

THE UTILISATION OF the right OF CHILDREN to shelter TO ALLEVIATE POVERTY IN SOUTH AFRICA

SUMMARY

Children being the most vulnerable members of society are the one's most affected by living in poverty. This unacceptable situation can inter alia be attributed to the disastrous effects of Apartheid. During this unfortunate period in our nation's history millions of people were unjustly evicted from their homes and forced to live in deplorable conditions. Moreover, many of these people were left homeless or without the necessary adequate shelter. Children who were born into these circumstances were denied basic resources such as proper shelter, food, water and health care services.

These unfortunate circumstances existed at the adoption of South Africa 's democratic Constitution. The preamble of the Constitution of the Republic of South Africa , 1996 reaffirms government's commitment to heal the inequalities of the past and improve the quality of life of all citizens. The Constitution is based on certain fundamental values, most importantly, human dignity, freedom and equality. The fact that these values are denied to those people living without access to basic resources such as adequate housing/shelter, food, water or health care services cannot be dismissed. To facilitate South Africa 's development as a democratic state based on human dignity, freedom and equality, the problem of poverty must be addressed. The Constitutional Court , in *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 11 BCLR 1169 (CC), has recently stated that the effective realisation of socio-economic rights is key to the advancement of a value based democratic South Africa .

Section 26 of the Constitution grants everyone the right to have access to adequate housing and section 28 that grants every child the additional right to basic shelter among others. By virtue of section 28(1)(b) the primary responsibility to provide children with the necessary adequate housing/shelter is vested in their parents, unless the parents are unable to fulfil their duty or the children are removed from their care. This does not in the least mean that the state has no responsibilities to children living with their parents. The state must still provide the framework in which parents can facilitate the realisation of their children's rights. The state can fulfil this obligation by taking reasonable legislative and other measures within its available resources to realise everyone's right of access to adequate housing progressively. Therefore, it is submitted that the measures taken to realise section 26 also indirectly ensures the realisation of children's right to basic shelter (section 28(1)(c)).

It has been largely accepted by the courts and academics alike that all fundamental human rights are indivisible and interrelated. Clearly then, the state's obligations in terms of section 28(1)(c) cannot be properly interpreted without referring to the interpretation of those obligations conferred upon it by section 26(2) and the other socio-economic rights in the Constitution. Hence, section 28(1)(c) must be seen in the context of the Constitution as a whole. Put simply, the state must take reasonable legislative and other measures within its available resources to realise children's right to basic housing/shelter progressively.

This article will focus on the utilisation of the right to shelter of the child to alleviate poverty. Essential to this discussion is an effective understanding of the right to basic shelter as entrenched by section 28 of the Constitution in conjunction with the right of access to adequate housing conferred on everyone by virtue of section 26. This will be achieved by studying the general working of such rights including their limitations and enforcement.

Keywords

Socio-economic rights, social and economic rights, housing, shelter, children, children's rights, poverty, human dignity, enforcement, limitations, right to access to adequate housing, right to shelter, child headed households, Constitutional Court, South African Human Rights Commission.