* case is illustrative of the post-apartheid transformative agenda. This is because, after unsuccessful efforts to prevent the evictions, the community's representatives filed an application with the Western Cape High Court seeking an order compelling the municipality to provide sufficient basic temporary accommodation or housing for vulnerable groups, including children and the elderly. The High Court's stance was widely praised, as it marked the first occasion that a South African community invoked its constitutional rights to shelter and housing. However, the realisation of these rights was hindered by the government's decision to appeal to the Constitutional Court. The appeal by the South African government highlighted the lack of capacity and willingness to fulfil its positive duty to comply with the Constitution, as well as to support disadvantaged communities in accessing socio-economic rights. The Constitutional Court in this case maintained that, while the rights to housing and other socio-economic entitlements are indeed justiciable and enforceable, such enforcement is limited to direct governmental regulations.

This judgment suggests that the Court adopted a different approach, emphasising the negative dimension of socio-economic rights.[15] Specifically, the Court determined that constitutional provisions regarding the right to housing do not confer an immediate right to shelter on individuals. Instead, the state is required to formulate and implement a reasonable, comprehensive plan that progressively realises these rights within the constraints of available resources. Furthermore, the Court interpreted the state's obligation as negative rather than positive, refraining from imposing a direct positive duty on the state.[16] The Court relied on concepts such as ‘reasonable measures’, ‘progressive realisation’, and ‘available resources’, reflecting an administrative perspective on socio-economic rights. At that stage, the Constitutional Court was notably hesitant to follow the High Court’s more assertive position and did not seek to hold the executive accountable for its shortcomings. Nevertheless, the intervention of the Legal Resources Centre (LRC) and amici curiae contributed to a shift in the Court’s reasoning. Their arguments ultimately led the Court to issue a binding decision in support of the right to housing. Today, socio-economic rights are understood to impose positive obligations on states, consistent with the requirements articulated by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR).

The court’s reasoning also intersects with the long-standing debate on whether South African courts should establish a “minimum core” content for socio-economic rights —a threshold level of entitlements that must be met immediately, regardless of resource constraints. The Constitutional Court has historically been reluctant to adopt the minimum core doctrine outright, preferring the “reasonableness” standard articulated in *Grootboom* and refined in *Treatment Action Campaign*. However, by holding the City liable for damages flowing from the failure to provide any alternative accommodation for nearly three years, *Changing* Tides appears to operationalise a de facto minimum core: at the very least, the state must ensure that evictions do not render individuals homeless.

This reading aligns with General Comment No. 3 of the UN Committee on Economic, Social and Cultural Rights, which stipulates that certain obligations, such as the duty to refrain from forced evictions

[14] 2001 (1) SA 46 (CC), 200(11) BCLR 1169 (CC).
[15] Robert C Ellickson, ‘The Untenable Case for an Unconditional Right to Shelter’ (1992) 15 *Harvard Journal of Law and Public Policy* 17.
[16] Murray Wesson, ‘Grootboom and Beyond: Reassessing the Socio-Economic Jurisprudence of the South African Constitutional Court’ (2004) 20(2) *South African Journal on Human Rights*.

without provision of alternative housing, are of immediate effect. South African courts are constitutionally enjoined by section 39(1)(b) to consider international law when interpreting the Bill of Rights, giving weight to such interpretations of the ICESCR. In this context, *Changing Tides* represents the maturation of the justiciability debate: no longer is the question merely whether socio-economic rights can be enforced, but whether their breach can trigger traditional private law consequences against the state. This is a notable evolution in a jurisdiction that, less than three decades ago, had no enforceable socio-economic rights at all.

The position of the South African government, as outlined above, necessitates an in-depth examination of whether the government is fulfilling its positive obligation to provide social assistance to its citizens in accordance with the approach established by the United Nations Commission on Economic, Social and Cultural Rights. The reference and application of international law are provided for under sections 39(1) and 233 of the South African Constitution. These sections establish the relationship between national and international law, in that the latter must have supremacy over the former. Particularly, s 233 states that: "when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." Likewise, s 39 requires courts to consider international law.

Generally, international law encompasses binding and non-binding agreements, as well as customary international law. In this context, reference should be made to article 25 of the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations-Habitat's Global Urban Observatory Programme and Habitat Agenda.17 Particularly, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (ICCPR), General Comment 3 on the nature of States Parties' Obligation, and General Comment no 4 on the rights to Adequate Housing: Forced Eviction.[18] Particularly, the United Nations Committee on Economic, Social and Cultural Rights urges all states parties to submit regular reports to the Committee on how the rights protected under the ICESCR are being implemented. States are required to report within two years of accepting the Covenant and thereafter every five years.

After reporting, the Committee examines each report with a view to addressing its concerns and directs its recommendations to the State party in the form of "concluding observations". In addition to the reporting obligation, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights also recognises the power of the Committee to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. Under these mechanisms, State parties have a positive right to ensure that the needs of their peoples are met. Whether or not there is consensus on whether South Africa has ratified the ICESCR,[19] the issue of South Africa's positive obligations under the ICESCR may not be arguable due to the domestication of the ICESCR.[20] Thus, the country is bound by virtue of the implementation of the ICESCR and the ratification of other human rights instruments, such as the African Charter on Human and Peoples' Rights.

The African Charter serves as a champion and comprehensive agenda for the promotion and protection of human rights in Africa.[21] The complementary relationship between the Charter and its bodies, such as the African Commission on Human and Peoples' Rights, reinforces the idea of the protective mandate of

[17]Article 25 of the UDHR, art.11 of ICESCR,
[18] Article 2 of the Covenant (UN Doc, E/1991/23), Art.11 of the Covenant UN Doc .E/1992/23
[19] Primerose Khumalo Kurasha, *The Ratification of the International Covenant on Economic, Social and Cultural Rights in South Africa* (LLM thesis, University of Pretoria 2016).
[20] Frans Viljoen and Nicholas Orago, 'An Argument for South Africa's Accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in the Light of Its Importance and Implications' (2014) 17(6) *Potchefstroom Electronic Law Journal* 2555.
[21] Amare T Chekol and Ilyas Dogan, 'Championing Human Rights: Normative Insights into the African Charter on Human and Peoples' Rights' (2024) 15 *Beijing Law Review* 1598.

international law. Particularly, the commission reaffirms: "adherence to principles of human rights and peoples' rights, and duties contained in the Declaration, Conventions, and other instruments adopted by the African Union." The commitment to promote socio-economic rights and development is dear to African member states. Regional mechanisms offer an opportunity to ensure that perpetrators of human rights violations who evade national justice systems have no chance to escape regional accountability.[22]

At the regional level, several cases on the justiciability of socioeconomic rights were also decided upon. The case of the Social and Economic Rights Action Centre (SERAC) has been widely praised because of the decision reached by the African Commission on Human and Peoples' Rights.[23] In *SERAC v. Nigeria*, the Social and Economic Rights Action Centre (SERAC) brought a communication before the African Commission, alleging the Nigerian government's complicity in human rights violations committed by oil companies, particularly Shell, in Ogoniland. The Commission found that Nigeria had violated several rights under the African Charter, including the rights to health, a healthy environment, adequate housing, and the right to life. This was one of the first cases to link environmental degradation to socio-economic and civil-political rights in Africa. The Commission emphasised the state's duty to protect its citizens from harmful acts of third parties. SERAC grounded its findings in the African Charter, broadening socio-economic rights and implicitly recognising environmental rights.

This case has brought socioeconomic rights to growing recognition from a litigation perspective among many legal professionals and communities. In the context of the *Changing Tides* case, this case note anticipates and addresses critical questions, illustrating how the court effectively balanced competing rights and obligations in a transformative society. In holding the City of Johannesburg accountable for its failure to comply with its obligations, particularly those related to the enforcement of socio-economic rights, the court has once again set a precedent for the legal consequences of non-compliance by the state with its obligations to respect, ensure respect for, and fulfil or promote the enjoyment of human rights. To draw such a conclusion, this paper will address two legal questions.

2.1.1. Minimum core requirement versus progressive realisation and availability: Does the decision in Changing Tides reflect national and regional approaches towards socioeconomic rights

The Constitutional Court of South Africa has played a pivotal role in shaping the country's jurisprudence on socio-economic rights, particularly through its interpretation and application of sections 26 and 27 of the Constitution, which guarantee access to adequate housing, healthcare, food, water, and social security. Initially, the Court's approach was marked by caution and self-restraint in the adjudication of socio-economic rights, as reflected in the seminal case of *Soobramoney v Minister of Health*. In this case, the Court declined to compel the state to provide life-saving dialysis treatment to the applicant, reasoning that such an obligation must be balanced against the availability of resources and the broader needs of the public health system. The Court's reliance on terms such as "reasonable legislative and other measures," "progressive realisation," and " available resources" revealed a tendency toward an administrative and deferential model of socio-economic rights adjudication, which some scholars have criticised for granting excessive discretion to the executive. For instance, Dworkin rejects judicial restraint and argues that the courts should not defer to other branches of government but rather interpret 'principles of legality, equality, and the rest, revise these principles from time

[22] Lupwana Jean Jacques Kandala and Frank Moffat, 'The Effectiveness of the African Union's Mechanisms in Preventing and Combatting Corruption and the Commitment to Achieve Development Agendas 2030 and 2063' (2024) 22(3) *African Studies Quarterly* 40.
[23] *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001)

to time in the light of what seems to the Court fresh moral insight, and judge the acts of the Congress, the states and the President accordingly.[24]

However, subsequent jurisprudence marked a turning point. Through continued litigation and sustained advocacy, the Constitutional Court began to refine its stance, recognising the justiciability of socio-economic rights and the positive obligations they impose on the state. Landmark cases such as *Government of the Republic of South Africa v Grootboom* and *Minister of Health v Treatment Action Campaign* demonstrated the Court's willingness to interpret socio-economic rights in a more substantive manner. This paper argues that the Court has since demonstrated that it has both the mandate and the opportunity to serve as an agent of transformative constitutionalism by articulating clear standards, particularly by identifying the "minimum core" content of socio-economic rights necessary to uphold human dignity and equality.

The court is entitled to decide on the minimum core that is required in every right to provide a clear understanding of what exactly is required for the development of social change. The *Changing Tides* case demonstrates how the court utilises this opportunity to establish clear benchmarks for the legislature and the executive. A benchmark that works in favour of the progression and realisation of the welfare of the poor communities in South Africa. The court decision in *Changing Tides* also indicates an alignment with regional and international approaches, as outlined in the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR). Section 39 (1) of the Constitution provides that when courts interpret the Bill of Rights, they must consider international law. In general terms, international law encompasses binding and non-binding agreements, as well as customary international law. Particularly Article 25 of the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations-Habitat's Global Urban Observatory Programme and Habitat Agenda, [25] the International Covenant on Civil and Political Rights (ICCPR), General Comment 3 on the nature of States Parties' Obligation,[26] and General Comment no 4 on the rights to Adequate Housing: Forced Eviction are central to the case at issue.[27] Particularly, they describe the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what the International Law Commission refers to as obligations of conduct and obligations of result. The Committee notes that while the Covenant provides for progressive realisation and acknowledges the constraints due to the limits of available resources, it also imposes various obligations that take immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties' obligations. One is the "undertakings to guarantee" that the relevant rights will be exercised without discrimination, and the other, and more relevant to this paper, is the obligation "to take steps" found in Article 2 of the ICCPR.

This obligation is always interpreted differently due to the varying formulations used. Article 2 (1) requires states to "take steps". Not only is this phrase itself not qualified or limited by other considerations, but its full meaning can also be gauged by noting some of the different language versions. In English, the obligation is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("a adoptar medidas"). Thus, while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonable time. More importantly, such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant. These requirements imply that states must achieve at least a minimum core by "all appropriate means". Accordingly, a State can decide for itself which means are the most appropriate under the circumstances with respect to each of the rights. However, the "appropriateness" of the means chosen will not always be self-evident.

[24] Ronald Dworkin, *Taking Rights Seriously* (A&C Black 2013) 137.
[25] Article 25 of the UDHR, art.11 of ICESCR,
[26] CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)
[27] Article 2 of the Covenant (UN Doc, E/1991/23), Art.11 of the Covenant UN Doc .E/1992/23

In the context of the right to property, the issue of unlawful occupation and eviction is addressed under the Prevention of Illegal Eviction of Occupiers Act (PIE) and the Extension of Security of Tenure Act (ESTA). These two Acts give effect to Section 26(3) of the Constitution but extend protection to different categories of people. The ESTA, for instance, extends protection against eviction of lawful rural occupiers (those whose occupation was based on the owner's consent) while the PIE extends protection against a specific category of unlawful occupiers. PIE is particularly regarded as a compassionate Statute because it protects the rights of unlawful occupiers.

Most of the right to access to housing in South Africa is decided under PIE. For instance, *City of Johannesburg Metropolitan Municipality* v *Blue Moonlight Properties 39 (Pty) Ltd and Another,*[28] the dispute concerns the eviction of unlawful occupiers from a property in Johannesburg and the obligations of the municipality to provide housing for them. This case involves the eviction of 86 unlawful occupiers from a property in Johannesburg, raising issues about the rights of property owners and the obligations of the City to provide housing. The Constitutional Court ruled that the City of Johannesburg must provide temporary accommodation to the occupiers before eviction occurs. The eviction order is linked to the City's obligation to provide housing, ensuring that the occupiers are not left homeless.

Similarly, in *Changing Tides*, the municipality was ordered to accommodate the unlawful occupiers but failed to do so. There are, therefore, two competing rights when the court determines this type of dispute, namely the right to property under Section 25 and the right to access to housing governed by Section 26 of the Constitution. Or, as ruled by the Constitutional Court in *Port Elizabeth Municipality v Various Occupiers (Port Elizabeth),* the Constitution recognises that land rights, the right to access housing, and the right not to be arbitrarily evicted are closely intertwined.[29] Unfortunately, Changing *Tides* adds to this constitutional and judicial discourse and was delivered at a time when there was a heated debate about section 25. In brief, the debate over Section 25 of the Constitution centres on whether amending it to permit the expropriation of land without compensation can address the country's land reform challenges.

Section 25(2) currently protects property rights while permitting expropriation without compensation, but its application is seen as ambiguous and open to legal challenges, which have slowed the pace of land redistribution. The opponents of the amendment argue that section 25 already allows for expropriation without compensation, and failures in land reform are attributed to government inefficiencies, corruption, bureaucracy, and elitism rather than the property clause itself. They argue that amending Section 25 may not guarantee equity in redistribution and could lead to intra-racial tensions, further complicating the land debate. The proponents of the amendment argue, on the contrary, that the property clause is a significant barrier, as its implicit nature and legal challenges have prevented effective expropriation without compensation. In their view, amending section 25 would remove ambiguity, fast-track land redistribution, and reduce wasteful legal battles.[30]

Such debate falls outside the scope of this analysis.[31]Suffice to say that in *Port Elizabeth,* the Constitutional Court ruled that although PIE was adopted with the clear objective of overcoming abuses and

[28] *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC).
[29] Paragraph 19.
[30] See Lekunze Joseph Nembo and Usapfa Luvhengo, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' in Emmanuel Yenshu Vubo (ed), *Global Jurisprudential Apartheid in the Twenty-First Century: Universalism and Particularism in International Law* (Lexington Books 2021) 285.
[31] Section 25 seeks to strike a balance between protecting property rights and enabling land reform to redress the apartheid historical dispossession of land. The section provides, among other things, that "no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property" (section 25(1)), but it also mandates the state to "take reasonable legislative and other measures … to foster conditions which enable citizens to gain access to land on an equitable basis" (section 25(5*)*. More crucial is the fact that section 25 expressly

ensuring that future evictions take place in a manner consistent with the values of the new constitutional dispensation, property rights should be fully respected both by the state and by private persons.[32] This ruling by the court underscores the fact that the enforcement of either of these rights must be consonant with the values of dignity and equality underpinned by our constitutional dispensation. As much as unlawful occupiers are entitled to shelter over their heads, private property owners have the right to enjoy the *usus*, *fructus* and *abusus* of the property.

These are the three fundamental rights associated with ownership. Similarly, people need to have a place where they can be free from environmental elements such as cold, rain or sun. Hence, in *Port Elizabeth*, the court stressed that, as much as section 25 does not guarantee absolute ownership rights, so too does section 26 not grant an unlimited right to occupy any property unlawfully. Rather, every property right must be understood in the context of the constitutional undertaking for social justice and equitable access to resources. Although PIE is specially regarded as a compassionate statute because it protects the rights of the unlawful occupier, the courts must consider all circumstances before granting an eviction order, including the needs and vulnerabilities of occupiers, the availability of alternative accommodation, and the rights and interests of the property owner.

In the words of the Court:

> *There are three salient features of the way the Constitution approaches the interrelationship between land hunger, homelessness and respect for property rights. In the first place, the rights of the dispossessed in relation to land are not generally delineated in unqualified terms as rights intended to be immediately self-enforcing. For the main part they presuppose the adoption of legislative and other measures to strengthen existing rights of tenure, open up access to land and progressively provide adequate housing. Thus, the Constitution is strongly supportive of orderly land reform, but does not purport to effect the transfer of title by constitutional fiat.*[33]

Based on the facts in the case at issue, PIE is, however, relevant in this case because Changing Tides sought to evict the illegal occupants from its property. Consequently, PIE obligations are more likely directed to the court, municipality, and the owner. What is regarded as an obligation to Changing Tides is the restriction under Section 8 of the PIE. It restricts any person from evicting an unlawful occupier except on the authority of an order of a competent court. Likewise, Section 4 of the same Act requires the owner of the land or any other person in charge of the land to comply with both the procedural and substantive conditions of eviction. The PIE must, in such circumstances, respect the rights of unlawful occupiers by serving a notice of proceedings as prescribed under the court's rules.

2.1.2. The Role of the judiciary in promoting the minimum core obligation in socioeconomic rights

The court is entitled to decide on the minimum core which is required in every right to give a clear understanding of what exactly is required for the development of social changes. It was entitled to use this opportunity to set clear benchmarks for the legislature and the executive. In doing so, the High Court reinforced a jurisprudential trend whereby domestic courts use international human rights norms as interpretive tools to flesh out the content of constitutional obligations. Section 39(1)(b) of the Constitution explicitly directs courts to "consider international law" when interpreting the Bill of Rights, while section 233 requires legislation to be interpreted consistently with international law wherever reasonably possible. This constitutional framework

allows for expropriation "for a public purpose or in the public interest" subject to "just and equitable" compensation (s 25(2)-(3).

[32] Paragraphs 11 and 15.

[33] Para 20.

means that instruments such as the ICESCR and the African Charter are not merely aspirational; they are part of the normative backdrop against which municipal obligations are assessed.

In Social and Economic Rights Action Centre (SERAC) and Another v Nigeria, the African Commission found Nigeria in violation of multiple rights under the African Charter due to its complicity in environmental degradation and displacement caused by oil extraction in Ogoniland. The decision articulated that socio-economic rights impose duties not only to refrain from interference (respect), but also to safeguard individuals from third-party harm (protect), actively ensure the enjoyment of rights (fulfil), and create enabling conditions for the realisation of rights (promote). These four duties provide a functional template for analysing municipal accountability in Changing Tides. The City's conduct arguably failed on all four counts: it directly interfered with property rights (failure to respect), failed to protect occupiers from hazardous conditions (failure to protect), neglected to provide alternative accommodation (failure to fulfil), and failed to take measures to progressively improve living conditions (failure to promote).

Moreover, the Committee on Economic, Social and Cultural Rights has made clear in General Comment No. 7 that forced evictions without provision of adequate alternative housing are prima facie incompatible with the ICESCR. While South Africa only ratified the ICESCR in 2015, its courts have long treated its provisions as persuasive interpretive aids, especially where domestic law recognises similar rights. Thus, the High Court's approach in Changing Tides aligns with South Africa's treaty obligations and with a broader regional and global movement towards holding public authorities accountable for breaches of socio-economic rights.

It is essential to understand the government's obligations regarding the rights that individuals may have under international and national law. The case of socio-economic rights litigation (SERAC) before the African Commission on Human and Peoples' Rights provides four levels of state responsibility in relation to any rights, namely: the obligation to respect, protect, fulfil, and promote the rights of people.

The first obligation requires that the state refrain from interfering in the enjoyment of all fundamental rights. It must respect rights-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio-economic rights, especially the right to housing at issue, this means that the state is obligated to ensure full enjoyment, whether permanent or temporary. There is no ranking of socio-economic rights, and because all rights collectively promote the minimum for a reasonable quality of life, any decision on how to allocate available resources should be consistent with an equal distribution of resources for the promotion and protection of people's rights. A disproportionate allocation of resources is also what the court is entitled to challenge. The state is also obliged to protect rights-holders against other subjects through legislation and the provision of effective remedies. This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere of frameworks through an effective interplay of laws and regulations, allowing individuals to freely enjoy their rights and freedoms. In the context of the right at issue, it is thse government's duty to protect both the building owner from economic losses and the occupants from eviction, recognising that it is responsible for providing shelter, whether temporary or permanent, as well as for fairly distributing the available resources. From the apartheid system, there is a huge imbalance in the state and the manner in which resources are spent calls for concern. More on the defence, security and executive allowances than on providing or raising the standards of life of the people. These requirements correspond to a large degree with the state's obligation to promote the enjoyment of all human rights.

The state should ensure that individuals can exercise their rights and freedoms by promoting tolerance, raising awareness, and building infrastructure. Equally important, states are obliged to fulfil the rights and freedoms they freely agreed upon under various international human rights instruments and those enshrined in the constitution. In the Changing Tides case, the court demonstrated that it is more of a positive expectation on the part of the state to move its machinery towards the actual realisation of socio-economic rights. It could be the direct provision of basic needs such as food, health, and housing or resources that can be used for food (direct food aid or social security). Thus, since states are generally required to comply with the above set of

duties when they ratify or agree voluntarily under human rights instruments, it is essential for courts and other institutions, such as civil society organisations, to engage in an awareness campaign and present their findings before international and national forums to hold states accountable. In doing so, states will comply with their duties to promote the provision of international and national law.

The judgment also inevitably touches on the separation of powers question: to what extent should courts dictate how scarce public resources are allocated? The Constitutional Court in *Mazibuko and Others v City of Johannesburg and Others*[34] cautioned against courts assuming executive functions in socio-economic policy. Yet, by enforcing compliance with a specific relocation obligation already crystallised in a court order, *Changing Tides* avoided the more intrusive aspects of this debate; it was not telling the City what its housing policy should be, but rather compelling it to honour a concrete, judicially determined commitment. This distinction is critical for preserving judicial legitimacy in the socio-economic rights arena.

Importantly, the High Court's award of delictual damages in this context may have a deterrent effect, signalling to municipalities that ignoring court orders carries tangible fiscal consequences. This could incentivise more proactive compliance, thereby reducing the need for prolonged structural interdicts.

2.1.3. Third Party Delictual liability

The *Changing Tides* judgment marks a significant doctrinal turning point in South African delict law, affirming that the state may incur delictual liability for pure economic loss suffered by a third party who is not the primary beneficiary of the violated socio-economic right. South African courts have historically been a cautious approach to third-party delictual liability because have emphasised the need to limit liability for pure economic loss in order to avoid indeterminate, open-ended claims. Unlike physical injury or patrimonial loss resulting directly from wrongful conduct, pure economic loss requires additional justification grounded in legal policy, constitutional values, and the assessment of whether public interest supports the imposition of liability.

Traditionally, courts have refused to impose liability unless a special legal duty existed, and whether such a duty exists has been assessed through the criterion of wrongfulness. This inquiry is normative: it requires an assessment of whether recognising a duty of care in the circumstances aligns with constitutional values, reasonableness, and the broader interests of society. In the landmark case of *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority*[35] the Supreme Court of Appeal stressed that public policy considerations particularly the avoidance of limitless liability require constraints on liability for pure economic loss. Against this backdrop, *Changing Tides* breaks new jurisprudential ground by recognising that constitutional obligations, when crystallised in a court order, may give rise to private-law duties enforceable even by third parties whose rights are indirectly implicated.

The High Court's reasoning reframes the wrongfulness inquiry in a manner consistent with the Constitutional transformative visions. Applying this logic, the City did not merely fail to exercise administrative diligence; it repeatedly infringed clear judicial orders intended to give effect to the rights in sections 25 and 26. These infringements produced two categories of foreseeable harm: (i) prolonged occupation in unsafe, degrading conditions, infringing the occupiers' housing rights; and (ii) substantial economic loss to the property owner, who was deprived of exercising ownership rights such as *frutus, usus* and *abusus* for nearly three years. Crucially, the harm to the owner was not incidental or remote; it flowed directly from the City's omissions. Thus, the court found that a legal duty existed to prevent such loss.

The High Court also recognised that public policy strongly favours state accountability in circumstances where the state fails to comply with binding judicial orders. Section 165(5) of the Constitution requires organs

[34] 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC).
[35] [2006] 1 All SA 6 (SCA); 2006 (1) SA 461 (SCA).

of state to "assist and protect the courts" to ensure the effectiveness of their orders. Non-compliance, therefore, constitutes a constitutional wrong that carries potential delictual consequences. The court's approach implicitly rejects the argument that budgetary constraints, administrative complexity, or policy disagreements can protect the state from liability where its failure undermines fundamental rights and the rule of law.

This judgment also embodied the fact that state failures linked to socio-economic rights may generate third-party claims. *Changing Tides* introduces, therefore, a new perspective into South African socio-economic jurisprudence discourse by holding that constitutional obligations may create correlative duties not only toward right-holders but also toward parties foreseeably affected by state inaction.

In this sense, the judgment marks a significant contribution to the expanding field of constitutional delicts. It recognises that constitutional norms are not merely aspirational but may give rise to enforceable private-law duties. By compelling the state to compensate for pure economic loss suffered by a third party, the court affirms the integrated nature of South Africa's constitutional order, one in which private law, public law, and socio-economic rights interact to ensure accountability, dignity, and effective judicial enforcement.

2.1.4. The interplay between domestic enforcement and international norms

The Changing Tides judgment also resonates with the African Commission's emphasis on "effective remedies" in socio-economic rights cases. Similarly, in *Changing Tides*, the High Court recognised that the harm to the property owner was not fully remedied by prospective compliance orders; it required retrospective compensation to address the economic loss suffered over years of municipal inaction. This approach strengthens the remedial architecture for socio-economic rights by combining forward-looking compliance measures with backwards-looking compensation, a dual strategy rarely seen in domestic South African jurisprudence but well-supported in comparative and international practice. _

By integrating constitutional delicts into this matrix, the court effectively linked South Africa's domestic private law traditions with its international commitments. This fusion creates a more robust enforcement toolkit, capable of addressing both the individualised harm suffered by property owners and the collective harm suffered by displaced or at-risk communities. It also reflects an understanding that socio-economic rights enforcement must be both systemic and particularised, ensuring that no category of victim, direct or indirect, is left without remedy.

3. Conclusion

Ultimately, *Changing Tides* pushes the boundaries of constitutional accountability by demonstrating that when the state fails to meet its socio-economic obligations, the courts will not hesitate to issue pecuniary orders. *Changing Tides* judgment signals a significant milestone in the evolving jurisprudence of socio-economic rights and state accountability within South Africa's constitutional framework. It bridges the conceptual and practical divide between the enforceability of socio-economic rights and the financial liability of the state for the failure to comply with court orders designed to give those rights effect. In acknowledging the City of Johannesburg's wrongful and negligent failure to comply with binding judicial orders, the High Court affirmed that socio-economic rights, particularly the right to have access to housing, are not merely aspirational but entail concrete, justiciable obligations. Importantly, the court expanded the scope of constitutional delicts by holding the state liable for economic loss suffered by third parties. This judgment decisively affirms that state, provincial or local government entities cannot absolve themselves from liability through the invocation of budgetary or institutional constraints when such rights are infringed.

Moreover, this note has demonstrated that the judgment aligns South Africa's approach with regional and international standards, as articulated in instruments such as the ICESCR and the African Charter, and reflects the emerging global consensus that states must respect, protect, promote, and fulfil socio-economic

rights. In addition, the judgment provides an example of judicial willingness to define the minimum core content of such rights and to impose meaningful remedies when the state fails to comply. The decision also reinforces the integrity of structural interdicts as a vital mechanism for ensuring that court orders in socio-economic rights litigation are not rendered hollow through the state's inaction. Finally, *Changing Tides* contributes to the broader constitutional dialogue on balancing property rights with the right to housing, offering a pragmatic, rights-based framework for adjudicating such conflicts in a transformative constitutional democracy. The precedent set here will undoubtedly shape future litigation and policy, reinforcing a culture of accountability and substantive socio-economic justice in South Africa.

The *Changing Tides* judgment opens an important opportunity for systemic reform in how socio-economic rights are enforced in South Africa. On this basis, this case note makes the following legislative and policy recommendations with the aim of ensuring that both direct beneficiaries and third parties affected by socio-economic rights non-compliance receive timely, effective remedies.

First, the PIE Act should be amended to expressly require municipalities to develop and publicly disclose an eviction compliance plan for every court-ordered eviction where alternative accommodation is mandated. Such a plan should set clear timelines, budgetary allocations, and designated officials responsible for delivery. By legislating these obligations, Parliament would reduce the reliance on ad hoc judicial enforcement and improve transparency in municipal housing delivery.

Secondly, the Housing Act and its associated National Housing Code provisions should be revised to establish a dedicated emergency relocation fund at the municipal level. This fund, ring-fenced from general housing budgets, would ensure that municipalities cannot plead a lack of resources as an excuse for non-compliance with court orders. The principle of budgetary prioritisation for court-mandated obligations is consistent with section 165(5) of the Constitution, which requires organs of state to assist and protect the courts to ensure the effectiveness of their orders.

Lastly, the Department of Human Settlements should issue binding regulations under section 9 of the Housing Act to operationalise "meaningful engagement", which is a procedural requirement recognised in *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*[36] in all eviction-related housing provision. These regulations should set minimum standards for consultation, notice periods, and alternative housing quality, thereby reducing disputes over adequacy and compliance.

At the municipal level, compliance units should be established within legal departments to track and report on the implementation of court orders. These units would liaise directly with housing departments, treasury, and the judiciary to ensure coordinated action. Annual compliance audits, presented to municipal councils and provincial oversight bodies, could foster a culture of accountability and deter prolonged non-compliance, as seen in Changing Tides.

Provincial governments, exercising their oversight functions under section 139 of the Constitution, should be more proactive in intervening when municipalities fail to meet constitutional obligations in housing delivery. This could include the temporary assumption of housing functions or the deployment of provincial task teams to resolve capacity bottlenecks.

[36] 2008 (3) SA 208 (CC) ; 2008 (5) BCLR 475 (CC).

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