Protection and enforcement of the right to social security

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1 INTRODUCTION

A fundamental reform of the social security system is a way of redressing past injustices that occurred in South Africa. It would appear that this reformative approach is in particular borne out by the provisions of the Constitution of the Republic of South Africa 108 of 1996.[1] For the first time in the history of South Africa the Constitution compels the state to ensure the "progressive realisation" of social security. Section 27 shows a clear and unambiguous undertaking by the state to develop a comprehensive social security system. It states that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance (s 27(1)(b)) and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights (s 27(2)).

The South African Constitutional Court acknowledged on several occasions that socio-economic rights are in fact justiciable.[2] The critical question is therefore not if these rights are justiciable but how these rights can be adjudicated. A distinction can be made, on the one hand between adversarial adjudication mechanisms, such as the Constitutional and other courts and, on the other hand, inquisitorial adjudication mechanisms, such as the South African Human Rights Commission.

For purposes of this paper it is necessary to identify the relevant constitutional provisions regarding the interpretation, implementation, enforcement and monitoring of this right. Suggestions will also be made with regard to the role of the constitutional and other courts as mechanisms in helping people to enforce their social security rights.

1 Hereafter referred to as the Constitution.

2 *Certification of the Constitution of the Republic of South Africa, 1996* 1996 4 SA 744 (CC) par 76-77; *The Government of the Republic of South Africa and Others v Grootboom and Others* CCT 11/00 of 4 October 2000 par 20.

2 CONSTITUTIONAL PROVISIONS

2.1 Preamble

The assumption can be made that South Africa is a social state (De Wet 1995:36; De Villiers 1996:694). This assumption is based on the Preamble to the Constitution which states that the Constitution as the supreme law of the Republic aims to heal the divisions of the past and establish a society based on democratic values and to improve the quality of life of all citizens and free the potential of each person. The cornerstone of a social state is a comprehensive social security system (De Wet 1995:36). The wording of the Preamble of the Constitution implies that the State has the intention of creating a comprehensive social security system.

2.2 Recognition of the Constitution as the highest law

Section 2 of the Constitution determines that the Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the duties imposed by it must be performed. Section 27(1)(c) states that everyone has the right to access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) places a constitutional duty on the state by determining that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

When section 27(2) is read in conjunction with section 2 the assumption can be made that the fundamental right to access to social security is enforceable, because section 2 explicitly states that duties imposed by the constitution must be performed. In the White Paper this assumption is confirmed:

> "The general long-term objective is to have an integrated and comprehensive social security system supported by the collective potential of existing social and development programmes. This would be supported by a well-informed public, which is economically self-reliant, in a country which has active labour market policies aiming at work for all, while accepting that all will not necessarily have formal employment. Where these broad goals cannot be met, social assistance should be a reliable and accessible provider of last resort. A comprehensive and integrated social security policy is needed to give effect to the Constitutional right to social security."[3]

2.3 Fundamental rights and limitations

2.3.1 *Introduction*

In certifying the 1996 Constitution the Constitutional court acknowledged that socio-economic rights are in fact enforceable even if they give rise to budgetary considerations.[4] Consequently section 7 must be read in conjunction with section 36 to determine to what degree the right to access to social

3 Government Notice 1108 in *Government Gazette* 18166 of 8 August 1997 par 45.

4 *Certification of the Constitution of the Republic of South Africa, 1996* 1996 4 SA 744 (CC) par 76-77. See also *The Government of the Republic of South Africa and Others v Grootboom and Others* CCT 11/00 of 4 October 2000 par 20.

security can be limited. Section 7(1) states that the Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. Section 7(2) places a duty on the state to respect, protect, promote, and fulfil the rights in the Bill of Rights.

De Vos (1997:78) points out that the wording of section 7(2) implies that the state has a constitutionally entrenched duty to respect, protect, promote, and fulfil the rights in the Bill of Rights and consequently the right to access to social security. On a primary level the duty to respect requires negative state action and the courts will only expect the state not to unjustly interfere with a person's fundamental rights. This is known as negative enforcement by the courts.

The duties to protect, promote, and fulfill place positive duties on the state and these duties also require positive action from the courts. On a secondary level all fundamental rights require the state to protect citizens from political, economic and social interference with their stated rights (De Vos 1997:83; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights par II par 6; O'Regan 1999:2). It places a positive obligation on the state not to interfere in the political, civil, economic and cultural rights of its citizens. This obligation does not require that the state distribute money or resources to individuals, but requires setting up a framework wherein individuals can realise these rights without undue influence from the state.

At tertiary level section 7(2) requires that the state promote and fulfil everyone's rights (De Vos 1997:86; Maastricht Guidelines par II par 6; O' Regan 1999:2). The beneficiary has the right to require positive assistance, or a benefit or service from the state. The nature and scope of these obligations placed on the state will depend on the exact wording or phrasing of the fundamental right as well as on the internal and external limitations of this right.[5]

O'Regan also suggests a fourth level of obligation: a right may place an obligation on the State to act rationally and in good faith, and require that it justify their failure to carry out their obligations. In other words there must be a good reason for the State not to respect, protect, promote, and fulfil a right (1999:2).

2.3.2 *External limitations*

Section 7(3) refers to external limitations by stating that the rights in the Bill of Rights are subject to the limitations contained in or referred to in section 36, or elsewhere in the Bill. It is therefore important to establish the extent of limitations on the right to access to social security.

In the constitutional case of *S v Zuma*[6] the court stated that constitutional analysis contains two phases. In the first phase the applicant must show that

5 Internal limitations are limitations contained within the fundamental right itself and are aimed to confine the scope and application of the specific fundamental right. External limitations refer to the general limitation clause in the Bill of Rights.

6 1995 4 BCLR 401 (CC) 414.

there was an infringement on the duty to respect, protect, promote, and fulfil the rights in the Bill of Rights. In the second phase the respondent must show that the infringement was justifiable and that the right was legitimately restricted in accordance with the general limitation clause contained in section 36 of the Bill of Rights.

Any infringement on the duty to respect, protect, promote, and fulfil the right to access to social security by current and future legislation will have to be measured against the provisions of section 36(1) of the Constitution. Current social assistance legislation includes the Social Assistance Act 59 of 1992, Special Pensions Act 69 of 1996, Demobilisation Act 99 of 1996 and the Promotion of National Unity and Reconciliation Act 34 of 1995. Legislation regarding social insurance includes the Unemployment Act 30 of 1966 and Compensation of Occupational Injuries and Diseases Act 130 of 1993. Section 36(1) determines that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose. If a provision of the above-mentioned social assistance and social insurance legislation infringes upon the right to access to social security, such an infringement will only be justifiable if the limitation falls within the ambit of section 36(1) of the Constitution.

2.3.3 *Internal limitations*

The state's duty to respect, protect, promote, and fulfil the right to access to social security is further qualified by the phrasing of section 27(2). Section 27(2) states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. The inclusion of these qualifications is an acknowledgement that the right to access to social security cannot be fulfilled by the state immediately and completely.

The Constitutional Court in the case of *The Government of the Republic of South Africa and Others v Grootboom and Others*[8] shed light on the meaning of these different provisions in sections 26(2) en 27(2) and the manner in which the courts are prepared to enforce socio-economic rights.[9]

- ***Reasonable legislative and other measures***

A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether

7 Cf De Waal, Currie en Erasmus 1999:142.

8 CCT 11/00 of 4 October 2000. Hereafter called the *Grootboom*-case

9 This case raises the state's obligations under section 26 of the Constitution, which gives everyone the right of access to adequate housing. Section 26(2) and 27(2) has similar wording. Therefore the judgment of the court will also be applicable on section 27. For purposes of this paper reference will only shortly be made to the judgment of the court.

public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met (par 41). The court stresses further that the policies and programmes must be reasonable both in their conception and their implementation (par 42).

The court states further that:

> "Reasonableness must also be understood in the context of the Bill of Rights as a whole. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. 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 therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test." (par 44).

In the case of *Soobramoney v Minister of Health (KwaZulu-Natal)*[10] no mention was made of reasonableness. The court held that a court would be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters. Before the judgment in the *Grootboom-* case the conclusion can be reached that socio-economic rights can be enforced but that the court will be reluctant to interfere with the functions of the legislative and executive branches of government. The state thus has the discretion about when and how these rights should be realised.[11]

However, following the judgment in the *Grootboom-* case it appears that the court will not investigate the rationality and *bona fides* of the executive and the legislature, but will rather ask whether the socio-economic programme and the implementation thereof was reasonable.

- ***Progressive realisation***

The wording of the phrase progressive realisation is similar to the phrase used in section 2(1) of the International Covenant on Economic, Social and Cultural Rights. The court used the interpretation of the United Nations Committee on Economic, Social and Cultural Rights on the meaning of this phrase. The court stated that "progressive realisation" shows that it was contemplated that the right could not be realised immediately, but the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal (par 45).

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10 1997 12 BCLR 1696 (CC) par 29.

11 Cf Liebenberg 1999:8.

- ***Within available resources***

The court (par 46) referred to the judgment in the case *Soobramoney v Minister of Health (KwaZulu-Natal)* where the meaning of the phrase "available resources" was interpreted as follows:

> "What is apparent from these provisions is that the obligations imposed on the state by sections 26 and 27 in regard to access to housing, health care, food, water and social security are dependent upon the resources available for such purposes, and that the corresponding rights themselves are limited by reason of the lack of resources. Given this lack of resources and the significant demands on them that have already been referred to, an unqualified obligation to meet these needs would not presently be capable of being fulfilled. This is the context within which section 27(3) must be construed "[12]

In the *Grootboom-* case (par 46) the court further stressed that there is a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.

The conclusion can thus be reached that the availability of resources is but only one of the factors, which have to be considered when determining whether there was an infringement of a right. The observation in the *Soobramoney* case attributes to the above conclusion of the court in the *Grootboom* case:

> "The state has to manage its limited resources in order to address all these claims. There will be times when this requires it to adopt a holistic approach to the *larger needs of society rather than to focus on the specific needs of particular individuals within society*." (par 51) (Own emphasis)

- ***Right to access to***

Sections 26(2) and 27(2) refers to the "right to access to" and not purely to the "right to".[13] In the *Grootboom-* case the court reached the conclusion that the "right to access to" can be interpreted broader than the "right to":

> "The right delineated in section 26(1) is a right of "access to adequate housing" as distinct from the right to adequate housing encapsulated in the Covenant. This difference is significant. It recognises that housing *entails more* than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in section 26. A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including

12 *Soobramoney v Minister of Health (KwaZulu-Natal)* 1997 12 BCLR 1696 (CC) par 11. As quoted in *The Government of the Republic of South Africa and Others v Grootboom and Others* CCT 11/00 of 4 October 2000 par 46.

13 Majola remarks that there is still uncertainty as to what is meant by "access to" and that the core content of this right must still be interpreted by the courts. Majola 1999:6. Davis, Cheadle and Haysom 1997:345 further remark that the distinction can be understood as an attempt to avoid an interpretation that this section creates an unqualified obligation on the state to guarantee free housing on demand to everyone. See also Du Plessis 1997:186; Du Plessis 1996:13-14; Du Plessis 1996:293; Du Plessis and Gouws 1996:35.

> individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society. State policy dealing with housing must therefore take account of different economic levels in our society " (par 35 – own emphasis)

When the judgment of the court is made applicable to social security rights the conclusion can be reached that "access to" means more than a pure right to. [14] It suggests that the state will also have to provide, by way of legislative and other measures, that everyone has access to social security protection.[15]

3 ROLE OF THE COURTS AS ENFORCEMENT MECHANISM

Section 167(4)(e) states that only the Constitutional Court may decide that Parliament or the President has failed to comply with a constitutional duty.[16] According to section 7(2) a constitutional obligation can be described as a duty, which is placed on the state to respect, protect, realise and promote the rights in the Constitution. The above-mentioned sections imply that the state is expected on tertiary level to promote and realise the right to access to social security. This can be interpreted as meaning that the courts can enforce social security rights and order state organs to act positively.[17]

It is important to establish which court will play a role in the enforcement of the fundamental right to access to social security. Section 167(3) of the Constitution states that the Constitutional Court is the highest court in all constitutional matters and may decide only constitutional matters, and issues connected with decisions on constitutional matters and makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter. Section 167(7) describes a constitutional matter as any issue involving the interpretation, protection or enforcement of the Constitution. The High Court however, may also decide on any constitutional matter except a matter that only the Constitutional Court may decide, for example section 167(4)(e) which states that only the Constitutional Court may decide that Parliament or the President has failed to comply with a constitutional duty (s 169(a)(i)).

The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters (s 168(3)). Section 167(3) states that the Constitutional Court is the highest court in all constitutional matters.

It has been submitted (Trengove 1999:8) that our courts are empowered, whenever they decide on any issue involving the interpretation, protection and enforcement of a fundamental right contained in the Constitution, to

14 This approach of the court places an heavier burden on the resources of the state. It implies that the state will have to create effective policies to achieve the maximum output.

15 An example is to create the necessary infra-structure in rural areas for the elderly to enable them to collect their old age pensions.

16 See also Davis, Cheadle and Haysom 1997:352.

17 As in the case of *The Government of the Republic of South Africa and Others v Grootboom and Others* CCT 11/00 of 4 October 2000.

make any order that is just and equitable and may grant "appropriate relief."[18] In *Fose v Minister of Safety and Security*[19] appropriate relief is described as follows:

> "Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a *mandamus* or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights."[20]

Specific constitutional remedies include orders of invalidity (s 172(1)(a)); the development of the common law to give effect to the constitutional rights (ss 173 and 8(3)); the creation of procedural mechanisms necessary for the protection and enforcement of constitutional rights (s 173); and procedural remedies derived from some of the substantive rights (ss 32(10), 33(2) and 34).

Where Parliament or the provincial legislature failed to comply with a constitutional obligation that requires positive state action the Constitutional[21] or High Court[22] may grant appropriate relief. In such circumstances appropriate relief will be to make a declaratory order, where the relevant organ of state did not act in compliance with the provisions regarding the specific right.[23] Davis, Cheadle and Haysom emphasise the importance of a declaratory order as follows:

> "However, it could rule that the legislature's failure to act positively in the particular circumstances of the case was unreasonable and provide *broad guidelines on what is required to fulfil the constitutional obligations*. The effect of a declaration that Parliament has not complied with its constitutional duties should not be underestimated. An order of this nature is in the *public interest* by promoting accountability, responsiveness and openness in decision-making affecting fundamental social and economic rights."(1997:352 – own emphasis)

Supervisory jurisdiction is a new way of addressing the problem of enforcing social security rights.[24] This entails that courts would give orders directing the legislative and executive branches of government to bring about reforms defined in terms of their objective and then to retain such supervisory jurisdiction as to the implementation of those reforms.

Another important issue to address is what remedy the courts will have if the responsible legislature refuses to enact the social security legislation required of it by section 27(2). Section 27(2) states that the state *must* take reasonable legislative and other measures, within its available resources, to

18 Section 38.

19 1997 3 SA 786 (CC) par 19.

20 See *Grootboom and Others v Oostenberg Municipality and Others* 2000 3 BCLR 277 (C).

21 If it is non-compliance by parliament.

22 If it is non-compliance by the provincial legislature.

23 Davis, Cheadle and Haysom 1997:352. See *The Government of the Republic of South Africa and Others v Grootboom and Others* CCT 11/00 of 4 October 2000 par 96, 99.

24 Trengove 1999:8; Scott 1999:5. This remedy of supervisory jurisdiction is used in Canadian and Indian courts.

achieve the progressive realisation of the right in question. The question may be asked whether the court may compel the legislature to enact this legislation against its will. It has been suggested (Trengove 1999:10–11) that the court must simply declare that the legislature is compelled under the Constitution to enact this legislation. If the legislature refuses, the court may give a mandatory order against it. If the legislature still resists, the court may issue a mandatory order against its members personally. As a last resort, the court may issue a legislative order that prescribes the rules meant to have been enacted by the legislature required under the Constitution.

The conclusion can be drawn that the protection and enforcement of the right to access to social security and social assistance will require the development of new remedies by the courts. Developing current and new remedies will require from the courts to act more proactive and inquisitorial.

4 CONCLUSIONS AND RECOMMENDATIONS

It is clear that what is protected by section 27 of the Constitution is the right to access to social security. This means that the state may not deny anyone access to these benefits, but it does not mean that everyone has the right to social security since the availability of this service is dependent on the resources at the disposal of the state.

The constitutional obligation of the state in terms of this section is to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. The constitutional approach is pragmatic, not only in terms of the availability of resources but also in terms of the time frame for delivery.

By parity of this reasoning, a service, which is non-existent, cannot be available overnight; there is the escape valve for government, namely, "the progressive realisation" clause. It thus follows that the prerogative of allocating state funds is a policy decision and within the domain of the political arm of government; the judiciary cannot, through judgment, compel performance or delivery in this particular circumstance.

It is further clear that, standing as it is, the right to (access to) social security in South Africa is not yet cast in concrete terms. For such a right to fully mature, the state should initiate legislation which must provide for the substantive rights capable of being claimed (what actually should be claimed); the procedure and mechanism for claiming such rights (how the rights should be claimed); and where the rights should be claimed (venue). On the question of how and where the right should be claimed, we are concerned with the institutions that will hear and determine disputes arising from claims for social security benefits provided for under the relevant legislation.

The enforcement and monitoring of socio-economic rights can only be successfully achieved through a collaborative and interactive process involving the legislature, the executive, the courts, the South African Human Rights Commission, NGO's, CBO's and the ordinary people in South Africa.

When considering whether the existing adjudicatory institutions already in existence will be capable of also taking on the additional burden of determining social security disputes, this will depend on the present workload of the existing institution, the specialisation and expert knowledge required of those who constitute the court or tribunal, and the need to establish and keep social security as a system independent of other existing institutions.

In order to make the social security rights more tangible, and in order to avoid a floodgate of constitutional litigation the results of which, in the present circumstances, may turn out to be inconclusive, and certainly may not further the course or the availability of social security services, it will be necessary for government to set up through legislation, an enforcement machinery. In order for government to realise its dream of providing social security to the population at large, an entirely new machinery needs be put in place.

Ideally a *Social Security Tribunal* should be established to process all claims arising from the new system of social security in South Africa. Its jurisdiction must be of first instance and should cover all claims whether under the new Unemployment Insurance Act; the Road Accident Fund Act 56 of 1996; the Compensation for Occupational Injuries and Diseases Act 130 of 1993 and all the other benefits emanating from the social security system.

The tribunal should be headed by a person legally qualified and with sufficient post-qualification experience equivalent for appointment to the High Court. Other members or presiding officers of the tribunal must be legally qualified but must have been in practice or equivalent employment for at least five years since qualification. The tribunal shall be properly constituted with the President or any other member presiding with two other members who may be lawyers or persons qualified and/or experienced in the field of social security.

The reason for the creation of such a tribunal is not different from the usual reasons often advanced to justify the existence of administrative tribunals, namely:

- to make the settlement of disputes cheap, accessible and speedy;
- to bring professionalism and expertise to bear in settling or adjudicating such disputes;
- to make justice, in this case, social justice, accessible to the greater population of the working class and the unemployed by taking this type of jurisprudence away from the technical glare of the ordinary courts.

Alternatively, a Social Security Division of the existing Labour Court with supervisory jurisdiction on all matters concerning social security could be considered. Its jurisdiction would arise:

- by way of review of the award of the tribunal;
- review of the proceedings of the tribunal, the traditional common law review; and
- by way of case stated on the interpretation of the relevant constitutional provisions or the law relating to social security.

A Social Security Appeal Tribunal to which all appeals on social security claims must go could also be established.

The caveat here is to ensure that the status of the appeal court or tribunal established at this stage is placed at the same level as that of the High Court so as to avoid its being plagued by the common law writs of *certiorari, mandamus* and prohibition and indeed so as to shield it from the traditional common law supervisory jurisdiction of the High Court. If its status is at the level of the Labour Court, then it (the appeal tribunal) shall exercise supervisory jurisdiction over the tribunal in the same way as the existing Labour Court does in respect of the CCMA awards and proceedings. The danger in establishing such an appeal tribunal in the common law world is that unless it is made a superior court of record in status equivalent to that of the High Court, its status and jurisdiction may become a veritable avenue for prerogative writs[25] and constitutional challenges.[26]

The Labour Appeal Court could alternatively hear and determine all appeals arising on points of law concerning all social security matters and its decisions on such matters shall be binding and final. This court would therefore be the final court of appeal on all social security matters. It is recommended that the present Labour Appeal Court can serve this purpose.

Sources

A-G v The Queen & Boilermakers Society of Australia ex parte Kirby [1957] AC 288

Amalgamated Clothing & Textile Workers Union of SA v Veldspun (Pty) Ltd 1994 1 SA 162 (A)

Certification of the Constitution of the Republic of South Africa 1996 1996 4 SA 744 (CC)

Compensation for Occupational Injuries and Diseases Act 130 of 1993

Constitution of the Republic of South Africa Act 108 of 1996

Davis D Cheadle H and Haysom N *Fundamental Rights in the Constitution – Commentary and Cases* Kenwyn (1997)

De Villiers B "Human Rights in developing countries: some crucial issues" 1996 *TSAR* 679–700

25 Cf the situation with the old Industrial Court and see eg *Amalgamated Clothing & Textile Workers Union of SA v Veldspun (Pty) Ltd* 1994 1 SA 162 (A); *PPWAWU v Pienaar NO & Others* 1993 4 SA 621 (A).

26 See eg the recent Malaysian case of *Syarikat Kenderaan Melayu Bhd v Transport Workers Union* [1995] 2 MLJ 317 (CA); the Jamaican Court of Appeal cases of *R v Industrial Disputes Tribunal, ex parte The Half Moon Bay Hotel Ltd* Suit No M 49 of 1978; *R v The Industrial Disputes Tribunal, ex parte Portland Parish Council* Suit No M 48 of 1978.

27 See eg: Australia *Waterfront Workers Federation of Australia v JW Alexander Ltd* (1918) 25 CLR 434; *A-G v The Queen & Boilermakers Society of Australia, ex parte Kirby* [1957] AC 288; Canada *Toronto Corporation v York Corporation* [1938] AC 415; *Saskatchewan LRB v John East Iron Works Ltd* [1949] AC 134; Sri Lanka *United Engineering Workers Union v Devanayagan* [1967] 2 All ER 367.

De Vos P "Pious wishes or directly enforceable human rights?: Social and economic rights in South Africa's 1996 Constitution" 1997 *SAJHR* 67–101

De Waal J Currie I and Erasmus G *The Bill of Rights Handbook* Kenwyn (1999)

De Wet E "Can the Social State principle in Germany guide state action in South Africa in the field of social and economic rights?" 1995 *SAJHR* 30–49

Du Plessis LM "Evaluative reflections on the final text of South Africa's Bill of Rights" 1996 *Stell LR* 283–305

Du Plessis LM "Menseregte in die skadu's en skanse van die ivoortoring ('n akademiese waardering van enkele fasette van menseregtebeskerming in Suid-Afrika se finale Grondwet)" 1997 *Stell LR* 181–191

Du Plessis LM "The Bill of Rights in the working draft of the new Constitution: an evaluation of aspects of a constitutional text *sui generis*" 1996 *Stell LR* 1–24

Du Plessis LM en Gouws A "The gender implications of the final Constitution with particular reference to the Bill of Rights" 1996 *SA Publiekreg* 472–489

Grootboom and Others v Oostenberg Municipality and Others 2000 3 BCLR 277 (C)

International Covenant on Economic, Social and Cultural Rights 1966 999 UN Treaty Ser 3

Liebenberg S *National Implementation of Economic and Social Rights* (Cape Town 1999) (To be published in: Krause C *et al Economic, Social and Cultural Rights: A Textbook* (2000))

Majola B "A Response to Craig Scott – A South African Perspective" 1999 1:4 *ESR Review* 6–7

O'Regan K "Introducing socio-economic rights" 1999 1:4 *ESR Review* 2–3

PPWAWU v Pienaar NO & Others 1993 4 SA 621 (A)

R v Industrial Disputes Tribunal, ex parte The Half Moon Bay Hotel Ltd Suit No M 49 of 1978

R v The Industrial Disputes Tribunal, ex parte Portland Parish Council Suit No M 48 of 1978 Road Accident Fund Act 56 of 1996

S v Zuma 1995 4 BCLR 401 (CC)

Saskatchewan LRB v John East Iron Works Ltd [1949] AC 134

Scott C "Social Rights: Towards a principled, pragmatic judicial role" 1999 1:4 *ESR Review* 4–6

Soobramoney v Minister of Health (KwaZulu-Natal) 1997 12 BCLR 1696 (CC)

Syarikat Kenderaan Melayu Bhd v Transport Workers Union [1995] 2 MLJ 317 (CA)

The Government of the Republic of South Africa and Others v Grootboom and Others CCT 11/00 of 4 October 2000

The Maastricht Guidelines on Violations of the International Covenant on Economic, Social and Cultural Rights reprinted in 1998 *Human Rights Quarterly* 691–701

Toronto Corporation v York Corporation [1938] AC 415

Trengove W "Judicial Remedies for violations of socio-economic rights" 1999 1:4 *ESR Review* 8–11

Unemployment Insurance Act 30 of 1966

United Engineering Workers Union v Devanayagan [1967] 2 All ER 367

Waterfront Workers Federation of Australia v JW Alexander Ltd (1918) 25 CLR 434

White Paper for Social Welfare General Notice 1108 in *Government Gazette* 18166 of 8 August 1997