

Joint Submission

to the

Human Rights Council Advisory Committee

on

**the Achievement of Social Justice Through the Legal Enforcement of
Economic, Social and Cultural Rights by National Courts**

The South African Context

30 April 2026

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Executive Summary

The centrality of human rights, including economic, social and cultural (ESC) rights, in South Africa is evidenced in its founding values expressed in the transformative Constitution of South Africa of 1996, which include human dignity, equality, advancement of human rights, and the rule of law, and the Constitution's progressive Bill of Rights. The Constitution is exceptionally progressive when it comes to ESC rights, recognising them as justiciable rights and the important role of South African courts and other institutions in safeguarding these rights. In addition, South Africa has ratified several international human rights treaties that incorporate ESC rights.

South African courts have played a crucial and transformative role in advancing social justice through enforcing ESC rights. However, this is not without challenges that limit the impact of these rights and their translation into concrete benefits in ways that result in social justice on the ground.

This joint submission provides civil society and academic perspectives on the legal enforcement of ESC rights (with specific focus on socio-economic rights) by national courts, with reference to the South African context, and some practical recommendations in promoting greater accountability and legal enforcement of these rights by the courts with the goal of achieving social justice. The submission relied on a range of primary and secondary sources as well as the work and experiences of contributing organisations and individuals on the implementation and enforcement of socio-economic rights in South Africa.

The submission is divided into three main sections focussing on the questions to: all stakeholders (part II); civil society (part III); and academics and legal experts (part IV).

Abbreviations and Acronyms

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Disability Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
African Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
CALS	Centre for Applied legal Studies
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Centre for Human Rights
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisations
DOI/Dullah Omar Institute	Dullah Omar Institute for Constitutional Law, Governance and Human Rights
DOJCD	Department of Justice and Constitutional Development
ESC	Economic, Social and Cultural
HJI	Health Justice Initiative
HRC	Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
LRC	Lawyers for Human Rights
MEC	Member of the Executive Council
NGO	Non-Governmental Organisation
NHI	National Health Insurance
OP-ICESCR	Optional Protocol to the ICESCR
PIE	Prevention of Illegal Eviction from and Unlawful Occupation of Land
PHM-SA	People's Health Movement South Africa
PMTCT	Prevent Mother to Child Transmission
SA	South Africa
SAHRC	South African Human Rights Commission
SERI	Socio-Economic Rights Institute of South Africa
WLC	Women's Legal Centre

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I. Introduction

1. This joint submission is in response to the Human Rights Council (HRC) Advisory Committee's questionnaire on the achievement of social justice through the legal enforcement of economic, social and cultural (ESC) rights by national courts. The joint submission focuses on the questions to: all stakeholders (part II); civil society (civil society organizations (CSOs), including non-governmental organizations (NGOs), social movements, lawyers and individual litigants) (part III); and academics and legal experts (part IV).
2. The joint submission provides civil society and academic perspectives on the legal enforcement of ESC rights (with specific focus on socio-economic rights) by national courts, with reference to the South African context. It also includes some practical recommendations in promoting greater accountability and legal enforcement of these rights by the courts with the goal of achieving social justice.
3. The submission is a joint initiative of some South African civil society/human rights organisations and individual experts. It has been compiled with input from the following organisations and individual experts (listed in alphabetical order):
 - *Black Sash*,¹ a human rights organisation advocating for social justice in South Africa. It works towards the realisation of socio-economic rights, with emphasis on social security and social protections for the most vulnerable South Africans particularly women and children. Black Sash also works towards exploring options to significantly reduce poverty and inequality.
 - *Centre for Applied Legal Studies (CALS)*,² a human rights organisation based at the University of the Witwatersrand School of Law. It works towards promoting human rights and challenging systems of power in South Africa and the region. CALS uses a combination of research, advocacy and litigation to advance social justice.
 - *Centre for Human Rights (CHR)*,³ based at the University of Pretoria Faculty of Law is an internationally recognised university-based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. It aims to contribute to advancing human rights, through education, research and advocacy. The Centre provides support by way of capacity building and education to regional human rights bodies and civil society groups in Africa.
 - *Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI)*,⁴ based at the University of the Western Cape works in the areas of children's rights, socio-economic rights, multilevel government and criminal justice. It conducts engaged, multi-disciplinary research and human rights education, and actively campaigns around key social justice issues. Through engaged research, teaching and advocacy, DOI supports processes in South Africa and the region to build inclusive, resilient states that are accountable to citizens and responsive to human rights.
 - *Health Justice Initiative (HJI)*,⁵ a non-profit organisation working to address systemic health inequities and injustices in South Africa and beyond. It also focuses on the intersections between health justice, racial and gender inequity, and climate injustice, while continuing to work directly on issues of health policy. HJI uses law, research, and advocacy

¹ For more information on Black Sash's activities, see: <https://www.blacksash.org.za>.

² For more information on CALS' activities, see: <https://www.wits.ac.za/cals>.

³ For more information on Black Sash's activities, see: <https://www.chr.up.ac.za>.

⁴ For more information on DOI's activities, see: <https://dullahomarainstitute.org.za>.

⁵ For more information on HJI, see: <https://healthjusticeinitiative.org.za>.

tools to understand, challenge and address the factors that shape inequity in health access, especially in relation to accessing life-saving medicines for key diseases.

- *Jackie Dugard*,⁶ a Senior Lecturer in the discipline of Human Rights at the Institute for the Study of Human Rights and the Department Political Science, Columbia University; Visiting Professor of Law, School of Law, University of the Witwatersrand; Board member, Socio-Economic Rights Institute of South Africa. She has published widely on socio-economic rights and legal mobilisation, and has been involved in teaching, advocacy and litigation initiatives relating to socio-economic rights.
 - *Lawyers for Human Rights (LHR)*,⁷ an independent non-profit public interest law organisation providing pro bono legal services to vulnerable and marginalised communities, focusing on the six thematic areas: refugees and migrant rights, environmental rights, land, housing and property rights, gender equality, penal reform and detention monitoring and broader strategic litigation. LHR utilises a holistic approach by integrating strategic litigation, advocacy, and community mobilisation, empowerment and movement building to dismantle structural inequality and uphold the rule of law.
 - *Lilian Chenwi*,⁸ a Professor of Law, School of Law, University of the Witwatersrand School of Law; Core team member of the NRF SARChI Chair on Equality, Law and Social Justice. She has published widely on socio-economic rights, African regional protection of human rights, among other critical human rights topics, and has been involved in teaching, advocacy and litigation initiatives relating to socio-economic rights.
 - *People's Health Movement South Africa (PHM-SA)*,⁹ the South African Chapter of the People's Health Movement (PHM), a global network of grassroots activists, civil society and academics, predominantly from low and middle-income countries. PHM-SA focuses on advocating for improved healthcare services for all. It also works with communities and civil society organisations to improve the social determinants of health.
4. We would like to express our gratitude and recognition to all those who have worked on this joint submission.¹⁰ Without their work, this joint submission would not have been possible.
 5. The contributing organisations and individuals hope that the submissions that follow would be considered and included in the Human Rights Advisory Committee's study.

II. Responses to Questions to All Stakeholders

A. Please explain the reasons for the ratification or non-ratification by your State of the Optional Protocol to the ICESCR, if known.

6. South Africa has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). The delay on ratification of the OP-ICESCR is concerning, considering that South Africa ratified the ICESCR on 12 January 2015 (viewing

⁶ For more information on Jackie Dugard, see: <https://polisci.columbia.edu/content/jackie-dugard>.

⁷ For more information on LHR's activities, see: <https://www.lhr.org.za>.

⁸ For more information on Lilian Chenwi, see: <https://www.wits.ac.za/people/academic-a-z-listing/c/lilianchenwiwitsacza>.

⁹ For more information on PHM-SA's activities, see: <http://phm-sa.org>.

¹⁰ Lilian Chenwi (Wits), Hoodah Abrahams-Faykey (Black Sash), Olayinka Adeniyi (CHR), Jackie Dugard (Columbia/Wits), Leslie London (PHM-SA), Fatima Hassan (HJI), Nabeelah Mia (LHR), Rue Matanda (LHR), Favour Akanbi (DOI), and Thuto Gabaphethe (CALS).

the action as vital in bringing the country ‘a step closer to the further realization of socio-economic rights’¹¹ and ‘giving the Covenant greater force in domestic law’¹²), supported the elaboration and adoption of the OP-ICESCR,¹³ has a transformative¹⁴ Constitution that recognises socio-economic rights as justiciable and the role of South African courts in enforcing these rights, has adopted legislative and other measures for socio-economic rights realisation, and recognises the justiciability of these rights in practice.

7. Hence, South Africa has not heeded to repeated calls for it to ratify the OP-ICESCR. One of the recommendations on South Africa’s initial report by the CESCR is that South Africa should ratify the OP-ICESCR.¹⁵ The HRC’s Working Group on the Universal Periodic Review¹⁶ and the Committee on the Rights of the Child (CRC Committee)¹⁷ among others, have also recommended ratification of the OP-ICESCR by South Africa.
8. While there is an indication of South Africa’s willingness to ratify the OP-ICESCR, this has not materialised. Likely reasons relate to: concerns about *sovereignty and international oversight* of domestic socio-economic policy in litigation context, limiting national policy discretion; a view that South Africa’s *robust domestic constitutional framework* already provides sufficient ESC rights protection, making international complaint mechanisms less urgent (and a preference for using domestic courts to handle socio-economic complaints); a broader *political reluctance* to subject executive socio-economic decisions to international scrutiny, particularly given resource constraints; *institutional capacity constraints* in managing international reporting and complaints obligations; and *bureaucratic delays* for various reasons.
9. Formal reasons advanced by the government for non-ratification have been mixed, pointing to both *substantive* and *procedural issues* delaying ratification. In 2018, during consideration of South Africa’s initial report under the ICESCR, South Africa’s representatives explained to the CESCR that ‘it had taken some time for South Africa to ratify the Optional Protocol because the Government wanted to ensure that it had proper reporting mechanisms on the Covenant’ and ‘[t]he question of the ratification of the Optional Protocol to the Covenant was at its heart a question of domestication of international human rights instruments’.¹⁸
10. In 2018 as well, in response to a parliamentary question posed in the National Assembly of South Africa on when South Africa intends to submit legislation that will make provision for

¹¹ South Africa, ‘Initial report, ICESCR’, UN Doc E/C.12/ZAF/I (2017) para 5.

¹² South Africa, ‘Opening statement to the 64th session of the Committee on Economic, Social and Cultural Rights (CESCR)’ (October 2018), UN Doc INT/CESCR/OCR/ZAF/64/27792 (2018) para 2.

¹³ South Africa supported the adoption of the OP-ICESCR and played an active role in its drafting and adoption. It made significant effort to ensure that the Protocol affirmed and built on the African experience and did not weaken it by setting a lower standard of review at the international level. Its experience in enforcing socio-economic rights through the courts was considered during the drafting process, which informed the text of the Protocol, particularly article 8(4) of the OP-ICESCR.

¹⁴ South Africa’s Constitution is widely described as transformative by the courts and in academic literature. For example, see generally, S Liebenberg, *Socio-economic rights: Adjudication under a transformative constitution* (2010).

¹⁵ Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the initial report of South Africa, UN Doc E/C.12/ZAF/CO/1 (2018) para 78.

¹⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review: South Africa, UN Doc A/HRC/52/17 (2023) para 143.6 & 143.17.

¹⁷ Committee on the Rights of the Child, Concluding observations on the combined third to sixth periodic reports of South Africa, UN Doc CRC/C/ZAF/CO/3-6 (2024) para 49.

¹⁸ United Nations, ‘Committee on Economic, Social and Cultural Rights considers the report of South Africa’ Press Release (2018), <https://www.ohchr.org/en/press-releases/2018/10/committee-economic-social-and-cultural-rights-considers-report-south-africa#:~:text=The%20Country%20Rapporteur%20inquired%20about,an%20essential%20part%20of%20democracy> (accessed 17 April 2026).

the OP-ICESCR, the relevant government department indicated that ‘South Africa is in the process of considering the Optional Protocol’s consistency with domestic and international law to which South Africa is obligated, with a view to ratifying the Optional Protocol’ and ‘consideration of legislative changes, if any will be considered at the appropriate time’.¹⁹

11. In 2019, on the question of ratification of the OP-ICESCR, the Department of Justice and Constitutional Development (DOJCD) indicated that it has obtained ‘a legal opinion on the issue. But this is an issue that will take time, as it affects the whole of Government and therefore will need to be thoroughly debated and discussed across government departments and taken through the different government structures’.²⁰
12. A similar reason was advanced in 2024. The DOJCD indicated that it ‘has taken the first step of the ratification process by obtaining a legal opinion from the Office of the Chief State Law and will need to undertake further internal consultative processes within government’; also, ‘the possible ratification of the Optional Protocol would require Cabinet approval before ratification in terms of section 231(2) of the Constitution’ but due to change in government administration at the time, a firm undertaking could not be given in this regard.²¹
13. The contributors to this joint submission recognise the transformative Constitution and progressive socio-economic rights jurisprudence South Africa has in place but *advance* the need for stronger accountability mechanisms for ESC rights, considering the extent of poverty, inequality and socio-economic deprivations in the country. They also *support* and *recommend* the ratification of the OP-ICESCR as an additional layer of protection for vulnerable and marginalised individuals, groups and communities.

B. Describe the legal and constitutional status of ESC rights in your country, including relevant constitutional provisions, legislation, or treaty incorporation.

14. ESC rights (commonly referred to as socio-economic rights in the South African context) have a strong legal and constitutional status. They are expressly provided for in the Constitution of South Africa of 1996 (SA Constitution) as justiciable rights. In addition, South Africa has in place a range of legislative and policy measures towards the realisation of these rights. It has also ratified several human rights treaties, at the UN and African regional levels, that guarantee ESC rights but the lack of full incorporation of some of the treaties limits the extent to which they can be invoked before domestic courts.

Constitutional provisions

15. The SA Constitution provides for the rights of everyone to: fair labour practices and worker’s right to form, join and participate in activities of a trade union, and to strike (section 23); a healthy environment (section 24); property, including citizen’s *access* to land on an equitable basis (section 25); have *access* to adequate housing (including prohibition of arbitrary eviction) (section 26); have *access* to health care services (including reproductive health care and protection against refusal of emergency treatment), sufficient food, water and social security (including appropriate social assistance if not able to support themselves) (section 27)

¹⁹ National Assembly, Parliament of South Africa ‘Question for written reply: Parliamentary question no. 3042’ (2018), <https://pmg.org.za/files/RNW3042-181115> (accessed 17 April 2026).

²⁰ Department of Justice and Constitutional Development, South Africa (DOJCD), Address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery on ‘The role of the State in implementing the ICESCR and the CESCR’s Concluding Observations’ at the Seminar on the ICESCR: Implications of its Ratification for South Africa, hosted by the South African Human Rights Commission, Braamfontein, 27 November 2019, https://www.justice.gov.za/m_speeches/2019/20191127-ICESCR_dm.html (accessed 17 April 2026).

²¹ Letter from the Deputy Minister of Justice and Constitutional Development, John Jeffery, MP (9 January 2024).

and education (section 29). It also provides for rights relating to language (section 29(2)) and culture such as rights of everyone to participate in the cultural life of their choice (section 30) and to belong to a cultural community (section 31). It further provides for the right of detained persons (including sentenced prisoners) to dignified detention conditions including provision at state expense of adequate accommodation, nutrition, reading material and medical treatment (section 35(2)(e)). In addition, children's rights to basic nutrition, shelter, basic health care services and social services (section 28(1)(c)), and protection from exploitative labour practices (section 28(1)(e)) are guaranteed in the Constitution.

16. Though SA Constitution is viewed as exceptionally progressive when it comes to justiciable socio-economic rights (including explicitly recognising the right to water that is not explicit, but implicit, in the ICESCR²²), some ESC rights in the ICESCR are not explicitly recognised in the Constitution. For example, the Constitution is not explicit on: 'right to work', 'right to just and favourable conditions of work', 'widest possible protection and assistance should be accorded to the family'; '[p]rimary education shall be compulsory and available free to all'; right of everyone to enjoy the benefits of scientific progress and its applications.
17. Some of the socio-economic rights, such as housing, health care services, food, water, social security, are formulated as 'access' rights; therefore, without entitlement *on demand*. The state's duty is to take reasonable measures, within available resources, to progressively realise these rights.²³ Hence, they are described as 'qualified' socio-economic rights. Generally, the state has a duty to respect, protect and fulfil all socio-economic rights in the Constitution.²⁴ Also, the socio-economic rights in the Constitution are subject to the general limitation clause.²⁵ Basic socio-economic rights, such as the right to basic education (including adult basic education),²⁶ are not formulated as 'access' rights, therefore usually described as 'unqualified' rights, as they do not have the explicit progressive realisation qualification. The Constitutional Court has however clarified that children's right to basic shelter, though not qualified, 'does not create any primary state obligation to provide shelter on demand to parents and their children if children are being cared for by their parents or families'.²⁷
18. As regards basic education, South Africa has sought to introduce upon ratification of the ICESCR a limitation to the right (subjecting it to progressive realisation) through its declaration relating to articles 13(2)(a) and 14 of the ICESCR, which the CESCR views as problematic since the limitation is not found in the Constitution and domestic jurisprudence.²⁸ The CESCR has thus called on South Africa to withdraw the declaration.²⁹ The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has also called on South Africa to withdraw this declaration 'so that education is made immediately available'.³⁰ The contributors to this joint submission also *recommend* South Africa's withdrawal of this declaration, as its continued existence affects the immediate realisation of the right to basic

²² The right to water is implicit in articles 11 and 12 of the ICESCR as confirmed in CESCR, General Comment No. 15 on the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2002/11 (2003).

²³ See for example sections 26(2) and 27(2) SA Constitution on housing, health, food, water, social security.

²⁴ Section 7(2), SA Constitution.

²⁵ Section 36, SA Constitution.

²⁶ Section 29(1)(a) SA Constitution.

²⁷ *Grootboom* (CC) para 77.

²⁸ CESCR, Concluding observations on initial report of South Africa, para 6.

²⁹ CESCR, Concluding observations on initial report of South Africa, para 7.

³⁰ ACERWC, Concluding observations and recommendations on the second periodic report of South Africa – African Charter on the Rights and Welfare of the Child (African Children's Charter) (2023) para 5.

education and results in a form of parallel regime, where the courts hold for the immediate realisation of the right to basic education but the government maintains a progressive stance.³¹

Legislation

19. Constitutional socio-economic rights have been elaborated on in national legislation in South Africa, providing for statutory socio-economic rights/entitlements. For example, access to state subsidised housing and to social assistance based on certain qualifying requirements, protection from arbitrary evictions, access to health care services, equal access to education, among other socio-economic entitlements, are facilitated through domestic legislation. Relevant housing laws include the Housing Act 107 of 1997, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), Social Housing Act 16 of 2008, Rental Housing Act 1999. The Social Assistance Act 13 of 2004 regulates access to social assistance benefits. Other relevant laws that facilitate access to socio-economic rights/benefits include the Water Services Act 108 of 1997, National Health Act 61 of 2003, National Health Insurance Act 20 of 2023 (NHI Act) and South African Schools Act 84 of 1996.
20. Some laws are currently facing significant legal challenges. For example, increasing illegal occupations of land and buildings in South Africa (which has placed financial and administrative burdens on government and the private sector and has implications for housing and land rights) has given rise to the need for review of the PIE Act to manage the unlawful occupations and ensure more decisive response to illegal occupations and eviction.³² The review is also informed by the government's concern about 'inconsistent interpretation' of the PIE Act, which it sees as a key challenge, 'often resulting in lengthy court processes and escalating costs'.³³ Another example is the NHI Act, a new vehicle aimed at expanding access to quality health care, that has been challenged by multiple parties on different grounds. Some oppose the Act based on unaffordability and adverse impacts on the private sector.³⁴ Other oppositions focus on whether NHI will reduce access to health care or do so in ways that are inconsistent with constitutional principles of equality, particularly for migrants.³⁵

Treaty ratification and incorporation

21. South Africa has ratified the following treaties that provide for ESC rights generally or in relation to specific groups. At the UN level, the treaties include the ICESCR, Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Rights of Persons with Disabilities (CRPD), International Convention on the Protection of the Rights of All Migrant Workers and

³¹ Instructive cases in this regard include the following: *Governing Body of the Juma Musjid Primary School and Others v Ahmed Asruff Essay N.O. and Others* 2011 (8) BCLR 761 (CC); *Section 27 & Others v Minister of Education & Others* 2012 (3) All SA 579; *Madzodzo & Others v Minister of Education & Others* 2014 (2) All SA 339 (ECM).

³² Parliamentary Monitoring Group, 'Briefings on Prevention of Illegal Eviction from and Unlawful Occupation of Land Bill' (May 2025), <https://pmg.org.za/committee-meeting/40805> (accessed 28 April 2026); South African Government News Agency, 'Government gazettes bill to strengthen response to illegal land occupations' (2026), <https://www.sanews.gov.za/south-africa/government-gazettes-bill-strengthen-response-illegal-land-occupations> (accessed 28 April 2026).

³³ South African Government News Agency (2026).

³⁴ See J Copelyn, 'On which legal arguments are the NHI court cases set to turn? Part 1: Affordability' (2025), <https://www.spotlightnsp.co.za/2025/09/16/on-which-legal-arguments-are-the-nhi-court-cases-set-to-turn-part-1-affordability> (accessed 27 April 2026).

³⁵ See J Copelyn, 'On which legal arguments are the NHI court cases set to turn? Part 2: Right to healthcare services' (2025), https://www.spotlightnsp.co.za/2025/10/29/on-which-legal-arguments-are-the-nhi-court-cases-set-to-turn-part-2-right-to-healthcare_services (accessed 26 April 2026).

Members of Their Families (CMW).³⁶ At the African regional level, the treaties include the African Charter on Human and Peoples' Rights (African Charter), African Charter on the Rights and Welfare of the Child (African Children's Charter), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol).³⁷

22. These human rights treaties have significantly impacted laws and policies in South Africa. For example, though South Africa had not ratified the ICESCR at the time, the SA Constitution is largely modelled on the ICESCR. This is evident if one compares, for example, sections 26 and 27 of the Constitution with article 2(1) of the ICESCR. There are however some differences in the provisions' formulation, for instance: state obligation to take 'reasonable legislative and other measures' in the Constitution versus state obligation to take 'all appropriate means, including particularly the adoption of legislative measures' in the ICESCR; limiting resources to 'within its available resources' in the Constitution versus to the 'maximum of its available resources' in the ICESCR; and 'to achieve the progressive realisation' of the rights versus 'achieving progressively the full realization of the rights'. Though the differences seem minor,³⁸ the Constitutional Court has held that 'the differences between the relevant provisions of the Covenant and our Constitution are significant in determining the extent to which the provisions of the Covenant may be a guide to an interpretation of section 26'.³⁹ It has endorsed some ICESCR understandings (for example, confirming that the term progressive realisation is taken from article 2(1) of the ICESCR and its understanding in the Constitution is the same as that under the ICESCR⁴⁰) while rejecting others (for example, the minimum core concept explained later in this joint submission).
23. However, following South Africa's ratification of the ICESCR, the Constitutional Court has engaged with the impact of ICESCR ratification, noting that the court 'must seek to harmonise its approach to the interpretation of the socio-economic rights in the Constitution with the ICESCR, whose interpretation is most authoritatively contained in the General Comments of the UN Committee on Economic, Social and Cultural Rights', 'South Africa is [now] bound to give effect to its obligations in good faith' and 'may not use its own internal law to justify failing to give effect to its international obligations'.⁴¹ It is thus hoped – which the contributors to this joint submission *recommend* – that the court will revisit its position on minimum core to harmonise ICESCR obligations with domestic obligations.
24. Some of the treaties have not been fully incorporated into domestic law. For example, the ICESCR has not been fully incorporated into domestic law. For treaties to become law in South Africa, the Constitution requires incorporation of ratified treaties through domestic legislation (except for self-executing treaties).⁴² Failure to do this or partial incorporation limits the extent to which the treaties or relevant provisions can be invoked before domestic courts. The CESCR has noted that the Constitution does not fully incorporate the rights in ICESCR such as the

³⁶ See United Nations, 'View the ratification status by country or by treaty: Ratification status for South Africa', https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN (accessed 22 April 2026).

³⁷ See ratification status of African Union treaties at <https://au.int/en/treaties> (accessed 22 April 2026).

³⁸ C Mbazira, *Litigating socio-economic rights in South Africa: A choice between corrective and distributive justice* (2009) 54; F Coomans 'Reviewing implementation of social and economic rights: An assessment of the 'reasonableness' test as developed by the South African Constitutional Court' (2005) 65 *ZaöRV* 167, 171.

³⁹ *Grootboom and Others v Government of the Republic of South Africa and Others* 2000 (11) BCLR 1169 (CC) para 28.

⁴⁰ This was confirmed in *Grootboom* (CC) para 45.

⁴¹ *Commando and Others v City of Cape Town and Another* [2024] ZACC 27 paras 122 & 147; also see paras 48-55 & 140-158.

⁴² Section 231(4), SA Constitution.

right to work and the right to an adequate standard of living.⁴³ Hence, while observing that SA Constitution 'is particularly progressive in the area of economic, social and cultural rights', the CESCR recommended that South Africa should 'ensure that the rights enshrined in the Covenant are fully recognized in its Constitution and domestic legislation and that the provisions of the Covenant can be directly invoked before domestic courts'.⁴⁴

25. South Africa has also been praised for its incorporation and implementation of some of the treaties. For example, as regards African regional treaties, positive efforts have been made towards their incorporation and implementation; for example, the ACERWC has applauded South Africa 'for undertaking a number of measures to realise the implementation of the provisions of the African Children's Charter'.⁴⁵
26. To adequately assess the extent of incorporation of human rights treaties in South Africa, a *database on treaties incorporated and the extent of their incorporation* is necessary, especially considering that South Africa's state reports to relevant treaty bodies do not adequately address this question.⁴⁶ The contributors to this joint submission *recommend* having in place such a database as well as *full incorporation* of the ICESCR into domestic legal systems.
27. Notwithstanding the incorporation question, the treaties relevant to ESC rights enforcement still have a significant role in interpretation of the bill of rights and legislation. The Constitution requires that interpretation of constitutionally guaranteed rights (in its Bill of Rights) must take into consideration international law.⁴⁷ Also, a court must give preference to interpretation of legislation that is consistent with international law over one that is inconsistent with it.⁴⁸ These interpretive directives have strengthened the impact of treaties in ESC rights adjudication.

C. To what extent are ESC rights recognized as legally enforceable by courts in your country?

28. As the constitutional socio-economic rights are recognised as justiciable, they can be enforced through South African courts. There is now substantial jurisprudence developed by South African courts affirming the legal enforcement of socio-economic rights and their interdependence with other rights as well as ordering of specific and systemic remedies in cases of socio-economic rights violations. South African courts have on several occasions held the state accountable for its failure to take reasonable measures towards socio-economic rights realisation.
29. Early socio-economic rights jurisprudence in South Africa was groundbreaking in establishing these rights (housing and health rights, specifically) as legally justiciable and enforceable. *Soobramoney v Minister of Health Kwazulu-Natal (Soobramoney)*,⁴⁹ involving an appeal to the courts to secure access to dialysis treatment for a patient unable to continue dialysis in the private sectors as he had run out of insurance benefits, confirmed how rationing of resources, integral to health service delivery in the public sector, could be effected consistent with the Bill

⁴³ CESCR, Concluding observations on initial report of South Africa, para 4.

⁴⁴ CESCR, Concluding observations on initial report of South Africa, paras 4-5.

⁴⁵ ACERWC, Concluding observations and recommendations on the second periodic report of South Africa, para 4.

⁴⁶ L Chenwi 'International human rights law in South Africa' in E de Wet, H Hestermeyer & R Wolfrum (eds) *The implementation of international law in Germany and South Africa* (2015) 354.

⁴⁷ Section 39(1)(c), SA Constitution.

⁴⁸ Section 233, SA Constitution.

⁴⁹ *Soobramoney v Minister of Health Kwazulu-Natal* 1997 (12) BCLR 1696 (CC).

of Rights and provided interpretation of the right to life and to emergency medical care in the context of a health rights claim.

30. The celebrated case of *Government of the Republic of South Africa v Grootboom* (*Grootboom*)⁵⁰ confirmed that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to adequate housing. The case established and defined the standard of ‘reasonableness’ in socio-economic rights adjudication, when dealing with positive duties imposed by these rights.
31. *Minister of Health v Treatment Action Campaign (TAC)*⁵¹ confirmed that the government will be in breach of its obligation to realise the right to health by failing to expand access to sites where antiretroviral nevirapine to prevent mother to child transmission (PMTCT) of HIV can be obtained. Government policy, influenced by AIDS denialism at the time, did not provide ARV treatment to pregnant women, despite clear evidence of effectiveness in PMTCT of HIV, prompting a national campaign and court action led by the Treatment Action Campaign. The *TAC* case provided the basis for subsequent legal actions that expanded the envelope of access to health care (specifically for ARVs) as a right (for examples: *use of competition law* to challenge two multinational pharmaceutical companies’ pricing practices, resulting in increasing access to a sustainable supply of affordable ARV medicines;⁵² and litigation for access to ARVs for prisoners⁵³). It has also provided the basis for later court applications involving appeals for the allocation of scarce resources (for example, in *EA v Helen Joseph Hospital and Others*,⁵⁴ where the applicant urgently sought relief to remain on the dialysis programme after the hospital had decided she was not a candidate for kidney transplant and therefore no longer qualified for dialysis).
32. On several other occasions, the courts have held the state accountable for failing to realise socio-economic rights. In some housing rights and eviction cases (for example, *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street Johannesburg v City of Johannesburg* (*Olivia Road*),⁵⁵ *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* (*Blue Moonlight*),⁵⁶ and *Dladla and Another v City of Johannesburg and Another (Dladla)*⁵⁷), the courts have found that failure to engage with communities to identify alternative accommodation for evictees is inconsistent with the enjoyment of the right to housing under the Constitution. The High Court held in *Equal Education and Others v Head of Department Western Cape Education Department and Others*⁵⁸ that restricting access to food to vulnerable children during COVID-19 undermines the rights to food and equality of poor children. In *Centre for Child Law v Minister of Basic Education*,⁵⁹ the High Court found that denial of access to education to children of refugees and asylum seekers due to lack of permit is in violation of the right to education for these children. Also instructive is the case of *Black Sash*

⁵⁰ *Grootboom* (CC).

⁵¹ *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* 2002 (5) SA 721 (CC) (*TAC*).

⁵² *Hazel Tau & Others v GlaxoSmithKline, Boehringer Ingelheim & Others* 2002 (South African Competition Commission, Competition Commission Case No. 2002Sep226); AIDS Law Project and the Treatment Action Campaign, ‘The Price of Life - Hazel Tau and Others vs GlaxoSmithKline and Boehringer Ingelheim: A report on the excessive pricing complaint to South Africa’s Competition Commission’ (2003), <https://healthjusticeinitiative.org.za/wp-content/uploads/2022/11/The-Price-of-Life.pdf> (accessed 27 April 2026).

⁵³ *EN and Others v Government of RSA and Others* 2007 (1) BCLR 84 (D).

⁵⁴ *EA v Helen Joseph Hospital and Others* Case No. 19/15448, ZAGPJHC (2019).

⁵⁵ *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street Johannesburg v City of Johannesburg* 2008 (3) SA 208 (CC).

⁵⁶ *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC).

⁵⁷ *Dladla and Another v City of Johannesburg and Another* 2018 (2) SA 327 (CC).

⁵⁸ *Equal Education and Others v Head of Department Western Cape Education Department and Others* [2024] ZAWCHC 189.

⁵⁹ *Centre for Child Law v Minister of Basic Education* 2020 (3) SA 141 (ECG).

Trust v Minister of Social Development,⁶⁰ where an application was launched directly to the Constitutional Court when approximately 17 million social grant beneficiaries were at risk of not receiving their social grants. Of significance as well is the case of *Institute for Economic Justice and Another v Minister for Social Development and Another*,⁶¹ where the High Court issued a groundbreaking decision, finding that since the Covid-19 Social Relief of Distress Grant has not kept up with inflation, it violated the requirements of progressive realisation under section 27 of the Constitution, thus in breach of the provision. The decision has been hailed as ‘a resounding victory for South Africa’s most vulnerable’.⁶²

33. The courts have also called on the state to fulfil its obligation to prevent unlawful interference with access to socio-economic rights based on nationality. This was the case in, for example, *Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others*⁶³ concerning actions of Operation Dudula that prevented people from accessing health care based on nationality. The High Court issued a strong ruling, finding that the failure of state authorities to take active steps to protect the right to have access to healthcare for all was a violation of the constitutional rights of patients seeking healthcare. It ordered the state to take all reasonable measures to ensure safe and unhindered physical access to the facilities where people were being obstructed from seeking health services, including removal of any unauthorised persons from the clinics’ premises or immediate surroundings who are involved in intimidating, hindering or obstructing physical access and the provision of health services within the clinics.

D. What are the main arguments advanced in favour of the legal enforcement of ESC rights in your country?

34. The reasons for inclusion of socio-economic rights in the SA Constitution support its legal enforcement. Their inclusion was based on, inter alia, the need to redress socio-economic disadvantage, ensure that the transition to democracy results in durable socio-economic transformation and uphold the principle of interdependence of rights.⁶⁴ Their inclusion was also ‘because a lack of access to social and economic resources and services constitutes a major impediment to people’s ability to participate as equals in a democracy’.⁶⁵ Legal enforcement of socio-economic rights is thus essential for redressing historical injustices and ensuring that democracy ‘works for’ and ‘benefits’ all. In addition, the Constitutional Court of South Africa, in rejecting objections to inclusion of socio-economic rights in the Constitution, stated that socio-economic rights are justiciable, the fact that they give rise to budgetary implications is not a bar to their justiciability, judicial enforcement of some civil and political rights will also give rise to budgetary implications, and that at the very least ‘socio-economic rights can be negatively protected from improper invasion’.⁶⁶

⁶⁰ *Black Sash Trust v Minister of Social Development* CCT 48/17 ZACC 8.

⁶¹ *Institute for Economic Justice and Another v Minister for Social Development and Another* [2025] ZAGPPHC 324.

⁶² See ‘Historic judgment in SRD grant court case stands to benefit half of South Africa’s population’ (24 January 2025), <https://iej.org.za/press-room/statements/statement-historic-judgment-in-srd-grant-court-case-stands-to-benefit-half-of-south-africas-population/> (accessed 25 April 2026).

⁶³ *Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others* [2025] ZAGPJHC 1102.

⁶⁴ On the public and academic debate regarding inclusion of socio-economic rights in the Constitution, see for example: S Liebenberg ‘Direct constitutional protection of economic, social and cultural rights in South Africa’ in DM Chirwa & L Chenwi (eds) *The protection of economic, social and cultural rights in Africa: International, regional and national perspectives* (CUP 2016) 305, 308-313.

⁶⁵ S Liebenberg, ‘Socio-economic rights under a transformative Constitution: The role of the academic community and NGOs’ (2007) 8(1) *ESR Review* 3.

⁶⁶ *Ex parte chairperson of the constitutional assembly: in re certification of the Constitution of the Republic of South Africa 1996* (First certification judgment) 1996 (4) SA 744 (CC) paras 77-78.

35. Legal enforcement of socio-economic rights is thus central to South Africa's constitutional order. ESC rights enforcement supports the *dignity* of all persons, a foundational constitutional value. It promotes accountability and gives practical effect to constitutional guarantees. For example, in the *TAC* case,⁶⁷ the Constitutional Court ordered the removal of restrictions on the provision of nevirapine and required the state to act consistently with its constitutional obligations regarding access to health care. This case is frequently cited as a major example of how adjudication can protect vulnerable people when policy implementation is inadequate.
36. South Africa's transformative constitutional vision with one of the most progressive constitutional frameworks in the world provides the tool to demand state accountability and enforce ESC rights provided in the Constitution. South Africa has an active civil society where the sector has pursued public interest litigation for systemic change.
37. While the contributors to this joint submission are cognisant of the issue of access to the courts and the cost implications of approaching the courts, turning to the courts provides the last resort after all other remedies have been exhausted to advocate for enforcement. An independent judiciary provides an avenue to enforce *accountability* for the government's failure to implement provisions in terms of legal provisions. Courts can *compel government action* where the executive or legislature has been unresponsive. In general, it is thus *important* and *recommended* that the independence of the judiciary be safeguarded and its role in the enforcement of ESC rights be explicitly recognised in domestic legal systems.

E. What are the main arguments advanced against the legal enforcement of ESC rights in your country?

38. The main objections usually raised are institutional rather than textual. These are, among others: concerns about separation of powers, judicial intrusion into budgetary or policy domains; the limited institutional competence of courts in designing social policy; and the democratic nature of courts. These concerns feature prominently in South African academic⁶⁸ and judicial debates around socio-economic rights adjudication, including discussion surrounding cases such as *Grootboom*⁶⁹ and *Mazibuko & Others v City of Johannesburg and Others (Mazibuko)*,⁷⁰ although the Constitution itself clearly permits adjudication of these rights.
39. The contributors to this joint submission note that concerns against legal enforcement of socio-economic rights arise: where the judiciary may be seen as overstepping into budget and policy decisions that are the domain of the executive and legislature; socio-economic rights cases may involve expertise deliberation which is complex, courts about bound to legal processes, the context at the time of the court deliberations may impact court decisions and very importantly bearing in mind that litigation will primarily assist those who can access the courts who have access to resources.

F. What are the main barriers and constraints to the effective legal enforcement of ESC rights in law and practice?

40. Major barriers to effective enforcement include limited administrative capacity, lack of or inadequate awareness of rights and avenues for enforcement, intransigence/'malicious

⁶⁷ *TAC* No.2 (CC).

⁶⁸ Liebenberg (2016) 309-310; Mbazira (2009) 30-51.

⁶⁹ *Grootboom* (CC).

⁷⁰ *Mazibuko & Others v City of Johannesburg and Others* 2010 (3) BCLR 239 (CC).

compliance', inequality, poverty, and resource constraints or ineffective/non-use of allocated resources, as well as, in some instances, a complete collapse of state institutions such as at a local government level, who are mandated with socio-economic rights such as access to water. Also, inability or limited opportunities for participation of, and reasonable engagement with, communities in decision making processes of government and in the provision of services is a key concern.⁷¹

41. Human rights awareness (including how to enforce them) by individuals and communities and belief in the rule of law are crucial, as the lived realities lead to disillusionment. Lack of knowledge and inability to access the legal system are barriers to legal enforcement of socio-economic rights (bearing in mind that there are however many non-legal enforcement paths used by civil society).
42. Related to the issue of enforcement is the cost of litigation, which is out of reach to the majority in South Africa. Also, court processes in South Africa generally take time which is not aligned with the urgent need to address socio-economic rights. Few potential litigants can afford legal advice and there is insufficient free legal support – only the poorest of the poor may qualify for free legal support. Essentially, pro bono legal work is in short supply. As a result, those legal services that do make legal services available have to ration who will qualify and applicants deemed of sufficient means to raise their own funds will not have access to public interest litigatory support (such as the State Legal Aid fund). Public interest litigation on behalf of clients therefore rests with a handful of public interest law firms/organisations and a proportion of corporate lawyer practice allocated to pro bono work. In sum, this does not cover the existent needs. In contrast, legal expertise is easily accessed by corporates, and wealthy individuals and organisations because of access to funds.
43. It is also *important to note that* the government has opposed almost every socio-economic rights case. Notwithstanding, the courts have vindicated (socio-economically disadvantaged) applicants in almost every case.
44. While the courts have been progressive in holding the government accountable for failure to realise socio-economic rights, the state's failure to obey or implement the decisions of courts has been a major constraint to effective legal enforcement of the implicated socio-economic rights. This is a serious threat to the enjoyment of socio-economic rights in the country and results in the judgments not translating into real change for communities on the ground where there is inadequate or non-implementation. Litigation may establish legal principles, but implementation on ground can remain contested, especially in local service-delivery contexts. *Mazibuko* case is illustrative of the limits of litigation in resolving broader systemic inequalities such as access to water. Also, a ruling of the Labour Court in *National Health and Allied Workers Union abo Members v Advocate Ronnie Bracks NO and Others*⁷² that Community Health Workers who had been employed on short-term temporary contracts by the Department of Health (across different provinces) must be recognised as permanent workers and afforded the protections of permanent appointments under labour law was met with delayed implementation.
45. Delayed implementation of agreed policy intended to protect socio-economic rights was evident in the aftermath of the October 2024 fatal poisoning of six children with an extremely toxic pesticide called Terbufos. Despite an investigation and Cabinet decision to ban the

⁷¹ L Chenwi 'Meaningful engagement' in the realisation of socio-economic rights: The South African experience' (2011) 26 *SAPL* 128.

⁷² *National health and Allied Workers Union abo Members v Advocate Ronnie Bracks and Others* Case No. JR1452/2021, 23 January 2025

pesticide,⁷³ it took seven months for the Minister of Agriculture to issue a gazetted notice confirming its decision to ban the pesticide.⁷⁴ By that time, further deaths had occurred.

46. Lack of capacity within the state to implement socio-economic rights is a constraint, exacerbated by widespread problems in governance arrangements at many levels. This poor governance results from many factors including historical issues, corruption, fragmentation of responsibilities and poor coordination between government departments, and negligence on the part of government officials, resulting in failure to effectively enforce socio-economic rights. The Life Esidimeni tragedy relating to the death of nine mental healthcare users is illustrative of the issue of negligence that implicates rights such as health, life and dignity, among others.⁷⁵

G. How frequently are ESC rights cases brought before courts, and what factors influence the frequency of such litigation?

47. Despite barriers outlined above, there is active and vibrant civil society in South Africa, who have managed to navigate the barriers to a certain extent with some positive results. Factors that influence frequency include: the ability of law clinics and availability of legal aid and pro bono assistance to have capacity and resources to litigate; using the media to draw attention to ESC violations; the nature of the rights violation and the extent of the impact (cases tend to be brought when the impact is significant and widespread, for example, denial of social grants to millions or large scale evictions without due process or alternative accommodation to those in desperate need and who are homeless as a result of the eviction); clear lack of political will to address socio-economic deprivations owing to government inaction or omission; and persistent evidence of lived experiences showing negative impact on socio-economic rights enjoyment.
48. ESC litigation in South Africa has been significant and recurring, particularly in relation to housing, land, health care, water, social assistance. The vast majority of socio-economic rights cases, especially before the Constitutional Court, are eviction cases (which echoes the state of play at the CESC level in relation to complaints received). Cases such as *Grootboom*,⁷⁶ *TAC*,⁷⁷ *Mazibuko*,⁷⁸ *Khosa*,⁷⁹ *Port Elizabeth Municipality*,⁸⁰ and *Residents of Joe Slovo*⁸¹ show that socio-economic rights claims have featured repeatedly in Constitutional Court jurisprudence.

⁷³ Department of Health (South Africa), 'Banning of terbufos in South Africa' (2025), <https://www.health.gov.za/wp-content/uploads/2025/12/BANNING-OF-TERBUFOS-advisory.pdf> (accessed 27 April 2026).

⁷⁴ 'Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947): Prohibition notice regarding the use of certain Agricultural Remedies' Government Gazette No. No. 53950, Vol. 727, 13 January 2026.

⁷⁵ See Msiza 'The Life Esidimeni tragedy – A human rights perspective' (2025), <https://www.up.ac.za/faculty-of-law/news/opinion-piece-life-esidimeni-tragedy-human-rights-perspective> (accessed 28 April 2026); Section27, 'SECTION27 and the Life Esidimeni Families welcome the NPA's decision to prosecute in the deaths of 141 mental healthcare' (2026), <https://section27.org.za/2026/04/press-statement-section27-and-the-life-esidimeni-families-welcome-the-npas-decision-to-prosecute-in-the-deaths-of-141-mental-healthcare-users> (accessed 27 April 2026).

⁷⁶ *Grootboom* (CC).

⁷⁷ *TAC* No.2 (CC).

⁷⁸ *Mazibuko* (CC).

⁷⁹ *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development* 2004 (6) BCLR 569 (CC).

⁸⁰ *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC).

⁸¹ *Residents of the Joe Slovo Community, Western Cape v Thubelisha Homes and others* 2010 (3) SA 454 (CC).

H. Are ESC rights in your jurisdiction primarily enforced directly (based on explicit ESC rights provisions) or indirectly (through civil and political rights)?

49. In South Africa, socio-economic rights are primarily enforced directly, because they are expressly recognised in the Constitution as justiciable rights. However, courts often interpret them alongside values and rights such as dignity, equality, and freedom. *Khosa*⁸² is a good example, because the Court linked exclusion from social grants not only to social assistance rights but also to equality and dignity concerns. *Dladla*⁸³ is another good example where the temporary emergency housing that was provided by the City of Johannesburg was found to be an unjustifiable limitation of the residents' dignity. This was exacerbated by the fact that the applicants were 'a group of poor people' and 'part of those who were denied dignity under the apartheid order'.⁸⁴ Litigation on the NHI has drawn on arguments related to discrimination as part a right-to-health framing.⁸⁵ As noted previously, Life Esidimeni tragedy implicated not just health rights but also other rights such as dignity, life, freedom from cruel, inhuman and degrading treatment.⁸⁶ Hence, though socio-economic rights are directly enforced, they can also be enforced indirectly through civil and political rights.

I. To what extent are judicial decisions on ESC rights implemented in practice? Identify factors that facilitate or hinder implementation.

50. Compliance with judicial decisions on socio-economic rights is crucial in ensuring litigation results in improvement of the rights situation on the ground. Implementation of ESC judgments in South Africa has been mixed. Some decisions have had clear national policy effects, especially *TAC* in the area of HIV treatment and *Grootboom* in establishing that evictions that result in homelessness are unconstitutional (essentially requiring all municipalities to have emergency housing programmes). *Grootboom* has also had international impact, influencing the OP-ICESCR's incorporation of the reasonableness standard.⁸⁷

51. However, as regards the housing situation of the litigants, the actual impact of the *Grootboom* decision on their housing situation was slow, owing to the *nature of the order* (what has been described as a weak, declaratory order) and the *lack of timeframes for action*, among other factors.⁸⁸ Despite being groundbreaking and having broader policy impact, 'eight years after the judgment was handed down she had still not been allocated a home and died penniless whilst still living in a shack'.⁸⁹ Notwithstanding, *Grootboom* has and continues to play a key role in achieving tangible social change for others in a variety of areas.⁹⁰ Although there are

⁸² *Khosa* (CC).

⁸³ *Dladla* (CC).

⁸⁴ *Dladla* (CC) para 127.

⁸⁵ J Copelyn, 'On which legal arguments are the NHI court cases set to turn? Part 2: Right to healthcare services' (2025), <https://www.spotlightnsp.co.za/2025/10/29/on-which-legal-arguments-are-the-nhi-court-cases-set-to-turn-part-2-right-to-healthcare-services> (accessed 27 April 2026).

⁸⁶ Office of the Health Ombud, 'The report into the 'circumstances surrounding the deaths of mentally ill patients: Gauteng Province - No Guns: 94+ Silent Deaths and still counting' (2017), <https://www.sahrc.org.za/home/21/files/Esidimeni%20full%20report.pdf> (accessed 27 April 2026).

⁸⁷ *Grootboom* (CC) para 45 where the Constitutional Court first explained the reasonableness review approach in relation to the right of access to adequate housing in article 26 of the SA Constitution informed the wording of article 8(4) of the OP-ICESCR. See: B Porter, 'The reasonableness of article 8(4) – Adjudicating claims from the margins' (2009) 27(1) *Nordic Journal of Human Rights* 39, 49; B Porter 'Reasonableness and Article 8(4)' in M Langford, B Porter, R Brown & J Rossi (eds) *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A commentary* (2016) 186.

⁸⁸ K Pillay 'Implementing *Grootboom*: Supervision needed' (2002) 3(1) *ESR Review*; L Chenwi 'Socio-economic gains and losses: The South African Constitutional Court and social change' (2011) 41(3) *Social Change* 41(3) 427, 440.

⁸⁹ See 'Dying for a house', <https://ourconstitution.wethepeoplesa.org/dying-for-a-house/> (accessed 25 April 2026).

⁹⁰ Chenwi 'Socio-economic gains and losses' (2011) 440.

still challenges regarding emergency housing programmes by Municipalities and the resultant administrative backlog, the decision has also set the tone for successful defending of evictions of vulnerable communities and others who would have otherwise been rendered homeless. Also, *failure to provide a strong remedy and supervise implementation* in the *TAC* case accounted for gaps in HIV/AIDS programmes in general and the prevention of mother-to-child transmission in particular.⁹¹ While the lower court in its decision to compel government to comply with ARV provision to all pregnant women imposed a supervisory order on government to monitor ARV roll out, the Constitutional Court declined to confirm that supervisory order partly because, in the interim, the national Cabinet had issued a statement that promised a universal roll out of a PMTCT programme after December 2002.⁹² The *non-issuance of structural interdict* in the case was informed by the Court's view that 'the government has always respected and executed orders of this Court. There is no reason to believe that it will not do so in the present case.'⁹³ This has however not been the case in all socio-economic rights cases.

52. Also, *misunderstanding of courts' judgment* impacts compliance pace. It was reported in relation to *TAC* that '[t]he judgment seems to have been misunderstood as simply a negative injunction to remove the restrictions on the availability of Nevirapine. The positive dimensions of the order, such as permitting and facilitating the use of Nevirapine and the taking of reasonable measures to extend access to it, seem to have been misunderstood.'⁹⁴ *TAC* further reveals that *where there is already a commitment to provide the necessary goods or services*, compliance is forthcoming. For example, it was established that 'generally in provinces where there was already a commitment to establishing a comprehensive [prevention of mother-to-child-transmission] programme (Gauteng, Western Cape, KwaZulu-Natal, North West), the judgment unshackled health departments and politicians and opened the door to implementation' with 'expansion and improvement', while in other provinces where such commitment was absent, *active engagement and advocacy* was necessary to propel compliance.⁹⁵
53. Civil society and national human rights institutions can play a significant role in facilitating compliance or influencing the pace of implementation of socio-economic rights court orders. As has been observed with reference to socio-economic rights cases, 'to a large extent – the pace will be dictated by the *ongoing engagement of civil society organisations, including the South African Human Rights Commission (SAHRC)*, with the implementation of the Court's orders'.⁹⁶ The recent judgment of the Constitutional Court on the role of SAHRC, in *South African Human Rights Commission v Agro Data CC & Another*⁹⁷ as a 'potent and indispensable guardian of human rights' despite its lack of binding power authority, illustrates this significant role played by human rights institutions and civil society organisations. The role of the SAHRC and other Chapter 9 institutions is dealt with in more detail later in this joint submission.
54. The *lack of transparency* on measures adopted by the government to give effect to court orders has been identified as a factor that negatively impacted effective implementation of some socio-economic rights court orders.⁹⁸ For example, inordinate delay in the implementation of the

⁹¹ C Mbazira 'Grootboom: A paradigm of individual remedies versus reasonable programmes' (2011) 26 *SAPL* 60, 68.

⁹² See generally, M Heywood, 'Preventing mother-to-child HIV transmission in South Africa: Background, strategies and outcomes of the Treatment Action Campaign case against the Minister of Health' (2003) 19(2) *SAJHR* 278-315.

⁹³ *TAC* No.2 (CC) para 129.

⁹⁴ M Heywood 'Contempt or compliance? The TAC case after the Constitutional Court judgment: Case law' (2003) 4(1) *ESR Review* 7-10, 9.

⁹⁵ Heywood 'Contempt or compliance' (2003) 9.

⁹⁶ Heywood 'Contempt or compliance' (2003) 9 (emphasis added).

⁹⁷ *South African Human Rights Commission v Agro Data CC and Another* [2026] ZACC 16 ('SAHRC v Agro Data').

⁹⁸ Mbazira (2011) 69.

order in *President of the Republic of South Africa v Modderklip Boedery (Pty) Ltd*⁹⁹ has been attributed to the lack of transparency and information on the relocation process.¹⁰⁰

55. *Meaningful engagement* directives - requiring communities or individuals and the government to talk and listen to each other to achieve certain objectives - have facilitated implementation in some cases (for example, *Olivia Road* case¹⁰¹) and not as much in others (for example, *Mamba* case¹⁰²). The *Olivia Road* case has been described as ‘one of the cases that show that the state can be compliant after all due to the, comparatively, short time-frame within which the judgement was enforced’.¹⁰³ In *Joe Slovo*,¹⁰⁴ there was an extensive engagement directive from the Constitutional Court to be undertaken during the relocation process (as it ordered the eviction of the Joe Slovo residents); however, the eviction order in the case was subsequently discharged because of implementation challenges and the government choosing to instead pursue in situ upgrading of the settlement. Generally, *meaningful engagement* is a positive and important development in South African court’s approach to enforcing socio-economic rights and fostering effective participation in service provision.¹⁰⁵ It has also been described with reference to *Joe Slovo* as representing ‘a retreat into a narrow consideration of procedural fairness’ and masking ‘a further retreat by the Court in its differential treatment of socio-economic rights’.¹⁰⁶
56. *Administrative incapacity* and *political interests of the government* have also been identified as ‘the most common causes of noncompliance’ by the SA government with court orders in socio-economic rights cases.¹⁰⁷
57. *Further legal strategies/action to force compliance* have been necessary in some socio-economic rights cases. This was the case in some cases relating to housing and eviction and access to health care. In *Thubakgale v Ekurhuleni Metropolitan Municipality*, for example, *contempt proceedings* were instituted owing to failure to enforce the High Court’s order; the High Court found the municipality in contempt for failure to comply and imposed a fine.¹⁰⁸ In *TAC*, *evidence of non-compliance was compiled into a complaint and request for an investigation*, filed with the SAHRC. Also, *contempt of court proceedings* were launched to ensure that the state fully complied with the intent of the Constitutional Court ruling.¹⁰⁹ CSOs had to also go back to court to compel the Gauteng Department of Health to comply with the *Koponang* court ruling. The *contempt hearing* was settled in the form of an agreement that was made an order of the court, in which authorities were bound to take reasonable steps to ensure safe and unhindered physical access to the clinics, to report on steps taken and to have an

⁹⁹ *President of the Republic of South Africa v Modderklip Boedery (Pty) Ltd* 2005 (8) BCLR 786 (CC).

¹⁰⁰ Mbazira (2011) 70.

¹⁰¹ *Olivia Road* (CC).

¹⁰² *Mamba v Minister of Social Development* Case no 36573/08 [2008] ZAGPHC 255.

¹⁰³ Chenwi ‘Socio-economic gains and losses’ (2011) 441.

¹⁰⁴ *Joe Slovo* (CC).

¹⁰⁵ See generally: K McLean, ‘Meaningful engagement: One step forward or two back? Some thoughts on *Joe Slovo*’ (2010) 3 *Constitutional Court Review* 223-242; Chenwi ‘Meaningful engagement’ (2011) 128-156.

¹⁰⁶ McLean (2010) 241 & 242.

¹⁰⁷ D Hausman ‘When and why the South African government disobeys court orders’ (2012) 48 *Stanford Journal of International Law*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025706 (accessed 26 April 2026).

¹⁰⁸ *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2023] ZAGPPHC 750; 2024 (2) SA 525 (GP) (29 August 2023).

¹⁰⁹ Heywood ‘Contempt or compliance’ (2003) 10, also noting that ‘[t]hese actions and the publicity around them seem to have been the proverbial straw that broke the camel’s back’. See also: See JM Berger & A Kapczynski, ‘the story of the TAC case: The potential and limits of socio-economic rights litigation in South Africa’ in DR Hurwitz, ML Satterthwaite (eds) *Human Rights Advocacy Stories* (2009) <http://dx.doi.org/10.2139/ssrn.1323522> (accessed 26 April 2026); Heywood ‘Preventing mother-to-child HIV transmission in South Africa’ (2003).

identified point person in the health facilities responsible for facilitating access.¹¹⁰ Worth noting also in relation an emerging trend of non-compliance with court orders by the City of Johannesburg is a recent High Court order in *Occupiers of Erf 74, Electron Township v K2012150042 & City of Johannesburg Municipality* for the City Mayor and Manager to appear before the Court due to failure to comply with five court orders regarding the provision of temporary emergency housing, and to indicate steps taken or being taken to provide temporary emergency housing to the relevant occupiers, and to provide information (specific address and logistics) on their relocation.¹¹¹ Although there are concerns about the effectiveness of committal in service delivery provision, others have also employed the committal approach not only as a legal remedy to non-compliance but as an attempt to force out and insist on compliance.¹¹²

58. Also, concerns over *use of legal appeals in some instances* to delay compliance. For example, in relation to the High Court's order in *Cancer Alliance v MEC for Health Gauteng Province*¹¹³ that required Gauteng Department of Health to devise and implement a plan to provide cancer treatment to patients awaiting care, after it had failed to spend a R784 million allocation granted by the provincial Treasury in 2023 for this purpose.¹¹⁴ Appeal of the decision delays urgent and life-saving relief. Also, in relation to the *Deadly Air*¹¹⁵ ruling that the government was obliged to pass regulations to implement and enforce the Highveld Priority Area Air Quality Management Plan, which is aimed at cleaning up the air on the Highveld to meet health-based air quality standards. Implementation was delayed as the state appealed the decision. Regulations were only issued three years later, just before the consideration of the appeal.
59. Local service-delivery matters have often revealed slower or uneven implementation. It is therefore safer to say implementation is variable, rather than uniformly strong or weak. As has been highlighted, based on other cases post-*Grootboom*, 'there will be shades and speeds of compliance by government with court orders concerning socio-economic rights' that 'may range from active and vigorous implementation, to turgid and tortoise-like'.¹¹⁶

J. What is the rate of compliance with ESC rights judgments (in your State/court/jurisdiction etc)?

60. Compliance appears stronger in some high-profile national policy cases where there is sustained civil society advocacy and use of further legal strategies in forcing or propelling implementation such as in *TAC* (the lack of urgency in implementing the Court's orders at both national and provincial levels prompted the applicants to undertake a range of actions to ensure

¹¹⁰ *Treatment Action Campaign and Others v Facility Manager at Yeoville Clinic and Others* Case No. 2025-181893 ZAGPJHC (17 March 2026); Section27, 'Civil society and the Department of Health reach a settlement on unhindered access to Yeoville and Rosettenville clinics' (2026), <https://section27.org.za/2026/03/civil-society-and-the-department-of-health-reach-a-settlement-on-unhindered-access-to-yeoville-and-rosettenville-clinics/> (accessed 27 April 2026).

¹¹¹ SERI, 'Johannesburg Mayor and City Manager summoned to court over failure to provide emergency housing (13 April 2026)', <https://www.seri-sa.org/index.php/latest-news/1483-press-statement-johannesburg-mayor-and-city-manager-summoned-to-court-over-failure-to-provide-emergency-housing-13-april-2026> (accessed 29 April 2026).

¹¹² CALS, 'Zondi Residents seek arrest of Johannesburg Mayor and City Manager' <https://www.wits.ac.za/news/sources/cals-news/2024/zondi-residents-seek-arrest-of-johannesburg-mayor-and-city-manager.html> (accessed 29 April 2026).

¹¹³ *Cancer Alliance v MEC for Health Gauteng Province* 2025 ZAGPJHC 136.

¹¹⁴ U Hoo, 'Cancer court battle rumbles on as Gauteng Health again appeals' (2025), <https://www.spotlightnsp.co.za/2025/09/17/cancer-court-battle-rumbles-on-as-gauteng-health-again-appeals> (accessed 27 April 2026).

¹¹⁵ *Trustees for the Time Being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* [2023] ZAGPPHC 1700.

¹¹⁶ Heywood 'Contempt or compliance' (2003) 8.

proper implementation), than in more structurally complex cases involving housing, relocation, and basic services such as in *Joe Slovo*¹¹⁷ and *Mwelase*¹¹⁸ cases.

61. Generally, compliance has been declining, which has led the courts to move from the position the Constitutional Court took in *TAC* regarding non-issuance of structural interdicts based on its trust in the government's propensity to comply with its orders. Slow implementation of court orders prompted calls for structural interdict as a means of ensuring compliance.¹¹⁹ Also, the legislature could play a more active role in holding the executive to account for delays in implementing court decisions.

K. What role do national human rights institutions (NHRIs) play in enforcing ESC rights (for example, acting as complaints mechanisms, litigation support, monitoring compliance)?

62. The SAHRC, together with other Chapter 9 institutions in South Africa,¹²⁰ plays an important and prominent role through conducting investigations and inquiries (e.g. on food security, water, housing); intervenes in court processes as an applicant or amicus curiae, engages with government bodies and monitors government compliance with constitutional obligations and international human rights treaties and produces *reports* on the progressive realisation of socio-economic rights. However, the SAHRC is under-resourced relative to the scale of violations, and its enforcement powers are limited.
63. The SAHRC's work has specifically included national and provincial processes on water and sanitation, as well as findings against public entities for failures affecting dignity and access to sufficient water and sanitation. For instance, the SAHRC has conducted inquiries into child malnutrition and the right to food,¹²¹ access to water and efficacy of water authorities in Limpopo,¹²² state of service delivery within Municipalities in Mpumalanga,¹²³ access to health care services,¹²⁴ and quality of health services in eastern Cape¹²⁵.

¹¹⁷ *Joe Slovo* (CC).

¹¹⁸ *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* 2019 (11) BCLR 1358 (CC).

¹¹⁹ See for example, G Budlender, 'The role of the courts in achieving the transformative potential of socio-economic rights' (2007) 8(1) *ESR Review* 9, 11.

¹²⁰ Chapter 9 institutions in South Africa are independent bodies established by the Constitution to strengthen constitutional democracy, protecting citizens and supporting democratic processes. They are accountable only to the National Assembly, impartial, and operate separately from the government.

¹²¹ A Shahi, 'Safeguarding human dignity in the face of hunger: Examining the role of human rights commissions in global food security' (2026) 2(4) *Naveen International Journal of Multidisciplinary Sciences* 10-21.

¹²² SAHRC, 'The SAHRC releases report of its inquiry into access to water and the efficacy of water services authorities within the Limpopo Province' (2023), [https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/3768-media-statement-the-sahrc-releases-report-of-its-inquiry-into-access-to-water-and-the-efficacy-of-water-services-authorities-within-the-limpopo-province#:~:text=The%20South%20African%20Human%20Rights%20Commission%20\(SAHRC\),unable%20to%20provide%20water%20to%20vulnerable%20communities](https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/3768-media-statement-the-sahrc-releases-report-of-its-inquiry-into-access-to-water-and-the-efficacy-of-water-services-authorities-within-the-limpopo-province#:~:text=The%20South%20African%20Human%20Rights%20Commission%20(SAHRC),unable%20to%20provide%20water%20to%20vulnerable%20communities) (accessed 22 April 2026).

¹²³ SAHRC, 'The SAHRC to brief the Mpumalanga Provincial Legislature on its inquiry report into the state of service delivery within municipalities in Mpumalanga' (2025), <https://sahrc.org.za/index.php/sahrc-media/news-2/item/4356-media-advisory-the-sahrc-to-brief-the-mpumalanga-provincial-legislature-on-its-inquiry-report-into-the-state-of-service-delivery-within-municipalities-in-mpumalanga#:~:text=The%20briefing%20is%20about%20the%20contents%20of,17%20local%20municipalities%20in%20the%20Mpumalanga%20Province> (accessed 22 April 2026).

¹²⁴ SAHRC, 'Access to healthcare', <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> (accessed 27 April 2026).

¹²⁵ SAHRC, 'SAHRC Eastern Cape Provincial Office conducts a subpoena hearing against the Eastern Cape Department of Health on systemic failures in public healthcare services in the province',

64. In addition, SAHRC initiated an investigation into the status of mental health care in South Africa, partly in response to the Life Esidimeni tragedy, producing a report that produced a range of recommendations to government stakeholders across levels of government and across different sectors, so as to protect, promote and fulfil the rights of mental health care users.¹²⁶ It also recently investigated conditions at the Northern Cape Mental Health Hospital and assessed their impact on the human rights of mental health care users.¹²⁷
65. The SAHRC has been very active in pushing the government to take responsibility for its failures in relation to socio-economic rights, has appeared before relevant parliamentary portfolio committees to raise socio-economic rights concerns, and attempted to obtain urgent interdict to prevent private parties from interfering with people's access to health care at local facilities. Though the latter was unsuccessful as it was not deemed urgent¹²⁸ and later became moot due other litigation, it indicates the SAHRC's willingness to take on urgent violations of rights in ways that support civil society agency.
66. The CESCR has commended the efforts and contributions of the SAHRC and other national Chapter 9 institutions (the Commission for Gender Equity and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities) in promoting and protecting ICESCR rights. The Committee was however concerned about the allocation of 'insufficient budgetary resources' to the SAHRC. It thus called on the government to 'allocate sufficient financial resources' to the SAHRC 'to enable it to effectively carry out its mandate'.¹²⁹
67. Chapter 9 institutions are plagued with the worrying trend of their recommendations being overlooked by state actors and the institutions themselves lacking follow-through on systemic reforms. Take the SAHRC, for example, a constraint to its role in compelling compliance is the non-binding nature of its directives, confirmed recently by the Constitutional Court in the case of *South African Human Rights Commission v Agro Data CC and Another*.¹³⁰ If for example the SAHRC issues recommendations regarding enforcement of ESC rights following an investigation into a complaint and issues recommendations on appropriate redress, in terms of the Court's judgment, the Commission cannot approach a court based on the issued recommendations to compel compliance in the event of a failure to comply. This is because, as held by the Court, SAHRC 'recommendation does not, in and of itself, impose a legally enforceable obligation'; hence, '[t]he SAHRC, or the complainant supported by the SAHRC, would be required to litigate the matter on the underlying facts and to establish an entitlement to the relief on the merits'.¹³¹

<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/4443-media-advisory-sahrc-eastern-cape-provincial-office-conducts-a-subpoena-hearing-against-the-eastern-cape-department-of-health-hod-on-systemic-failures-in-public-healthcare-services-in-the-province> (accessed 27 April 2026).

¹²⁶ SAHRC, 'Report of the national investigative hearing into the status of Mental Health Care in South Africa' (2017), <https://www.sahrc.org.za/home/21/files/SAHRC%20Mental%20Health%20Report%20Final%2025032019.pdf> (accessed 27 April 2026).

¹²⁷ SAHRC, 'Final Investigative Report into the Conditions at the Northern Cape Mental Health Hospital' (2026) <https://www.sahrc.org.za/index.php/publications/593-northern-cape-mental-health-report/viewdocument/593> (accessed 27 April 2026).

¹²⁸ SAHRC, 'SAHRC notes court decision on the legal proceedings against the unlawful denial of non-nationals and undocumented persons from entering and receiving medical treatment at public health care facilities' (2025), <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/4390-media-statement-sahrc-notes-court-decision-on-the-legal-proceedings-against-the-unlawful-denial-of-non-nationals-and-undocumented-persons-from-entering-and-receiving-medical-treatment-at-public-health-care-facilities> (accessed 27 April 2026).

¹²⁹ CESCR, Concluding observations on initial report of South Africa, paras 8 & 9.

¹³⁰ *SAHRC v Agro Data (CC)*.

¹³¹ *SAHRC v Agro Data (CC)* para 83.

68. However, the lack of binding remedial power, as further clarified by the Constitutional Court, ‘does not diminish the constitutional importance of the SAHRC or render its work ineffectual’, as emphasised by the court.¹³² In underscoring that the SAHRC is not ‘toothless’, has the ‘capacity to act in ways that courts cannot’ and is ‘a potent and indispensable guardian of human rights within our constitutional scheme’, the Constitutional Court highlighted the Commission’s important role in conducting investigations, supporting litigation, shaping state officials’ conduct, informing public debate and exerting ‘normative pressure on organs of state and private actors alike’.¹³³

L. Describe any positive impact of ESC rights litigation or adjudication, including changes to laws, policies, budgets, administrative practices, or access to services.

69. ESC litigation has had important positive effects in South Africa. These include the development of the reasonableness review framework in *Grootboom*¹³⁴ (which as stated previously in the submission has also had international impact; and its impact on the development of emergency housing programme), inclusion of permanent residents in social assistance in *Khosa*,¹³⁵ and a more humane, justice-based approach to eviction in for example *Port Elizabeth Municipality*.¹³⁶
70. Socio-economic rights cases are about more than the tangible gains for the applicants. They are also about holding the government accountable for governance. Since most socio-economic rights cases succeed in court, this is an important accountability mechanism.
71. It should however be noted that though litigation has been effective in enforcing some socio-economic rights in South Africa, litigation alone might not always be sufficient in achieving social change, as it can either lead to improvements, limited or no improvements, in the lives of the poor. Weak remedies or the normative construction of socio-economic rights has resulted in litigation being followed by minimal or no improvements in some instances. Hence, *a combination of strategies, as appropriate to a particular circumstance*, is thus important. *TAC* and its aftermath, for example, demonstrate how a combination of strategies (‘human rights education, HIV treatment literacy, demonstration, and litigation’) can be used to advance realisation of health rights.¹³⁷

M. Describe any negative consequences associated with ESC rights litigation or adjudication, including institutional tensions, political responses, or implementation challenges.

72. The main limitations are not that the judgments are unreal or ineffective in principle, but that court victories do not always translate into rapid structural change. Tensions may arise between the judiciary and the executive, and implementation may remain slow where municipal capacity, political will, or long-term resource planning are weak. This is especially visible in housing and service-delivery contexts.

¹³² *SAHRC v Agro Data* (CC) para 84.

¹³³ *SAHRC v Agro Data* (CC) para 84.

¹³⁴ *Grootboom* (CC).

¹³⁵ *Khosa* (CC).

¹³⁶ *Port Elizabeth Municipality* (CC).

¹³⁷ See generally, M Heywood, ‘South Africa’s Treatment Action Campaign: Combining law and social mobilization to realize the right to health’ (2009) 1(1) *Journal of Human Rights Practice* 14-36.

N. In your assessment, who benefits most from ESC rights litigation (for example, marginalized groups, specific communities, or relatively advantaged claimants)? Does such litigation contribute to reducing inequality and poverty?

73. The principal intended beneficiaries of socio-economic rights litigation are poor and marginalised communities, including women, children, non-citizens, stateless persons, and people facing exclusion from housing, water, health care, or social assistance. Cases such as *Khosa*¹³⁸, *Grootboom*,¹³⁹ and *Joe Slovo*¹⁴⁰ show that litigation has often centred on vulnerable communities, even though access to litigation itself may still depend on civil society support, legal representation, and institutional backing.

O. Please identify key measures or reforms that could strengthen the legal enforcement of ESC rights in your country.

74. Measures that may strengthen enforcement include improving implementation and monitoring systems, strengthening municipal and administrative capacity, expanding legal aid and public interest support, and making greater use of supervisory remedies where appropriate. Continued engagement by institutions such as the SAHRC and possible future ratification of the OP-ICESCR may also strengthen accountability frameworks.

III. Responses to Questions for Civil Society

A. Is it common for civil society in your country to focus on achieving social justice and realising ESC rights? What factors explain the extent of civil society engagement in ESC rights?

75. Yes, civil society engagement in socio-economic rights is well-established and significant in South Africa, though unevenly distributed. Socio-economic rights are a central focus for many NGOs, community or social movements and legal clinics, among others. Organisations like Black Sash, Section27, SERI, Legal Resources Centre (LRC), CALS, LHR, PHM-SA, HJI, and social movements (such as Treatment Action Campaign, Abahlali baseMjondolo) have made socio-economic rights a central focus. Factors explaining civil society engagement include: South Africa's transformative Constitution as a tool to effect change which prompts civil society participation; the Constitution's progressive socio-economic rights provisions; the courts' willingness to engage in socio-economic rights cases; the legacy of apartheid, which despite celebrating more than 30 years of democracy, continues to create deep structural inequality demanding ongoing rights advocacy; a strong and active civil society which demands state accountability prompted by the scale of entrenched poverty, unemployment, and inequality as well as gaps in implementation and systemic failures, which creates urgent socio-economic rights needs.
76. As a result, several CSOs focus on bringing technical expertise through research, policy analysis, advocacy, and strategic litigation to ensure that their work on social justice and socio-economic rights is evidence driven and policy focused. SERI, CALS, PHM-SA, HJI, CHR, Black Sash, DOI and LHR among others employ these strategies to advance and secure access to socio-economic rights generally or those within their respective focus. Some CSOs in South Africa such as CALS, CHR, DOI, LHR, among others, are also involved in strategic

¹³⁸ *Khosa* (CC).

¹³⁹ *Grootboom* (CC).

¹⁴⁰ *Joe Slovo* (CC).

engagements with African regional human rights bodies to support litigation and law reform on ESC rights. Others, particularly service provision CSOs or centres that provide temporary shelter for instance, serve as direct service delivery providers autonomously or, in some cases, with or on behalf of relevant government departments or agencies.

B. What role does civil society play in ESC rights litigation in your country, including public interest litigation and amicus curiae interventions?

77. Civil society, including NGOs, plays a multi-layered role: as *direct litigants* before courts and other investigative and prosecutorial bodies¹⁴¹ (for example, HJI, Black Sash, CALS, SERI, LHR, LRC, Ndifuna Ukwazi, Abahlali baseMjondolo, among others, have been applicants in socio-economic rights litigation within their focus areas/rights; as *amicus curiae* (friend of the court), submitting expert evidence and legal arguments in cases brought by others (for example SERI, DOI, CALS, HJI among others, have intervened in cases as friends of the court); providing *litigation support*, such as assisting affected individuals to access legal representation; assisting in *evidence generation*, through community advice offices, helplines, and monitoring work related to socio-economic rights (Black Sash, SERI, LHR for example, documents systemic violations that inform litigation strategy); *post-judgment monitoring*, through tracking compliance with court orders and returning to court where necessary (SERI for example has been monitoring compliance and approaches the court in cases of non-compliance in order to compel compliance); and *coalition building* by coordinating across organisations and civil society members to work towards strategic litigation that results in social change and improvement in the lives of individuals and communities.
78. Because of the public interest aspect of socio-economic rights litigation, CSO involvement often extends beyond the courtroom and beyond tracking compliance by providing advocacy and public education campaigns and materials and community mobilisation, to ensure implementation of court orders through sustained pressure on authorities to implement court-mandated remedies.
79. The Constitutional Court has noted the important role that public interest groups play in the development of human rights and in the development of courts' jurisprudence. In *Biowatch Trust v Registrar Genetic Resources and Others*,¹⁴² the Constitutional Court stated that 'vulnerable sectors of society are particularly dependent on the support they can get from public interest groups' and acknowledged 'how vital the participation of public interest groups has been to the development of this Court's jurisprudence'. It stated further that: 'Interventions by public interests groups have led to important decisions concerning the rights of the homeless, refugees, prisoners on death row, prisoners generally, prisoners imprisoned for civil debt and the landless. There has also been pioneering litigation brought by groups concerned with gender equality, the rights of the child, cases concerned with upholding the constitutional rights of gay

¹⁴¹ Regarding other investigative bodies, CSOs have also been direct applicants to the Competition Commission seeking to broaden access to life-saving medicines for cancer (see C Tomlinson, 'Why the Competition Commission's decision on two cancer medicine cases could have much wider implications' (2024), <https://www.spotlightnsp.co.za/2024/11/20/why-the-competition-commissions-decision-on-two-cancer-medicine-cases-could-have-much-wider-implications/> (accessed 27 April 2026)). The CSO Cancer Alliance, admitted as an intervenor in the cases has been able to provide evidence on how alleged excessive price of lenalidomide harmed patients and obstructed patients' rights of access to health care (see Cancer Alliance, 'Lenalidomide access', <https://canceralliance.org.za/lenalidomide-access> (accessed 27 April 2026)). The cases, still ongoing, are important for defining what the Commission considers 'excessive pricing' of pharmaceuticals, a key factor in determining the realisation of access to health care under the South African constitution, since considerable contestation still exists as to how to interpret the notion of excessive pricing (see F Ncube & T Shumba 'Defining excessive pricing in South African competition law: A European comparative analysis' (2025) 46(2) *Obiter* 410-435).

¹⁴² In *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC) ('*Biowatch Trust*').

men and lesbian women, and in relation to freedom of expression. Similarly, the protection of environmental rights will not only depend on the diligence of public officials, but on the existence of a lively civil society willing to litigate in the public interest.¹⁴³

C. What barriers do individuals or communities face in accessing courts or other mechanisms to enforce ESC rights?

80. They face *access challenges*. Although section 167(6)(a) of the SA Constitution allows direct access to the Constitutional Court in the interests of justice, the Court hardly ever grants this and almost never in socio-economic rights cases.¹⁴⁴
81. Also, the issue of *cost of litigation* is a big obstacle which prevents access to the courts. The high costs and slow pace of litigation make it challenging for poor and disadvantaged individuals and communities, who often cannot afford to dedicate funds to consult lawyers. The complexity of socio-economic rights claims often require technical evidence and multi-party coordination, further raising the financial barriers to litigation. Legal fees are thus prohibitive for most affected individuals. However, access to courts or other mechanisms extends beyond cost to include geographic distance from courts, particularly in rural areas, noting the urban-rural disparity.
82. There are also *geographic and knowledge barriers*. Poor socio-economic rights enforcement often occurs in rural areas where communities are more reliant on the state to effectively realise their socio-economic rights to access housing, water, healthcare, among others. Unfortunately, many such communities are not educated about their rights and the avenues of enforcement available to them. Those who are aware often cannot afford to travel into urban areas where most courts and lawyers' offices are allocated. The knowledge gap is exacerbated by lack of plain-language legal information.
83. *Other barriers to access* include: language barriers and; fear of retaliation, or the loss of services should they seek proper enforcement of their socio-economic rights, particularly for grant-dependent beneficiaries who fear losing access to services if they complain; distrust of institutions (communities with negative experiences of the justice system disengage with the system); complexity of legal processes (judicial procedures are inaccessible without legal assistance); lack of identity documents or other administrative prerequisites; time constraints (working-poor individuals cannot easily take time off to pursue litigation); delays caused by backlogs and limited judicial resources; slow remedies such as legislative amendment often deter individuals and communities from pursuing socio-economic rights enforcement. As some remedies may not be immediately practical because they may need planning, budgetary allocations or legislative change over several years, this may discourage individuals and communities from seeking redress.
84. It is important to note that the barriers are all underpinned by the important assumption that the most vulnerable know their rights, which is not often the case.

¹⁴³ *Biowatch Trust (CC)* para 19.

¹⁴⁴ See J Dugard 'Closing the doors of justice: An examination of the Constitutional Court's approach to direct access, 1995-2013' (2015) 31(1) *SAJHR* 112-135.

D. Is legal aid available and accessible for ESC rights claims? Please describe any limitations.

85. Legal Aid South Africa provides some access to justice, but it is limited for socio-economic rights cases. Legal Aid SA primarily focuses on criminal matters and certain civil matters (family law, labour). There is no dedicated socio-economic rights legal aid fund in South Africa.
86. Furthermore, legal aid bodies typically use means testing to determine if individuals qualify for representation and exclude claimants who are not technically indigent, but are nevertheless unable to afford legal fees, leaving many civil legal matters outside routine legal aid coverage.
87. Public interest socio-economic rights litigation is largely carried by NGOs and pro bono law clinics and private firms. The pro bono legal sector is however overstretched. There are also paralegal advice offices based in communities to assist in a limited way, but they do not have the necessary expertise and capacity to assist with socio-economic rights claims.

E. What are the legal procedures used to bring ESC rights claims before national courts (including public civil actions and class actions)?

88. It depends on the nature of the ESCR claim. One can make a direct constitutional application to the High Court, on appeal to the SCA and/or Constitutional Court. Also, direct applications can be made to the Constitutional Court if the matter is urgent and in the public interest - which would generally also apply to socio-economic rights claims that relate to, for example, a threat to life or threat to basic survival or affect socio-economic rights entitlements that significantly impact a community or are in the public interest.
89. Public interest litigation to challenge systemic policy and legislative failures is authorised by section 38(d) of the Constitution. Class actions for collective redress is authorised by section 38(c), although this procedure requires certification from the courts (according to Rule 11A of the Uniform Rules of the High Courts in South Africa) that such litigation is in the interest of justice, represents an identifiable class, a triable legal issue, and other requirements related to damages and the suitability of the representation and relief sought.
90. Applicants may also seek administrative reviews of state decisions or omissions that may be unlawful, unreasonable, or procedurally unfair under the Promotion of Administrative Justice Act.

F. What strategies has civil society used to promote the legal enforcement of ESC rights, and how effective have these strategies been?

91. Civil society uses a multi- pronged strategy, combining legal, advocacy, research and community-based strategies, among others. As a start it would be important for communities to know and understand their rights to have agency and actively take ownership of what they are entitled to and be active participants to enforce their rights whereby *community mobilisation and education* is important. Engaging with community advice offices who provide *legal support in communities* is an important aspect to creating awareness in communities and building capacity. A key strategy is *evidence gathering through monitoring and research* to illustrate the lived realities on the ground, document the impact of systemic exclusions and administrative barriers to socio-economic rights. It is important for civil society to work together through *coalition and alliance building* within the civil society sector, social

movements, academia and international partners, combining legal expertise and knowledge from different communities to strengthen the reach and legitimacy of the cause. *Media engagement* is an important tool to harness public support, highlight issues gaps and its adverse impact to strengthen accountability through a wide reach. *Engagement with government stakeholders* through parliamentary processes, public consultation processes and making submissions strengthen socio-economic rights legal frameworks. *Impact litigation* is an option to seek systemic change when other remedies have failed.

92. These strategies can be highly effective. For example, Abahlali baseMjondolo, Black Sash, CALS, DOI, LHR, LRC, Women's Legal Centre (WLC), SERI, have successfully used litigation to promote and compel legal enforcement of socio-economic rights. Successful use of litigation in socio-economic rights cases has not only been based on strong legal arguments but also on innovative remedies,¹⁴⁵ deep community evidence, broad civil society support, and sustained public attention.¹⁴⁶ CSOs often pair strategic litigation with other strategies; for example, pairing it with free public education resources and the mobilisation of grassroots movements to gain and sustain public awareness and support, often framing socio-economic rights litigation within broader public debates around the state's obligations to secure and advance access to housing, education and healthcare, for example.
93. CSOs may also use access-to-information requests in accordance with the Promotion of Access to Information Act to request access to records held by public bodies such as contracts, procurement documents, and policy decisions. CSOs can use this information to expose procurement, budget, and policy failures and to underpin legal claims for transparency and redress if necessary.¹⁴⁷
94. The abovementioned strategies have helped CSOs advance legal recognition and interpretation of socio-economic rights and set precedents that changed policies or clarified obligations. They have also helped to fast track and ensure compliance with court orders that would otherwise lag without sustained monitoring and public pressure. The strategies have further helped improve access to justice and increased public awareness of rights.

G. What measures could improve access to justice and strengthen enforcement of ESC rights for affected individuals and communities?

95. *Access to justice* is a key issue in South Africa with a limited national footprint and narrow criteria to qualify for legal aid in terms of the types of matters Legal Aid South Africa deals with and who is eligible, determined by a 'means test' which is a huge barrier for many in South

¹⁴⁵ For example, in *Sonke Gender Justice NPC v Government of the Republic of South Africa and Another* 2017 (3) SA 385 (WCC) which dealt with the overcrowding conditions in Pollsmoor Remand Detention Centre, the court issued a structural interdict which included the obligation on the government to provide a detailed remedial plan for healthcare and sanitation in the prison. This required the government to file detailed reports which were monitored closely by civil society.

¹⁴⁶ For example, this was the context within which Black Sash successfully used litigation to advance its Hands Off Our Grants campaign.

¹⁴⁷ HJI used this approach and requested access to information about Covid-19 vaccine contracts but was refused by the National Department of Health, leading to the case of *Health Justice Initiative v The Minister of Health and Information Officer, Department of Health* (2023), <https://powerlaw.africa/wp-content/uploads/2023/07/10009.22-the-health-justice-vs-min-of-health-judgment.pdf> (see also, HJI, 'Pandemic transparency: The Health Justice Initiative v The Minister of Health and Information Officer, Department of Health', <https://healthjusticeinitiative.org.za/pandemic-transparency> (accessed 29 April 2026)). However, the High Court 'ruled in HJI's favour and compelled the Department to provide access to the Covid vaccine procurement contracts and other documents'. See: F Hassan, LG Abinader & MM Kavanagh, 'Law and power in pandemic negotiations: Policymaking via contract in South Africa's dealings with COVID-19 vaccine companies' (2025) 20(1) *Global Public Health*, <https://doi.org/10.1080/17441692.2025.2537688>.

Africa. Access to justice is also impacted by the huge urban-rural resources disparity, and language barriers (with South Africa having 12 official languages) and literacy problems, which should therefore also be addressed.

96. Also important for improving access to justice is *access to social services* as they are mutually reinforcing. However, a big challenge to accessing social services is the onerous administrative process and documentation challenges, with no or limited recourse for redress. It is also important to acknowledge the shift to digitisation to access social services which must be considered on how it impacts on the ability to access socio-economic rights in a country with a limited digital infrastructure and the potential widespread exclusion this may have.
97. It would be important to *dedicate much more funding to legal aid with dedicated socio-economic rights legal aid funding*. Having mobile clinics in rural and peri-urban areas and strengthened community advice office networks can assist with addressing the issue of access to justice.
98. It would be beneficial for access to justice if there is *greater support and formal recognition of community advice offices and the broader paralegal sector*. Community advice officers are the frontline for under-resourced and marginalised communities but remain severely underfunded. Strengthening these offices would provide assistance within people's communities.
99. *Broader public understanding of the law and rights literacy* should be prioritised. Programs in schools and community education can help individuals to re-conceptualise poor living conditions (like lack of sanitation) as rights violations, enabling them to mobilize effectively and ensure stronger active citizenry. To tackle awareness and information gaps in South Africa, CSOs can commit to *transforming educational materials into documentaries, podcasts, radio plays, advertisements, and other media* that can be licensed to the national broadcaster in all of South Africa's official languages. This strategy has already proved to be successful in South Africa during the early to mid-2000s when CSOs made a concerted effort to educate the public about HIV and dispel stigma.
100. *Implementation of a simplified application and complaint procedures* would also be helpful in improving access to justice. It is also *recommended* that there be specialised socio-economic rights court processes and independent monitoring bodies to oversee compliance with socio-economic rights legal frameworks and court orders, but note that in the South African context we must be mindful of the narrative of fiscal constraints to mitigate limiting social spending.
101. Courts are empowered to *use innovative judicial remedies* to improve enforcement and accountability. For example, they can use measures such as structural interdicts and supervisory jurisdiction to monitor state compliance. This would require a further capacitation of our courts to be able to do that.
102. Non-judicial accountability mechanisms, such as national human rights institutions, should be properly resourced and accessible as alternative avenues for redress.
103. Socio-economic rights litigation is often resource strapped. This could be tackled through *time-limited fellowships for lawyers funded by donors* where compensation is tied to verified implementation milestones and not just case outcomes. This will *incentivise post-judgement technical enforcement work* which is essential for socio-economic rights remedies (like legislative and policy amendments) which are often subject to legislative and administrative processes that may be slow and require long-term follow-up.

IV. Responses to Questions for Academics and Legal Experts

A. How are ESC rights interpreted and applied within the domestic legal system?

104. As stated previously in this joint submission, socio-economic rights are enshrined in SA Constitution as justiciable rights; hence, directly enforceable by the courts. Socio-economic rights have been interpreted and applied with reference to the Constitution, applicable legislative and policy frameworks and relevant international law. South African courts have interpreted socio-economic rights through a transformative lens under the obligation of the state to respect, protect, promote and fulfil rights in the Constitution.¹⁴⁸ *Grootboom* case exemplifies this.

B. What doctrinal, institutional, or practical challenges affect the legal enforcement of ESC rights?

Doctrinal challenges

105. The doctrinal challenges relate to the failure to define the content of socio-economic rights and the interpretation of the constitutional socio-economic rights provisions, particularly with respect to the ‘progressive realisation’ and ‘within available resources’ qualifications contained in, for example, sections 26(2) and 27(2) of the Constitution.¹⁴⁹ These qualifications are also contained in the ICESCR; hence, not unique to the South African context. However, as elsewhere in the world, little progress has been made to adjudicate what progressive realisation within available resources means. This deficit is most evident regarding access to housing, where there remains a critical shortage of affordable housing options, and the courts are stuck in an eviction paradigm.¹⁵⁰

106. South African courts have generally focussed on whether the government action, program or policy is reasonable within the ‘reasonable’ legislative and other measures duty imposed on the state, rather than enforcing an individual immediate right to a specific benefit. This was the approach in, for example, *Minister of Health and Others v Treatment Action Campaign and Others (TAC)*.¹⁵¹

107. The Constitutional Court has thus dismissed the ‘minimum core’ concept, rejecting the argument that the socio-economic rights in the SA Constitution contain a minimum core which the state is required to fulfil. Put differently, the provisions do not entitle individuals to the direct provision by the state of minimum levels of relevant socio-economic goods and services. *Grootboom* and *TAC* cases are instructive in this regard.¹⁵² The court’s reasoning in *Grootboom* was based on its view that it is impossible to determine the minimum threshold for the progressive realisation of the right to have access to adequate housing without first ascertaining the varying needs and opportunities for enjoyment of the right.¹⁵³ In rejecting minimum core

¹⁴⁸ B de Villiers, ‘Breathing life into the Constitution: The transformative role of courts to give a unique identity to a Constitution’ (2023) 9(1) *Constitutional Review* 109.

¹⁴⁹ M Köglmeier, *An evaluation of whether South Africa fulfils the requirements of the International Covenant on Economic, Social and Cultural Rights: To what extent is South Africa obliged to realise the right to basic education, and to what extent is South Africa meeting those obligations?* Masters Thesis, University of Cape Town (2021).

¹⁵⁰ S Wilson, J Dugard & M Clark ‘Conflict management in an era of urbanisation: Twenty years of housing rights in the South African Constitutional Court’ (2015) 31(3) *SAJHR* 472-503.

¹⁵¹ *TAC* No 2 (CC).

¹⁵² *Grootboom* (CC) paras 22-33; *TAC* paras 26-39.

¹⁵³ *Grootboom* (CC) para 32.

content in relation to section 27 (right to health) of the Constitution, it was noted in *TAC* case that ‘the socio-economic rights of the Constitution should not be construed as entitling everyone to demand that the minimum core be provided to them’, providing everyone access to a core service immediately was impossible, and that all the state is required to do and which is possible is to ‘act reasonably to provide access to the socioeconomic rights identified in sections 26 and 27 on a progressive basis’.¹⁵⁴ In *Mazibuko and Others v City of Johannesburg and Others*, minimum core content was also rejected despite the fact that the Water Services Act 108 of 1997 which was enacted to give effect to the right to basic water supply and sanitation, prescribed a minimum level of rights of 25 litres per person per day.¹⁵⁵ The Constitutional Court analysed the state’s obligation in the case, confirming that ‘progressive realisation’ must be met by reasonable policies, rather than immediately setting a fixed free amount. This makes it difficult for individuals to claim a minimum standard.

108. Notwithstanding, the reasonableness concept leaves room for minimum core ‘obligations’ to be considered in the reasonableness assessment where adequate evidence is placed before the court on the content of the core obligation. As has been argued, some elements of minimum core obligations can be seen in the approach - ‘It accentuates the obligation to not leave people in desperate need without any form of assistance, to take immediate interim measures of relief for those in desperate need, and the obligation to, at the very minimum, meet short-term needs, thus essentially implying recognition of minimum core.’s accentuation of the obligation to not leave people in desperate need without any form of assistance, to take immediate interim measures of relief for those in desperate need, and the obligation to, at the very minimum, meet short-term needs, thus essentially implying recognition of minimum core.’¹⁵⁶ It was acknowledged in the recent case of *Commando* that ‘in relation to the minimum core obligation – opportunities may exist to harmonise the two approaches through the notion of “reasonableness”’.¹⁵⁷

109. With regard to ‘within available resources’, the interpretation has been flexible that it may dilute or weaken enforceability. In *Soobramoney*,¹⁵⁸ the Constitutional Court stated that ‘[o]ne of the limiting factors to the attainment of the Constitution’s guarantees is that of limited or scarce resources’ and that ‘the limited haemodialysis facilities, inclusive of haemodialysis machines, beds and trained staff constitute the limited or scarce facilities’ in the case.¹⁵⁹ Available resources thus go beyond the budgetary allocations of government *to the relevant right*. It has been observed that this ‘has the potential to undermine the notion of rights-directed policy-making’.¹⁶⁰

110. However, where resources have been allocated for the provision of socio-economic goods and services, the state cannot neglect its duties. Failure to spend allocated resources led to a court challenge - *Cancer Alliance*,¹⁶¹ with the High Court finding that the ‘failure to devise and implement a plan to provide radiation oncology services’ at Gauteng hospitals, given it had received ring-fenced funding for this purpose was unlawful and unconstitutional, and ordered the Department to provide a plan urgently. The State’s obligation to take positive measures to protect and promote the right of access to healthcare featured strongly in the reasoning of the court on this decision. The Court also considered the fact this failure occurred despite

¹⁵⁴ *TAC* No 2 (CC) paras 34-35.

¹⁵⁵ *Mazibuko* (CC).

¹⁵⁶ L Chenwi, ‘Implementation of housing Rights in South Africa: Approaches and strategies’ (2015) 24 *Journal of Law and Social Policy* 68, 78.

¹⁵⁷ *Commando* (CC) para 147, footnote 129.

¹⁵⁸ *Soobramoney* (CC).

¹⁵⁹ *Soobramoney* (CC) para 43.

¹⁶⁰ Liebenberg (2016) 318.

¹⁶¹ *Cancer Alliance* (HC).

significant deterioration of the health and wellbeing of cancer patients, with ‘clear, imminent and ongoing irreparable harm that cancer patients who are on the backlog list are suffering’.

111. Though resources in the context of ESC rights implementation, as interpreted under the ICESCR, refers to resources both within a state (internal resources) and those available through international assistance and co-operation (external resources),¹⁶² attention to external resources is lacking in the courts’ within available resources analysis. This could either be because the resource implications raised by the cases could be considered within internal resources allocations or the issue of external resources has not been at the core of socio-economic rights cases.

Institutional challenges

112. Implementation failure is a challenge which is not unique to South Africa, as it is common in almost every country. There is a *general lack of or inadequate enforcement or implementation of court orders* as the state often fails to carry out court directives promptly. An example is the *Grootboom* case where despite a court order, the state failed to provide emergency shelter to evicted residents. Another reason for non-implementation is weak institutions or systems. For example, the SAHRC, which is responsible for monitoring human rights, including socio-economic rights, has been constrained by limited funding and staffing. Recently, as noted previously in this joint submission, the Constitutional Court held that SAHRC’s directives are not binding,¹⁶³ limiting its ability to compel compliance based solely on its directives. Also, lack of ratification of the OP-ICESCR, deprives individuals of the opportunity to bring complaints directly to the CESCR where they have not been able to obtain a remedy at the domestic level. In addition, ineffective Local Government is a challenge, as many local municipalities responsible for delivering essential services (water, sanitation, housing), lack the technical capacity or financial resources to function as expected.
113. It should be noted that institutional challenge in South Africa goes beyond failure to comply with court orders. It also includes *non-delivery, non-maintenance of infrastructure and services, lethargic governance*, among other challenges.

Practical challenges

114. Practical challenges can be described as reality issues. Poverty and high cost of litigation and legal services make it difficult for vulnerable groups and marginalized communities to access the courts.¹⁶⁴ Also, high levels of poverty, unemployment, and inequality exert pressure on the state, making it difficult for it to meet all socio-economic expectations of the state or citizens. Furthermore, entrenched patriarchal systems and cultural norms, particularly played out in rural areas, are seen to often conflict with statutory laws regarding land ownership and property rights for women. These laws are recognised within the constitution. Lastly, citizens’ lack of awareness about constitutional rights and how to assert them often prevent many people from accessing the legal system. This is especially true in rural areas.

¹⁶² CESCR, General Comment No 3 on the nature of states parties’ obligations, 14 December 1990, UN Doc E/1991/23, para 13

¹⁶³ *SAHRC v Agro Data* (CC).

¹⁶⁴ *Abahlali base Mjondolo Movement SA and Another v Premier of the Province of KwaZulu-Natal and Others* 2010 (2) BCLR 99 (CC).

C. What role does international and comparative ESC rights jurisprudence play in domestic adjudication?

115. International and comparative ESC rights play a mandatory, interpretative and transformative role. This is because the South African courts are explicit in their adoption of international law and foreign law to interpret the Bill of Rights, which also directly impacts how courts define the responsibility of the state with regards to socio-economic rights.
116. As noted previously in this joint submission, there is explicit mandatory provision in sections 39(1)(b) that the courts must consider international law when interpreting socio-economic rights. This includes binding and non-binding international law as confirmed by the Constitutional Court in *S v Makwanyane*¹⁶⁵ and in *Grootboom*¹⁶⁶. The court referred to international agreements, customary international law, decisions of UN and regional human rights bodies on comparable instruments, and where appropriate ‘reports of specialised agencies such as the International Labour Organisation’ as interpretive guides. As the international law to be considered includes non-binding international law, though South African courts have been cautious about strictly enforcing a ‘minimum core’ of socio-economic rights, the general comments of the CESCR provides a key guiding framework on the ‘minimum core’ of socio-economic rights. However, as clarified by the court, ‘the weight to be attached to any particular principle or rule of international law will vary’ (depending on its binding nature); for example, ‘where the relevant principle of international law binds South Africa, it may be directly applicable’.¹⁶⁷
117. The transformative role is in section 39(1)(c) of the Constitution which provides that the Courts may consider foreign case law (comparative jurisprudence) to strengthen their reasoning and fill gaps in domestic law.
118. The interpretative role is in section 233 of the Constitution which, as stated previously, says that courts are required to prefer any reasonable interpretation of legislation that is consistent with international law over alternative interpretations.
119. In the *Grootboom* case, the Constitutional Court relied on international law to define the state’s obligation to provide ‘reasonable legislative and other measures’ for housing. In the *Commando* case, as noted previously in this joint submission, the Constitutional Court engaged with the impact of ICESCR ratification, highlighting the need to harmonise the approach to socio-economic rights interpretations under domestic law with the approach under the ICESCR and to not use domestic law to justify failure to give effect to international obligations.
120. On the comparative level, cases from common law jurisdiction, Canada, India, United States and United Kingdom are commonly cited in South African courts’ jurisprudence. For example, the Indian case of *Olga Tellis v Bombay Municipal Corporation*¹⁶⁸ was cited in the *Grootboom* case. The Canadian case of *National Citizens’ Coalition Inc v Attorney-General for Canada*¹⁶⁹ and the United States case of *Commonwealth of Pennsylvania v West Virginia*¹⁷⁰ were cited in *Khosa* case¹⁷¹ regarding the state’s duty to provide equal access to social benefits.

¹⁶⁵ *S v Makwanyane and Another* 1995 (3) SA 391 (CC) para 35.

¹⁶⁶ *Grootboom* (CC) para 26.

¹⁶⁷ *Grootboom* (CC) para 26.

¹⁶⁸ (1985) 3 SCC 545 or AIR 1986 SC 180.

¹⁶⁹ (1985) 11 DLR (4d) 481.

¹⁷⁰ 262 US 553, 593 (1923).

¹⁷¹ *Khosa* (CC).

D. How do legal education, judicial training, and legal culture influence the enforcement of ESC rights?

121. Legal education, judicial training and legal culture have a great influence as they help lawyers to adjudicate, and judges to interpret the provisions of socio-economic rights in such a way that it is transformative and forward looking. This creates a culture and atmosphere for advocacy for the respect of the rights of citizens. For example, CHR, DOI, SERI, CALS, among others carry out education and training on socio-economic rights and CHR has an annual training on judicial adjudication of socio-economic rights in national and African human rights systems to support this cause. The *Grootboom* case already cited was a landmark example of a legal culture that prioritised constitutional compliance over administrative convenience.
122. The importance of education and training is also evidenced from the CESCER's recommendation that South Africa should 'enhance training for judges, prosecutors, lawyers and public officials on the [ICESCR] and strengthen the capacity of the South African Judicial Education Institute to that end'.¹⁷²

E. How is judicial enforcement of ESC rights perceived within the legal profession, academia, and broader society?

123. Judicial enforcement of socio-economic rights is perceived within the legal profession, academia and broader society as an important or core aspect of South Africa's transformative democracy, although deeply contested. They are seen as a tool for social justice, and a necessary mechanism for government accountability. Sometimes also as a challenge to the separation of powers, or even an underutilised resource by marginalised communities. Differently, for lawyers and judges, the judicial enforcement of ESC rights is perceived as a legitimate and necessary tool for transformation and protecting marginalised groups, which the government should strive to actualise.
124. Academics and human rights practitioners (including contributors to this joint submission) see it as an area of bridge between rhetoric and lived experiences of vulnerable groups in society and one of continued discourse of analysis and arguments for achieving substantial human rights and the social development goals. They continuously advocate for better enforcement and accountability.
125. The broader society views it as an essential, yet slow, mechanism for social change, sometimes having legal victories that are confronted with challenges in translating into immediate desired improvements. For example, the *Grootboom* case was celebrated by civil society and the public as a triumph of rights-based litigation over poverty but long after the order, the applicant or petitioner and her community waited years for adequate housing, with many living in undignified conditions, to get it implemented. Hence, within the broader society, socio-economic rights are perceived by some to be legally present but practically absent (in terms of tangible benefits).

¹⁷² CESCER, Concluding observations on initial report of South Africa, para 5.

F. What legal or institutional reforms would most effectively strengthen ESC rights enforcement?

126. Effective strengthening of ESC rights enforcement would necessitate a multi-faceted approach of judicial, institutional, and legislative reforms.
127. As regards judicial reforms, judges need to be innovative in the interpretation of relevant legal frameworks. Courts should increase the use of structural interdicts, which compel the government to report back to the court on its progress in complying with judgments. This ensures that court orders lead to material improvements rather than being ignored. There is the need for safeguarding the independence of the judiciary. The judiciary needs to be empowered especially with budgetary or financial resources as well as to afford enforcement of its decisions.
128. Institutionally, training and capacity building are a must for legal officers. The OP-ICESCR should be ratified, as it would allow individuals to submit complaints directly to the CESCRR if they cannot find justice within South Africa.
129. Legislative reforms that would mandate the participation of the public in the design and implementation of policies related to social services.

G. Is the legal protection of ESC rights considered a factor that enables or supports the realization of broader societal objectives (such as upholding the integrity of the financial and banking system, protecting public enterprises, safeguarding competition, and ensuring equal access to employment)? If so, how is this relationship reflected in legislation, jurisprudence, or public policies?

130. To some extent, legal protection of ESC rights is considered a factor that enables or supports the realisation of broader societal objectives. South Africa is a country with vibrant progressive laws and belief in the rights of citizens and residents, which is evident in the laws, policies and constitution. This is also reflected in the court cases and efforts of the judiciary although the implementation may take time.
131. The relationship between socio-economic rights and competition law is reflected in jurisprudence. For example, *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another*¹⁷³ is instructive on the relationship between the right to health and competition. The case related to a proposed merger of facilities by two private hospital groups. The hospitals belonged to two of the largest actors in the private hospital sector in South Africa, a sector characterised by extremely high concentration of resources in the hand of relatively few groups.¹⁷⁴ The merger was rejected by South Africa's Competition Commission and the decision upheld by the Competition Tribunal. On appeal, the Competition Appeal Court endorsed the merger but imposed certain conditions and the Competition Commission then

¹⁷³ *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* [2021] ZACC 35; 2022 (5) BCLR 532 (CC).

¹⁷⁴ Reducing public-private inequality has been highlighted as the rationale for introducing a National Health Insurance in South Africa (see Department of Health (South Africa), 'National health insurance in South Africa: Policy paper', <https://www.gov.za/sites/default/files/nationalhealthinsurance.pdf> (accessed 27 April 2026)). Regarding the dysfunctionality of the private health care sector, particularly private hospitals, see Competition Commission South Africa, 'Health market inquiry: Final findings and recommendations report' (2019), <https://www.compcom.co.za/wp-content/uploads/2020/01/Final-Findings-and-recommendations-report-Health-Market-Inquiry.pdf> (accessed 27 April 2026).

approached the Constitutional Court to decide whether the merger should be permitted. The Constitutional Court approached the matter in line with the obligation of state machinery, including the courts, to promote, protect, respect and fulfil rights in the Bill of Rights, and, specifically, to ensure that the spirit, purport and objects of the right of access to health care services informs how the Court determined the matter. The court noted the importance of building an ‘inclusive, ethical, truly human rights-oriented and vibrant or prosperous economy’ but did so by considering competition law to remedy the consequences of historical injustices that pervade the inequity between public and private health care in South Africa, much of it a legacy of apartheid.¹⁷⁵ The Constitutional Court interpreted the right to health within the context of competition law by asking, firstly, whether a merger will lessen competition, and what impact this would have on the right to health. Secondly, it asked whether the merger would impact the right to health as a substantive public interest concern. The merger would likely lessen consumer’s choices and lead to increased costs for uninsured patients who are particularly vulnerable. The case illustrated how the Courts could strengthen the role of a Commission established as watchdog on competition to challenge market disparities that are introduced by anti-competitive activities and to do so in an explicitly rights-oriented manner.¹⁷⁶

V. Conclusion

132. In South Africa, the Constitution and post-apartheid legal frameworks provide a robust basis for socio-economic rights litigation. Applicants regularly win cases, but it is disappointing that such litigation is necessary, and that the post-apartheid government opposes such cases in court. As an upper-middle income country, South Africa has resources, but these are unequally distributed. Undoubtedly, more could be achieved if the government was committed, not just in theory but in practice as well, to socio-economic rights transformation. Against this backdrop, the judiciary has played a critical accountability and vindication of socio-economic rights’ role.
133. The courts in South Africa have generally defended socio-economic rights. However, there has been limited progress in adjudicating what progressive realisation within available resources means and in embracing minimum core. To ensure socio-economic rights compliance, it might be *necessary for courts to take on even more directive roles, and to develop an appropriate theory of separation of powers.*

¹⁷⁵ *Competition Commission of South Africa* (CC) para 2 & generally.

¹⁷⁶ See *Competition Commission of South Africa* (CC) generally. See also, O Ampofo-Anti, ‘The right to health vs. the market: Rejecting the false dichotomy’