

---

Explanatory Note

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This case raises the state's obligations under section 26 of the Constitution, which gives everyone the right of access to adequate housing, and section 28(1)(c), which affords children the right to shelter. It concerns questions about the enforceability of social and economic rights.

Mrs Grootboom was one of a group of 510 children and 390 adults living in appalling circumstances in Wallacedene informal settlement. They then illegally occupied nearby land earmarked for low-cost housing but were forcibly evicted: their shacks were bulldozed and burnt and their possessions destroyed. Their places in Wallacedene had been filled and in desperation they settled on its sports field and in an adjacent community hall.

The Cape of Good Hope High Court found that the children and, through them, their parents were entitled to shelter under section 28(1)(c) and ordered the national and provincial governments as well as the Cape Metropolitan Council and the Oostenberg Municipality, immediately to provide them with tents, portable latrines and a regular supply of water by way of minimal shelter. This decision formed the basis for the appeal to the Constitutional Court.

The Human Rights Commission and the Community Law Centre of the University of the Western Cape were admitted as *amici curiae* in the appeal.

At the hearing on 11 May 2000, the Grootboom community accepted an offer by the state to relieve the crisis in which they were living. By 21 September the state had not implemented its offer and an urgent application was launched in this Court. On that date, after communication with the parties, the Court made an order putting the municipality on terms to provide certain rudimentary services.

In a unanimous decision, written by Justice Yacoob, it was noted that the Constitution obliges the state to act positively to ameliorate the plight of the hundreds of thousands of people living in deplorable conditions throughout the country. It must provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The Court stressed that all the rights in the Bill of Rights are inter-related and mutually supporting. Realising socio-economic rights enables people to enjoy the other rights in the Bill of Rights and is the key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential. Human

dignity, freedom and equality are denied to those without food, clothing or shelter. The right of access to adequate housing can thus not be seen in isolation. The state must also foster conditions that enable citizens to gain access to land on an equitable basis. But the Constitution recognises that this is an extremely difficult task in the prevailing conditions and does not oblige the state to go beyond its available resources or to realise these rights immediately. Nevertheless, the state must give effect to these rights and, in appropriate circumstances, the courts can and must enforce these obligations. The question is always whether the measures taken by the state to realise the rights afforded by section 26 are reasonable. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights is most in peril must not be ignored. If the measures, though statistically successful, fail to make provision for responding to the needs of those most desperate, they may not pass the test of reasonableness.

The Court emphasised that neither section 26 nor section 28(1)(c) gave any of the respondents the right to claim shelter immediately. However, the programme in force in the area of the Cape Metropolitan Council at the time the application was launched fell short of the obligations imposed upon the state by section 26. Although the overall housing programme implemented by the State since 1994 had resulted in a significant number of homes being built, it failed to provide for any form of temporary relief to those in desperate need, with no roof over their heads, or living in crisis conditions. Their immediate need could be met by relief short of housing which fulfils the requisite standards of durability, habitability and stability.

After the case had been started in the High Court, an Accelerated Managed Land Settlement Programme had been introduced by the Cape Metropolitan Council to fulfil this need. This programme needs to be effectively implemented. The Court stressed that the judgment should not be understood as approving any practice of land invasion for the purpose of coercing a state structure into providing housing on a preferential basis to those who participate in any exercise of this kind.

The Court issued a declaratory order which required the state to devise and implement a programme that included measures to provide relief for those desperate people who had not been catered for in the state programme applicable in the Cape Metropolitan area before the Accelerated Managed Land Settlement Programme had been introduced.