

ESCR-Justice

Monthly Caselaw Update



ESCR-NET CASELAW DATABASE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
RELATED JURISPRUDENCE, CASES AND OTHER DECISIONS

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South African Court Endorses Settlement Between Occupants and the City of Johannesburg and Prevents Forced Evictions

THEMATIC FOCUS:

DOMESTIC APPLICATION OF INTERNATIONAL LAW, FORCED EVICTIONS, HOUSING RIGHTS, JUSTICIABILITY AND ENFORCEMENT OF ESCR, RIGHT TO LEGAL REMEDIES, PROCEDURAL RIGHTS, RIGHT TO A PRIOR AND PROPER CONSULTATION

Occupiers of 51 Olivia Road v. City of Johannesburg, CCT 24/07 Constitutional Court of South Africa, February 19, 2008

In the case *Occupiers of Olivia Road*, over 400 residents of unsafe and unhealthy buildings in the inner city of Johannesburg were successfully relocated. Although this relocation is currently temporary, the court-endorsed settlement between the parties avoided forced eviction by the City, which would have likely resulted in homelessness. Before hearing the case, the Constitutional Court ordered the parties to engage in a meaningful dialogue to see if they could agree on a mutual solution. The parties reached an agreement that was endorsed by the Court in November 2007. The agreement provided that “the City would not eject the occupiers, that it would upgrade the buildings and that it would provide temporary accommodation” in the inner city of Johannesburg where the occupants may live “secure against eviction” – a key request of the applicants. In addition, the parties agreed to meet and discuss permanent housing solutions. After the settlement was reached, several policy issues were referred back to the Court for consideration and decisions in 2008. In giving reasons for the engagement order, the Court for the first time held that the Constitution requires that a municipality engage meaningfully with occupants before ejecting people from their homes if the eviction is likely to result in homelessness and that a court must take into account whether there has been meaningful engagement before granting an order of eviction. It was also decided that the constitutional duty to provide access to adequate housing implies that the City should consider the likelihood of homelessness when deciding whether to evict people, and that only after a court has ordered an eviction can it be considered illegal for residents to remain. To date, two aspects of the judgment have been implemented: the buildings have been made suitable for residents and alternative temporary accommodation has been provided. Plans are still being finalized for permanent adequate housing. Human rights advocates in South Africa point to this case as a success story because court encouragement and judicial adoption of the settlement accelerated the process of resolution of the conflict and effective implementation of the City’s obligations on economic and social rights. Advocates also praise this method as a way of obtaining meaningful implementation with minimal court intervention, as well as side-stepping politically sensitive questions regarding the role of the judiciary in social policy. However, such negotiated settlements may result in courts skirting difficult issues that, if decided by the court, could provide beneficial jurisprudence that would positively affect similarly situated persons.

For a [full case summary](#) and information on the enforcement and other outcomes of this decision, visit the [Caselaw Database](#) on our [website](#). There you will also find information on groups involved, case documents and secondary literature.

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