

The Limited Success of Litigation as a Tool for Advancing the Constitutional Right to Housing in South Africa

Timothy Serie

Many people in South Africa face evictions, especially those in vulnerable situations.¹ In 2008, the government of the Western Cape ordered the eviction of approximately 20,000 residents of the Joe Slovo informal settlement area outside of Cape Town and attempted to move them to a location 20 km away.² This eviction was part of a broader government plan to upgrade slums across South Africa.³ However, the government failed to consult with the residents of Joe Slovo before ordering the eviction and did not provide them with adequate housing after the eviction.⁴ With their livelihoods on the line and their homes facing destruction, the residents of Joe Slovo challenged the government's plan and fought the eviction order. Their claim rested on their right to access adequate housing enshrined in the Constitution of South Africa. The residents of Joe Slovo took their case all the way to the Constitutional Court. On June 10, 2009, the Constitutional Court issued a decision in favor of the residents of Joe Slovo. The judgment requires the government to provide the residents of Joe Slovo with adequate alternative housing. This victory draws attention to the challenges many people in South Africa face in realizing their constitutional right to housing.

¹ I spoke with a group of immigrants from East Africa at the Blue Waters refugee camp who are facing an eviction by the municipality. After taking an affidavit from a man from Burundi, I realized how vulnerable all these people are. They have no legal right to remain on the land and cannot return to their old homes because they fear for their lives.

² "South Africa: Government Housing Project Excludes Poorest of the Poor," *IRIN* (Nov. 1, 2007), <http://www.irinnews.org/Report.aspx?ReportId=75102> (accessed November 2009).

³ COHRE, *Forced Evictions: Violations of Human Rights 2003-2006* (2006), 31, <http://www.cohre.org/globalsurvey> (accessed November 2009).

⁴ Sarah-Jane Frith, *Constitutional Court Strikes a Fair Balance: Joe Slovo Eviction Ordered While Paying Due Respect to Residents' Dignity* (Sept. 2009), <http://www.slsj.org/news/2009/slsj-newsletter-september-2009-students-students> (accessed November 2009).

Timothy Serie is in the final year of a dual-degree program at American University, pursuing a Master's Degree in International Relations from the School of International Service and a Law Degree from the Washington College of Law. He has a Bachelor of Arts in Economics from St. John's University in central Minnesota. He is particularly interested in international human rights law and environmental law.

INTRODUCTION

The Republic of South Africa is home to one of the most progressive and modern constitutions in the world. This revolutionary document was borne out of the suffering of the South African people under the repressive and authoritarian apartheid regime. Under the National Party, the South African government separated the people of South Africa into race groups and enforced a system of legal racial segregation until the early 1990s. In essence, the Constitution is a response to the many years of state-sponsored social and economic deprivation experienced by a majority of South Africans. The South African Constitution not only guarantees civil and political rights, but also a host of social and economic rights, including the right to access health care services, housing, and sufficient food and water.⁵ Numerous international covenants enshrine social and economic rights, but South Africa is one of the first countries to include a wide range of these rights in its Constitution and national laws.⁶

The South African Constitution guarantees access to adequate housing for all South Africans.⁷ According to the United Nations' Committee on Economic, Social and Cultural Rights, adequate housing encompasses legal security of tenure, affordability, habitability, and location, among other things.⁸ Everyone should possess a degree of peace and security from forced evictions, and be consulted when their security of tenure is threatened.⁹

In order to realize this right to housing, every person must have access to legal remedies if their right to housing is violated.¹⁰ According to the Constitution, courts have the authority to grant appropriate relief for constitutional violations.¹¹ However, it is unclear whether the Court's remedies have been effective in compensating victims, providing adequate relief, or advancing the socio-economic rights enshrined in the Constitution. This research paper examines whether recent litigation at the Constitutional Court level has improved access to adequate housing in South Africa as outlined in the Constitution, especially access to housing in emergency situations.

The Constitutional Court plays an important role in the realization of socio-economic rights, but it has not drastically improved access to housing as

⁵ South African Constitution (1996), sec. 26 & 27, <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf> (accessed November 2009).

⁶ *International Covenant on Economic, Social, and Cultural Rights* art. 11 (1976) <http://www2.ohchr.org/english/law/cescr.htm> (accessed November 2009).

⁷ South African Constitution (1996), sec. 26.

⁸ CESCR, "The Right to Adequate Housing," *General Comment No. 4* (Dec. 13, 1991), paragraph 8, E/1992/23.

⁹ *Ibid.*

¹⁰ Christopher Mbazira, "You Are the 'Weakest Link' in Realising Socio-Economic Rights: Goodbye – Strategies for Effective Implementation of Court Orders in South Africa," *ESR Review* 9.4 (2008), 3.

¹¹ South African Constitution (1996), sec. 26.

some scholars and human rights activists had hoped for.¹² This paper argues that recent litigation regarding the constitutional right to access to adequate housing has played an important role in shaping housing and development policy and advancing the right to housing in South Africa. Since 2001, the Constitutional Court has issued numerous judgments defining the state's obligation in protecting the right to housing in eviction situations. Nevertheless, there are still many limitations on litigating socio-economic rights, especially the right to housing.¹³ Housing litigation alone, without the aid of other forms of advocacy, has failed to drastically improve housing conditions for many South Africans living in informal settlements. Further, although socio-economic rights litigation has affected housing policy, it has been difficult for individual applicants to receive court-ordered relief.

At this critical juncture in South Africa's new democracy, it is important to ask whether the people of South Africa continue to realize their constitutional rights. The questions raised in this analysis are important for three reasons. First, the socio-economic right to housing enshrined in the Constitution is an important tool for alleviating poverty. Second, constitutional values will only become a part of South African culture if the people begin to realize their socio-economic rights, including the right to housing. Without seeing changes, South Africans will view their Constitution as an empty document devoid of any power to positively affect their lives. Finally, and possibly most importantly, South Africa is a test case for the inclusion of socio-economic rights in a national constitution. If the people of South Africa begin to successfully realize their right to adequate housing, the inclusion of this socio-economic right in the Constitution will serve as a successful example for other countries in the international community. On the other hand, if the people of South Africa do not benefit from their constitutional rights, the inclusion of socio-economic rights in the Constitution will be viewed as an ineffective measure for achieving progress.

FROM PROGRESSIVE REALIZATION TO COURT ORDERS: THE RIGHT TO HAVE ACCESS TO HOUSING IN SOUTH AFRICA

The right to access to housing is one of the many social and economic rights guaranteed by the South African Constitution. By including social and economic rights in the Constitution, the original drafters meant to redress past injustices from the apartheid era.¹⁴ Section 26 of the Constitution of the

¹² Karin Lehmann, "In Defense of the Constitutional Court: Litigating Socio-economic Rights and the Myth of the Minimum Core," 22 *American International Law Review* 163 (2006).

¹³ *Ibid.*, 5.

¹⁴ South African Constitution, 1996, Preamble.

Republic of South Africa provides:

Housing.

(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 realization of this right.

(3) No one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.¹⁵

“Section 26 is aimed at ensuring that every person has access to adequate housing and the state may not interfere with such access unless justifiable.”¹⁶ Not only does the South African Constitution include socio-economic rights such as the right to housing, it provides a cause of action and allows for individuals to bring housing claims into the court system.¹⁷ The South African Constitution of 1996 is relatively young. There are still very few Constitutional Court decisions actually interpreting the various sections of the Constitution. With such limited guidance, the government does not always know what it is required to do in order to progressively realize the right to housing.

The Constitutional Court of South Africa has an impressive reputation.¹⁸ In South Africa’s judicial system, the Constitutional Court maintains the power of judicial review over all constitutional matters, and is the final court of appeals for constitutional issues.¹⁹ “A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.”²⁰ The Constitutional Court makes the final decisions on the constitutionality of executive decisions, and acts of Parliament and other state organs.²¹ Since 2001, the Constitutional Court has handed down a number of decisions that shed light on the constitutional right of access to adequate housing in emergency situations. These groundbreaking cases include *Government of the Republic of South Africa v. Grootboom* (Grootboom), *President of the Republic of South Africa and Another v. Modderklip Boerdery* (Modderklip), and the most recent case, *Residents of Joe Slovo v. Thubelisha Homes* (Joe Slovo).

¹⁵ Ibid., sec. 26.

¹⁶ Lilian Chenwi, *Evictions in South Africa: Relevant International and National Standards* (2008), 16. South African Constitution, 1996, sec. 172 (1).

¹⁸ Theunis Roux, “Principle and Pragmatism on the Constitutional Court of South Africa,” 7 *International Journal of Constitutional Law* 106 (2009), 106-107.

¹⁹ South African Constitution, 1996, sec. 167 (3).

²⁰ South African Constitution, 1996, sec. 167 (7).

²¹ South African Constitution, 1996, sec. 167.

Grootboom

In a landmark 2001 decision, the Constitutional Court heard its first case on the right to access housing, *Government of the Republic of South Africa v. Grootboom*.²² Mrs. Grootboom lived with her children in an informal settlement outside of Cape Town. In order to escape the seasonal flooding, she moved with her children to a nearby hill. The government evicted Mrs. Grootboom with her children from the property and moved them to a nearby field where they were left with only plastic sheeting to protect them from the rain. The government did not even provide them with the materials to erect a new shack.

Mrs. Grootboom and the other applicants applied to the court for an order directing the state to provide them with temporary shelter.²³ Mrs. Grootboom's attorney argued that the Constitution of South Africa guarantees the right to access to adequate housing, and Mrs. Grootboom had nowhere to construct a home.²⁴ The government effectively rendered her homeless by not providing her with alternative housing. Conversely, the government argued that it is progressively realizing the right to housing given its available resources. Furthermore, the government claimed it was in a better position to formulate policy and allocate state resources.

The Court held that the lack of special emergency provisions was unreasonable in this particular situation, even though the government had a massive housing program, because it did not have an emergency program designed for people in desperate situations.²⁵ In the Court's view, the government had a constitutional obligation to meet the housing needs of a significant number of desperate people such as Mrs. Grootboom. Therefore, the Court ordered the government to develop an emergency housing program. The Court did not, however, mandate specific relief in this instance. Instead, it left the work of developing an emergency housing program up to the other branches of government. In this landmark decision, the Constitutional Court took its first step towards defining its role in ensuring the right to housing for all South Africans.

Modderklip

In *President of the Republic of South Africa and Another v. Modderklip Boerdery*,²⁶ the Constitutional Court decided another eviction case using the principles established in *Grootboom*. *Modderklip* involved a conflict between property rights and the right to housing. Here, a landowner sought to evict 18,000 oc-

²² *Government of the Republic of South Africa and Others v. Grootboom and Others* 2001 (1) SA 46 (CC) [hereafter *Grootboom*].

²³ Lehmann 2006, 171.

²⁴ Albie Sachs, "Enforcement of Social and Economic Rights," 22 *American University International Law Review* 673 (2007).

²⁵ Lehmann 2006, 173.

²⁶ *President of the Republic of South Africa and Another v. Modderklip Boerdery* 2005 (8) BCLR 786 (CC) [hereafter *Modderklip*].

cupants from a piece of private property, and the lower court granted the private landowner a legal order to evict the temporary occupants based on their status as illegal squatters. The illegal occupants of the private parcel resisted the eviction on the grounds that the government could not evict them from the land without providing them with adequate alternative accommodation. They argued that their right to access to adequate housing guaranteed by section 26 of the Constitution would be undermined if the government refused to provide them with alternative accommodation.

The Court in *Modderklip* held that the state had an obligation to provide housing for the evictees.²⁷ This obligation stems from the reality of the situation. If the state were to evict the occupants from the private property, they would be rendered homeless. Again, the government did not have emergency provisions in place to meet the housing needs of the evictees. In order to provide them with housing, the Court ordered the state to either: 1) expropriate the land from the private landowner and pay just compensation, or 2) provide adequate alternative housing. The state decided to relocate the entire population. Despite the court order requiring immediate action, the state was slow to relocate the evictees and failed to communicate with the evictees concerning the details of their relocation.

Joe Slovo

In a recent groundbreaking judgment, *Residents of Joe Slovo v. Thubelisha Homes*,²⁸ the Constitutional Court articulated a specific set of guidelines for the government to follow in respecting the right to housing for a group of informal settlement dwellers. This case marks the first time the Court defined the government's specific responsibilities in ensuring access to housing for the people of South Africa. In the past, the Court never went so far as to order the government to take specific actions.

Joe Slovo involved the government of the Western Cape's attempt to forcibly evict a group of approximately 20,000 slum dwellers from an informal settlement area outside of Cape Town.²⁹ The eviction was part of a large-scale plan to upgrade informal settlements across the country as a part of the government's housing policy, *Breaking New Ground*.³⁰ The government planned on demolishing the informal settlement and replacing it with improved, affordable housing for the poor. The residents were initially satisfied with the developer's promises. However, the government failed to allocate 70 percent of the new houses to the residents of Joe Slovo as agreed in its initial commitment, and planned to move them to Delft, a location 20 kilome-

²⁷ Ibid.

²⁸ *Residents of Joe Slovo v. Thubelisha Homes* 2009 BCLR (CC).

²⁹ Ibid.

³⁰ *Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements* (Aug. 2004), http://abahlali.org/files/Breaking%20new%20ground%20New_Housing_Plan_Cabinet_approved_version.pdf (accessed November 2009).

ters from their current community and economic opportunities.³¹ Instead, the government offered the new accommodations to those people already on the housing list in Cape Town. In the Western Cape High Court, the government argued that it had complied with the eviction requirements. The High Court agreed with the government and granted the eviction order. The residents of Joe Slovo appealed the eviction order and went to the Constitutional Court.

At the Constitutional Court, the residents of Joe Slovo argued that they had consent to live in the Joe Slovo area, and that their eviction was unjust. This first claim was based on the residents' legitimate expectation that they would receive 70 percent of the houses in the new development. The residents further asserted that the government failed to comply with the provisions of the Prevention of Illegal Evictions from the Unlawful Occupation of Land Act during the eviction. On the other hand, the government asserted that the removal of the residents of Joe Slovo was just and equitable because they were illegal squatters, and there was no expectation that the residents of Joe Slovo should receive a portion of the new housing development. The Constitutional Court held that the government had denied their right of access to adequate housing and issued a decision in favor of the residents since the government had not acted in line with its initial commitments.

In its judgment, the Constitutional Court declared that the residents of Joe Slovo must vacate the area, but that they should receive alternative accommodation consistent with specific requirements laid out by the Court. The judgment required the government to meaningfully engage with the residents of Joe Slovo on the timetable of the removal, allocate 70 percent of the new housing development to the residents of Joe Slovo, and report back to the Court concerning the implementation of the order.

THE EFFECTS OF HOUSING LITIGATION

Housing conditions in South Africa have gradually improved since the *Grootboom* decision and the subsequent housing cases. The percentage of South Africans living in informal settlements has decreased nationally from 16.4 percent in 2001 to 14.5 percent in 2007, even as the population has grown and the country is experiencing rapid urbanization.³² All levels of government have increased access to piped water and electricity throughout the country.³³ According to the National Department of Human Settlements, the housing situation in South Africa has drastically improved in the past 15 years.³⁴ The Department claims that the government of South Africa has de-

³¹ Frith 2009.

³² *Residents of Joe Slovo v. Thubelisha Homes* 2009 BCLR (CC).

³³ *Ibid.*

³⁴ A director from the Department of Human Settlements attended the public hearings at the South African Human Rights Commission in Johannesburg on June 10, 2009. He argued that the

livered 2.2 million houses to the people since 1994, and it plans to deliver another 400,000 by the end of 2009.³⁵ The government has even changed the National Housing Code, which now requires minimum standards for the government's building projects.³⁶ The government's contractors must construct houses that are at least 40 m² (which is still quite small), and the houses must contain two bedrooms, a kitchen, and a bathroom.³⁷

Other reports have been less optimistic. Although the South African government has taken many positive steps to improve housing, many people still live in desperate conditions.³⁸ Some commentators have even questioned the validity of the government's numbers and statistics.³⁹ Furthermore, these same commentators have suggested that the government cannot simply focus on the number of houses delivered but must also pay attention to the quality of the houses and the location of the developments.⁴⁰ The new houses quickly fall into a dilapidated state due to poor construction and the use of shoddy materials. Also, many of the areas where the new housing developments are located do not have access to basic services, infrastructure, or nearby employment opportunities.⁴¹ "[C]ommunities do not receive even the most basic support services, including proper sanitation, water, access to schools, and access to livelihood options," according to one United Nations Expert.⁴² The government attributes these failings to a lack of funding for the housing programs.

The Effects of Litigation on the Access to Housing

Despite progress in the area of housing, it is difficult to ascertain how much of this improvement can be attributed to litigation. The *Grootboom* decision definitely had a substantial effect on the government of South Africa's policy concerning emergency housing.⁴³ The effects of the *Grootboom* decision are

government is doing all it can with limited funding to improve the housing situation in South Africa.

³⁵ At the public hearings the director listed off a series of statistics on how many houses the Department of Human Settlements has constructed since 1994.

³⁶ *National Housing Code of South Africa*, <http://www.housing.gov.za/Content/The%20Housing%20Code/Index.htm> (accessed November 2009).

³⁷ According to the director from the Department of Human Settlements.

³⁸ "Housing Conditions in South Africa Often 'Desperate' Despite Efforts – UN Expert," *UN News Agency*, May 7, 2007, <http://www.un.org/apps/news/story.asp?NewsID=22458&Cr=South&Cr1=Africa> (accessed November 2009).

³⁹ At the South African Human Rights Commission's (SAHRC) public hearings, many active members of civil society complained that Statistics South Africa had failed to provide adequate statistics for analyzing the housing issue.

⁴⁰ One participant at the SAHCR public hearings berated the Housing Department for failing to provide decent houses.

⁴¹ *UN News Agency* 2007.

⁴² *Ibid.*

⁴³ Mbazira 2008, 23.

apparent in the creation of the National Housing Programme: Housing Assistance in Emergency Circumstances (Emergency Housing Programme) and the Informal Settlement Upgrading Programme. The Emergency Housing Programme expressly acknowledges the mandate of the *Grootboom* decision.⁴⁴ The government created the Emergency Housing Programme in response to the judiciary's protection of people in desperate need such as Mrs. Grootboom and her children. In this way, the *Grootboom* decision highlighted the challenges of the poor in obtaining adequate housing in emergency situations and brought these housing issues to the forefront of national politics. However, although litigation over the right to housing has been effective in forcing the government to be proactive, it has done less to protect individuals in desperate situations.

Litigation over the right to housing has been most successful in the case of evictions and emergency housing. The courts have consistently held that occupants subject to evictions have the right to receive alternative accommodation.⁴⁵ One expert asserted that recent court decisions have "... created a powerful tool for the advocates of specific communities involved in eviction proceedings, building a growing body of right-to-housing case law."⁴⁶ These court decisions have led to individual victories for local communities facing evictions. *Joe Slovo* is an example of a case where the Court ordered the government to provide adequate alternative accommodation. In addition, the court is requiring the government to report back on its progress in providing housing for the community.⁴⁷ This represents a further step towards holding the government accountable for implementing court orders in housing cases.

Despite some successful eviction cases, many people do not have equal access to the justice system. Those who face evictions are often the most vulnerable people in society and may not have the resources to assert their constitutional rights.⁴⁸ These people are in special need of legal assistance because they are usually uneducated and unaware of their constitutional rights.⁴⁹ Sadly, most people facing eviction do not receive legal representation and are unable to access the legal system.⁵⁰ One local advocate even claimed that less than 2 percent of evictees retain lawyers to represent

⁴⁴ *National Housing Programme*, <http://www.housing.gov.za/> (accessed November 2009).

⁴⁵ *Grootboom* 2001 (1) SA 46 (CC); *Modderklip* 2005 (8) BCLR 786 (CC).

⁴⁶ Mbazira 2008, 23 (quoting Wickeri).

⁴⁷ *Residents of Joe Slovo v. Thubelisha Homes* 2009 BCLR (CC).

⁴⁸ South African Human Rights Commission, *Report on the Public Hearing on Housing, Evictions and Repossessions*, 7 (2008),

<http://www.sahrc.org.za/sahrc/cms/downloads/Housing%20Inquiry%20Report2008.pdf> (accessed November 2009).

⁴⁹ *Ibid.*, 7.

⁵⁰ *Ibid.*, 31.

them.⁵¹ Further, forced evictions disproportionately affect women, children, and the disabled.⁵²

Limitations on the Use of Litigation as a Tool for Transformation

The government is failing to implement and enforce court orders even though the Constitutional Court maintains the power to provide remedies for individual violations of constitutional rights. The power to make changes through litigation in the court system is limited by a number of factors. Although the courts have the authority to issue binding decisions in individual cases and outline the government's responsibilities,⁵³ court orders may be rendered ineffective due to widespread non-compliance or because of the slow pace of the government to implement critical changes. Furthermore, the courts must act with deference regarding some housing policy decisions made by other branches of government because the courts are not in a position to control the budget or funding. The courts do not have the authority to make government policy.⁵⁴

The Government's Failure to Implement Changes

Despite some of the success stories mentioned earlier, the government has generally failed or been reluctant in many instances to implement court orders resulting from housing cases.⁵⁵ "[T]he role of litigation as a tool of realising these rights has been seriously undermined by government indifference and, at times, open defiance of court orders relating to socio-economic rights, thus depriving litigants of the fruits of successful litigation."⁵⁶ One advocate from the South African Human Rights Commission explained that in his experience he "has never seen local municipalities abide by their legal obligations."⁵⁷ At a conference at Stellenbosch University, a number of human rights advocates and lawyers noted with disdain that the government continuously refuses to acknowledge its legal obligations to provide alternative housing for people facing evictions across the country.⁵⁸

⁵¹ At a conference at Stellenbosch on litigating the right to housing on June 5, 2009, one human rights advocate claimed that barely over 1 percent of evictees receive legal aid in defending their cases.

⁵² Nkuzi Development Association, *Summary of Key Findings from the National Eviction Survey*, 10 (2004), http://www.nkuzi.org.za/docs/Evictions_Summary.pdf (accessed November 2009).

⁵³ Sachs 2007, 698.

⁵⁴ There is a fear that the courts are overstepping their bounds and usurping the power of the executive in some regards.

⁵⁵ Mbazira 2008, 20.

⁵⁶ *Ibid.*, 38.

⁵⁷ "South Africa: Law Is No Protection from Eviction," *Reuters*, Sept. 23, 2008, <http://www.alertnet.org/thenews/newsdesk/IRIN/8fba92fa91c4fdcd6edc82e61dcbdbf4.htm> (accessed November 2009).

⁵⁸ One panelist at the Stellenbosch conference, Stuart Wilson, argued that the government's attorneys are either "hopelessly stupid" or are completely ignoring the government's constitutional obligations.

According to one study, the situation of Mrs. Grootboom's community has not changed since the judgment in 2001.⁵⁹ The community managed to prevent their situation from getting worse but has not succeeded in forcing the government to improve it. To this day, the community's land is still subject to extreme flooding, and the people do not have access to adequate sanitation.⁶⁰ Mrs. Grootboom recently died, still living in the same deplorable conditions of the informal settlement.⁶¹ In apparent disregard for the judiciary, the government did not act quickly enough in providing the desperately poor with adequate housing.⁶² In many instances, individuals such as Mrs. Grootboom have been unable to secure personal relief from the courts.

Separation of Powers

The separation of powers in government is another limitation on the extent to which litigation can affect government policy concerning the right to housing. The other branches of government have considerable power over the housing situation. It is generally not the function of judges to determine housing policy and the allocation of resources.⁶³ A Justice on the Constitutional Court, Albie Sachs, noted that it is appropriate for the Court to declare the obligations of the state but that they must leave it to the state to fulfill those obligations.⁶⁴ Some commentators argue that it is dangerous if judges begin to usurp powers traditionally held by other branches of government.⁶⁵ The government can use this separation-of-power argument to claim that it is only within the government's purview to decide housing policy, and thus, it may frustrate any judicial attempt to advance the right to housing.⁶⁶

CONCLUSION

Mrs. Grootboom and the others were evicted very roughly, very brutally. Things were knocked down and destroyed; they ended up on an open sports field nearby ... The rains were threatening, and all they had to protect themselves

⁵⁹ Mbazira 2008, 21.

⁶⁰ *Ibid.*, 21.

⁶¹ *The Citizen*, "Housing Activist Grootboom Dies in Cape Shack" (August 2008), 5.

⁶² Mbazira 2008, 38.

⁶³ Sachs 2007, 677.

⁶⁴ *Ibid.*, 698.

⁶⁵ One of the professors from Stellenbosch argued that the judiciary needs to stay within its bounds if it wants to be respected by the other branches of government. Some of the court's actions fell outside the power of the court in his opinion.

⁶⁶ One advocate at the Stellenbosch Conference complained that the government's standard defense in any housing case is that it is continuously realizing the right to housing but does not have sufficient resources. Thus, the government cannot provide housing to everyone immediately and must pick and choose its battles.

with was plastic sheeting. Mrs. Grootboom and the children were huddled there, not knowing what to do.⁶⁷

Justice Albie Sachs

Although Mrs. Grootboom won her case before the Constitutional Court, her individual housing situation never improved. Her family's life never improved. She continued to live out the rest of her existence in the same conditions of squalor, and eventually, she died in the same conditions of squalor.⁶⁸ This striking example demonstrates the deficiencies in housing policy and access to adequate housing. The government of South Africa has failed to respond to the needs of the poor in this regard, failed to implement emergency housing plans, and failed to implement court orders concerning the right to housing.

The use of litigation as a tool for advancing the right to housing is limited; however, South African courts still play an important role in protecting this right. Combined with other forms of advocacy, litigation may be a useful tool in the fight to change government policy and advance the right to housing. But alone, litigation has failed to bring relief for many individuals or impact government policy.

THE FUTURE

Thus far, it appears as if the Constitutional Court is unwilling to intervene further in the government's housing policy beyond mandating emergency provisions. In the future, it will be fascinating to see whether the government implements, or fails to implement, the *Joe Slovo* decision. Another important indicator of success will be whether the government reports back to the court on its progress in relocating the residents of Joe Slovo. Will this new form of oversight encourage the government to fulfill its constitutional obligations and implement court orders? The success or failure of the right to housing in the South African context has greater implications for the future of human rights across the world. If the inclusion of social and economic rights in the Constitution is viewed as a success, other countries may move in the same direction and enact similar legislation. On the other hand, the failure of constitutional social and economic rights in South Africa may doom similar human rights movements in other countries.

⁶⁷ Sachs 2007, 673.

⁶⁸ *The Citizen* 2008, 5.