THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. CAUSE NO. 88 OF 2022

IN THE MATTER OF THE JUDICATURE (FUNDAMENTAL RIGHTS AND FREEDOMS) ENFORCEMENT PROCEDURE RULES SI NO. 31 OF 2019

AND

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF HUMAN RIGHTS

STEVEN KALALI:::APPLICANT

VERSUS

ATTORNEY GENERAL::RESPONDENT

Before: *Hon. Justice Dr Douglas Karekona Singiza*

RULING

1 Introduction

Uganda's human rights frameworks make numerous 'state welfare' promises that the state of Uganda aspires to realise for and on behalf of its citizens. These promises are not for 'manna from heaven' that is to be handed out on a plate to everyone on demand, but instead form part of value-based systems which we all look forward to actualising as a nation-state. Equally, these promises do not diminish simply because an individual citizen is wearing the badge of honour of being a police officer. Underlying the promises is the recognition, in this instance, that a good number of citizens continue to face challenges in accessing shelter or housing almost 30 years after the promulgation of the 1995 Constitution.[1]

Like many countries, Uganda relies on the diligence and commitment of its law enforcement agencies to maintain public safety and security. The men and women who serve in the Uganda Police Force discharge their duties with unwavering dedication, often at great personal risk. Yet despite their crucial role in society, the condition of the housing afforded to them has been a matter of concern for a long time. The applicant contends that the current housing provisions for police officers in Uganda are substandard and fail to meet basic standards of habitability. Such conditions compromise the well-being and morale of officers, and impede their ability to carry out their duties effectively.

[1] *Black's Law Dictionary* defines a 'welfare state' as one in which the state or a well-established network of social institutions plays a key role in the protection and promotion of the economic and social well-being of citizens. The concept lays emphasis on equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal requirements for a good life.

The motion before this court was brought by a lawyer who is concerned about the accommodation challenges that face most junior police officers in the Uganda Police Force.[2] The application seeks several human rights declarations and orders to realise, promote, and protect the right to access to shelter by Ugandan police officers. Therefore, I have decided to approach this application as one of great public interest given the challenging housing conditions faced not only by police officers in this country but also by most of our citizens.

1.1 Representation

At the commencement of the application, *M/s Mwina, Wananda & Co. Advocates* represented the applicant, while *M/s Attorney General's Chambers* represented the respondent. I have appreciation for the contribution of both counsel, so where I do not adopt all the arguments made and the authorities cited, it is not out of disrespect but due to limitations of time and space.

1.2 Background

Mr Steven Kalali, a public interest litigator, asserts that the state has violated police officers' rights to shelter. He avers that every police officer is entitled not only to shelter but to shelter of a decent kind; he also links the poor quality of accommodation availed by the police authority to the potential infringement of other rights, such as that to dignity, privacy, and a family. He thus calls for decent accommodation to be provided to all serving officers as a matter of entitlement.

[2] This motion is brought under the provisions of articles 50(2) and XIV(ii) of the National Objectives and Directive Principles of State Policy; articles 20, 21 24, 45, 40(1,2), and 39 of the Constitution of the Republic of Uganda 1995 as amended; section 98 of the Civil Procedure Act Cap 71; Rules 3,5(2) (a, b), 6(1)(d) and 7(1) of the Judicature (Fundamental and other Human Rights and Freedoms) Enforcement Procedure) Rules SI No. 31 of 2019; and Order 52 Rules 1,2,3 of the Civil Procedure Rules SI 71–1.

Mr Kalali brings to the fore the problem of what he calls the 'poor', 'ramshackle' or 'dilapidated housing structures' that are provided to junior police officers, maintaining that this is a violation of their right to stay in a clean and healthy environment, a violation which in turn impedes their right to practise their profession. Mr Kalali therefore invites this court to consider the poor quality of accommodation for police officers as inhuman and degrading, and prays for the following orders:

1) directing the respondent to provide proper or decent housing forthwith for all police officers in Uganda;

2) directing the respondent and its agents to stop further violation of the right to decent housing for all serving police officers and to comply with the provisions of the police standing orders;

3) directing the respondent to file quarterly or annual reports before this honourable court about progress in, or compliance with, the right to availing decent housing to all police officers; and

4) directing the respondent and all agents taking authority from it to safeguard the rights sought herein as enshrined under the 1995 Constitution as amended.

2 Grounds on which the motion is anchored

The present application is anchored on several suppositions, four of which I consider crucial. The first is that under the standing orders of the Uganda Police, junior ranking police officers are, as a matter of right, entitled to accommodation or housing. The motion suggests that this right is premised on the fact that a host of other rights flow from an expanded form of this very entitlement.

Secondly, the practice of keeping police officers in dilapidated, leaking, and congested houses that are unfit for human habitation violates several rights posited in regional as well as international instruments. Thirdly, given the huge budgetary allocation made to the Uganda Police Force under its welfare item, it is a dereliction of duty that police officers are not decently accommodated. Fourth, the violation of junior police officers' right to decent accommodation ultimately violates a host of other, interrelated rights in the Bill of Rights, such as a right to a clean environment, which itself is linked to a right to life, culture, and equality before the law. These violations are exacerbated by the fact that junior police officers cannot freely express themselves on their own and demand the satisfaction of those rights.

The four major grounds above are broken down into four other subsets, as follows:

1) Police accommodation is characterised by overcrowding, for instance through the use of shared tents in public barracks, which undermines police officers' right to privacy as well as their enjoyment of conjugal rights.

2) The police barracks' poor sanitary conditions undermine the security of police officers' families.

3) A link is made between the junior police officers' shelter and their personal identity, in that shelter, as a right, provides an individual person with both psychological as well as physical sanctuary.

4) A right to decent or adequate housing supports an individual's rights to work, education, health, security, and voting.

2.1 The applicant's affidavit evidence

Messrs Steven Kalali and Eliphaz Isabirye deponed affidavits in support of the motion. In their affidavits, they aver that the respondent had failed in its objective to

ensure the provision of decent housing facilities for junior police officers, notwithstanding that a substantial amount of money is allotted to the Police Force every year.

Evidence is presented that junior police officers at various barracks in the country are 'packed' into tents or have to share houses. Those homes are not supportive of a right to a family given that they consist of dilapidated structures with poor latrines and drainage. Messrs Kalali and Isabirye contend, furthermore, that the police officers are in need of a healthy and sustainable environment.

Mr Kalali's specific grievance is that, as a public-spirited human rights lawyer, it is his duty to give a voice to those who cannot speak on their own. It is his evidence that, flowing from the Constitution's National Objectives and Directive Principles of State Policy, a call for access to a decent shelter to every citizen includes provision of adequate accommodation to junior police officers as well.

Relying on the police standing orders, Mr Kalali avers that it is a right of every officer of and below the rank of an Inspector of Police to access decent accommodation. He condemns the sorry state of police accommodation, as depicted in annexure A as well as the Auditors General's report (annexures B1, B2 and B3), and takes the view that the evidence above reveals a clear violation of the constitutional right to decent shelter. He highlights the evidence of poor sanitation in several police barracks (annexure C), and uses the examples of poor accommodation in Nsambya, Nagulu and Ntinda barracks to assert that police accommodation is 'unfit [for] human [settlement] or against the right of decent housing [sic]'. The rest of the averments repeat the information contained in the grounds supporting the application.

As for Mr Isabirye, his evidence speaks primarily to his long service in the Police Force (of eight years), during which time he has been a resident of Nsambya police barracks. According to Mr Isabirye,

> [t]he houses where we are staying are poor, dilapidated, some un [sic] renovated with leakages and in some we share the accommodation despite having families as well as poor drainage in the bathrooms/latrine coupled with making some of our colleagues to sleep in the tents which situation is present through most police barracks in Mbale, Iganga, Jinja, Nitnda, among others.

Mr Isabirye paints a picture of a life of squalor in police barracks, one characterised by leaking roofs, shared unipots,[3] dilapidated metallic structures, broken plumbing pipes, and electricity shortages. He expresses frustration that despite the numerous complaints presented at police welfare meetings and to superiors, 'all our efforts have been in vain/landed on deaf ears'. Mr Isabirye identifies a nexus between citizenship and a right to decent shelter, and wonders about the inaction of those with the obligation to promote and protect police officers' rights.

In a more surreal manner, Mr Isabirye describes instances where police officers routinely face a shortage of accommodation, with the result that different families share a sitting room and bedroom in the same house. In addition, amenities of life such as toilets and water are often lacking, and there are cases where children and their parents share decker-beds. He adds: 'We are made to sleep like pigs, yet the Uganda police has a full welfare department and each year the Uganda police is allowed money in budget presented to parliament.' Mr Isabirye concludes by saying that the accommodation described above has negatively affected work output.

[3] In Uganda, the term 'unipots' is generally understood to mean metal-sheet huts which are of a temporary nature and common in barracks and construction sites.

2.2 Reply by the respondent

In reply, the respondent filed an affidavit deponed by AIGP Edyegu Richard, Director of Logistics and Engineering in the Uganda Police Force. Mr Edyegu presented evidence that the respondent has not violated the right of officers to a clean and healthy environment, and added that the key challenge in meeting accommodation needs is that annual budgets for capital development and maintenance are insufficient. He was categorical in asserting that accommodation for all eligible police officers could only be realised progressively over a long period.

Mr Edyegu also informed the court that the Police Force had adopted the following policies to address the shortage of accommodation:

1) external financing through supplier credit (this entails contractors' pre-financing for building projects);

2) disposal of prime land in the Kampala metropolitan area to raise money for enabling a budget-neutral approach; and

3) promoting a mortgage scheme for home ownership by individuals to help mitigate the housing deficit.

Striking a rather positive tone, Mr. Edyegu's affidavit refers to the findings of the Auditor General's report of 27th December 2022,[4] which presents evidence of the construction of Police Force accommodation in the Budaka, Sironko, Bukedea, Ngora, and Kalangala districts. That being noted, several averments by Mr Edyegu are considered vital. These relate to:

1) an acknowledgement of the Police Force housing shortages;

[4] Office of the Auditor General *Financial Statemen of the Uganda Police Force for the Year Ended 30th June 20222* Kampala: 2022 Government of Uganda pp 4-6.

2) the nature and total number of police houses – these stand at 7,472 units, of which 6,945 units are permanent and 527, semi-permanent;

3) the projected police personnel strength of 70,000, which will exert greater pressure on the already few housing units; and

4) the police budget allocation to the construction department, which falls short of what is required.[5]

In essence, according to Mr. Edyegu, the police housing shortage can be attributed largely to resource constraints, notwithstanding deliberate efforts to ameliorate poor access to shelter among junior police officers.

3 Issues for determination

The hearing of this application was prosecuted by way of written submissions in which the two parties cast the issues for determination differently. In the view of this court, the following are the true questions for determination:

1) Whether the Uganda Police Force has a duty to provide decent shelter to serving police officers of and below the rank of Assistant Inspector of Police (AIP)?

2) Whether this obligation has been violated?

[5] He said that the police budget for the 2021/22 financial year consisted of the following:
- total police budget: UGX 936 bn;
- wages: UGX 370 bn;
- non-wages (recurrent): UGX 322 bn;
- capital development: UGX 244 bn; and
- staff accommodation: UGX 38 bn.

The budget implies that that the Police Force would be able to construct 826 units at a cost of UGX46m every financial year, given that UGX 2 bn is also spent on renovating barracks countrywide.

3) What remedies are available to the parties?

3.1 Submissions by the applicant

The applicant began his submission by stating the foundational imperatives of human rights protection, as set out in the Bill of Rights, namely the obligation to respect, uphold, and promote human rights.[6] The applicant argues that his complaint is easier for the court to understand given the respondent's admission that access to a decent shelter is a right which is also available to its police officers.[7] The applicant insists that what remains for the court is merely to determine whether these rights, in an expanded format through other, associated rights, have indeed been violated.

For instance, it is the argument of the applicant that the right to freedom from torture, inhuman and degrading treatment, the right to a clean ecology (sic), the right to practise one's profession, as well as the rights to dignity, privacy, family, and development are intrinsically linked to the right to have access to a decent shelter.[8] In essence, he asserts that, since all these rights flow from the international human rights framework,[9] the right to access decent shelter should be understood as simply auxiliary to these other rights.

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[6] Article 20(2) of the Constitution prescribes that the fundamental and other human rights and freedoms set out in the Constitution shall be 'respected, upheld and promoted' by all organs of the state and by all people.

[7] The applicant relies on the decision in *Energo Projekt v Birgiadiar Kasirye Gwanga* High Court Miscellaneous Application No. 559 2009 para 4, which adopts the reasoning in *Samwiri Musa v Rose Achen* (1978) HCB 297.

[8] It appears that at this stage the applicant adopts the approach of 'expanding on rights' in the adjudication of human rights. The approach is discussed in detail in the later sections of this ruling.

[9] Making a case for the right to life under article 21 of the Constitution. The decisions of the Indian state of Karnataka were also cited in support of the importance attached to shelter. (Those decisions too are discussed in detail in the later sections of this ruling.)

4 Submissions by the respondent

The respondent acknowledges the applicant's complaint based on the constitutional human rights parameters under article 50(2) of the Constitution,[10] but opposes the application on the grounds that the right to decent shelter is limited by the available-resources doctrine.[11] The paragraphs below summarise these arguments.

Without discussing the constitutional directive principles of the state, the respondent argues that the Constitution, as with international human rights instruments, leaves room for redress in case of the violation of any of the guaranteed human rights. The respondent then leaps to giving the dictionary definition of the word 'shelter'[12] so as to advance the argument that the constitutional and legal framework establishing the Uganda Police Force does not in fact provide for the right to decent shelter.

The respondent seems to state that, at the very minimum, the right to decent shelter is only implied by article 45 of the Constitution as amended.[13] He correctly makes the point that this right is enjoyed by every citizen and is therefore not limited solely to low-ranking police officers.[14] He then opines that while the existing framework,

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[10] Under the general theme of enforcement of human rights by the courts, article 50(1) of the Constitution states: 'Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.'

[11] Cf. paras 7–22 of the Mr. Edyegu's disposition.

[12] *Black's Law Dictionary* defines 'shelter' as an abode that offers sanctuary or protection from danger.

[13] It is not clear why the respondent elected to rely on article 45 of the Constitution, which provides that '[t]he rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned'. In the view of this court, whereas the respondent seems to wish to smuggle in the equality-doctrine argument, article 45 merely clarifies the unclosed nature of the list of recognised rights to be enjoyed, and does not deal in any specific terms with the equality doctrine. The true application of article 45 is pointed out in later sections of this judgment.

[14] In the view of this court, the equality doctrine is exemplified by article 21(1) and (2) of the Constitution: '21. Equality and freedom from discrimination: (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect

as expressed through the police standing orders, makes provision for health, housing, equipment, welfare, and recreation for the entire Police Force generally, no concomitant obligation is imposed to provide decent shelter as a matter of right.[15]

The respondent argues that, instead, what is envisaged in the police standing orders is that officers of and below the rank of Inspector of Police must reside in police barracks except under 'unusual circumstances', in which case written permission must be sought. The use of the word 'may' in the standing orders, rather than 'shall', is cited to indicate the permissive nature of the obligation in the standing orders.[16]

After repeating what was stated in the affidavit of reply in regard to what the police management has done to ensure police officers' access to good accommodation, the respondent makes an argument around fiscal responsibility in the allocation of state resources to different sectors:

> The provisioning [sic] for adequate resources for the various organs and institutions of the government to enable them to effectively function at all levels must follow the process by which the government sets levels [sic] to efficiently collect revenue and allocate the spending of the resources amongst all sectors to meet the national objectives.[17]

In further support of the proposition above, the respondent advances the argument that provision for accommodation for police officers under the standing orders is a mere 'token' and not a right that flows from the national budgeting cycle, the nature of which depends largely depends on available resources.[18]

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and *shall enjoy equal protection of the law*. (2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, *social or economic standing,* political opinion or disability' (emphases added).

[15] See section 2 of the Police Act Cap 303.

[16] See Uganda Police Standing Orders (7th ed) 1984 as amended para 9.

[17] See p. 3 para 10 of the respondent's submission.

[18] Article 155 of the Constitution provides: 'Financial year estimates: (1) The President shall cause to be prepared and laid before Parliament in each financial year, but in any case not later than the

4. Dealing with preliminary objections

In rejoinder, the applicant raised a preliminary objection concerning the late filing of the respondent's written submissions. Since these submissions were filed without the court's leave, the applicant prayed that the arguments made by the respondents would be disregarded, expunged, or struck off the record.[19] Indeed, this court had directed both parties to file their written submissions, and it is clear from the record that the respondent filed the written submissions late.

This court has power under the law to validate a submission filed outside the time allowed by the law or set by the court.[20] The power is derived from section 33 of the Judicature Act (Cap 13) and sections 98 and 99 of the Civil Procedure Act (Cap 71), which provide that, in order to promote the administration of justice, the court should be slow to prevent a party from being heard.

Under the framework for the enforcement of human rights, no application should be rejected or otherwise dismissed merely for failure to comply with any procedure, form, or technicality.[21] Besides, submissions by either party do not form part of the evidence, but rather are sets of words usually intended to sway the court to decide in one way or the other.

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fifteenth day before the commencement of the financial year, estimates of revenues and expenditure of Government for the next financial year. (2) The head of any self-accounting department, commission or organisation set up under this Constitution shall cause to be submitted to the President at least two months before the end of each financial year estimates of administrative and development expenditure and estimates of revenues of the respective department, commission or organisation for the following year. (3) The estimates prepared under clause (2) of this article shall be laid before Parliament by the President under clause (1) of this article without revision but with any recommendations that the Government may have on them.'

[19] The argument was that the Attorney General ought to have sought for leave of court under Order 51 Rule 6 CPR and section 96 of the Civil Procedure Act, which he did not.

[20] See *Rajesh Kumar v Mahmood Somani* High Court (Commercial Division) Misc. Cause No. 62 of 2018.

[21] Section 6(5) of the Human Rights Enforcement Act 2019.

I therefore find no merits in the objections raised. It is my finding that a litigant who has shown an interest to be heard should not be condemned unheard. The applicant has not shown that he would suffer any injustice or prejudice, or that a miscarriage of justice would occur, if the respondent's submission were admitted.[22] To avoid a multiplicity of legal proceedings, and for the ends of justice to be met, I thus dismiss the preliminary objection raised by the applicant on a point of law in regard to the late filing of the respondent's submission.

5 Framework on the enforcement of economic and social rights

The debate on whether economic and social rights, such as access to a decent shelter, are justiciable in Uganda, and indeed in many other African countries, has raged over the course of time. The pertinent questions nowadays revolve around the determination of how such rights may be enforced in the context of the neatly provided state obligation. The cautionary principle is always that it is safer to enforce this right in its historical context, particularly when extremely difficult choices between competing imperatives have to be made in developing countries.[23]

Social, economic, and cultural rights have falsely been considered as non-justiciable programmatic goals that are to be achieved progressively within available resources and through political processes, rather than as judicially enforceable rights of immediate application.[24] Admittedly, one of the most serious challenges to the realisation of economic and social rights is the vagueness of some of the obligations

[22] Article 126(2)(e) fortifies my decision in this regard. The provision establishes a popular justice system limiting undue regard to technicalities.
[23] *Minister of Health and Others v Treatment Action Campaign and Others* (No. 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002) p. 19.
[24] Aulona Haxhiraj, 'Judicial Enforcement of Economic, Social and Cultural Right' *Academicus, International Scientific Journal*, pp. 221–229.

imposed on state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its treaty-monitoring mechanism.[25]

For instance, article 2(1) of the ICESCR establishes the concept of progressive realisation of socio-economic rights,[26] as compared to article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), which obliges each state party to respect the rights and ensure their immediate enjoyment by all individuals.[27] A comparison of the two provisions shows that the ICCPR imposes an immediate obligation on state parties to maintain a defined standard, whereas the ICESCR makes the realisation of economic and social rights merely promotional and a matter very much for the future.

The above notwithstanding, the right to an adequate standard of living is recognised under both article 25 of the Universal Declaration of Human Rights and article 11 of the ICESCR. I hasten to add that all human rights are universal, indivisible, interdependent, and interrelated.[28] On several occasions, the Constitutional Court has also stressed that the Constitution must be read as a whole and that no particular provision should be read in isolation or destroy another.[29]

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[25] Uganda ratified the ICESCR on the 21stday of January 1987.

[26] Article 2(1) of the ICESCR provides that each state party 'undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the Covenant by all appropriate means'.

[27] In terms of article 2(1) of the ICCPR, each state party 'undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant'.

[28] The universality, indivisibility, interdependence, and interrelatedness of human rights were restated at the Vienna Conference in 1993. The Vienna Declaration enjoins that there be a global resolve to 'treat human rights globally in a fair and equal manner on the same footing, and with the same emphasis'. In addition, the Bangalore Declaration and Plan of Action suggests that, by concentrating on the familiar path of civil and political rights to the exclusion of economic, social and cultural rights, lawyers and judges seem to ignore the opportunities as well as the challenges presented by the ICESCR.

[29] See, for example, *Paul Kafero and Another v The Electoral Commission & Another* Constitutional Petition No. 22 of 2006).

The fact that the realisation of economic and social rights is dependent on available resources, is a weakness that may be exploited by many governments around the world without the political will to ensure respect for human rights. All the same, in cases when particular groups disproportionately bear the brunt of inadequate housing and living conditions, the protection of such vulnerable people must be the foremost imperative in all conclusions emerging for the provision of socio-economic rights.[30] For example, Uganda could learn valuable lessons from the protection afforded to housing rights of women in article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and article 24 of the Convention on the Rights of the Child (CRC), which provides a clear example of the need for an integrated approach to the rights of children to health, adequate living conditions, and adequate environmental conditions.[31]

In the pleadings and arguments filed on record, the applicant seems to struggle to articulate the point around what the right to a decent shelter might entail. Along the way, he merely throws about information from the international human rights framework in a manner that is difficult for this court to decipher. In the paragraphs below, I deal first with the various approaches that are usually adopted in the enforcement on socio-economic rights in countries of lesser means.

5.1 The Human Rights Committee's approach

The easiest route in the enforcement of socio-economic rights remains the one taken by the United Nations Committee on Social and Cultural Rights. Notwithstanding

[30] UN Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kathari, UN Doc. E/CN.4/2002/59, 2002

[31] Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raqel Rolnik, UN Doc. A/HRC/19/53, 2011.

all its weaknesses as pointed out in numerous scholarly writings, the Committee's guide remains the best point of reference there is. The task of the Committee is to monitor state parties' compliance with human rights obligations in the enforcement of socio-economic rights. The Committee takes the view that where a state party has a population in which large numbers of people are deprived of the essentials of life, such as basic shelter and housing, the 'minimum core content' that considers the country's resource constraints is a good point of reference. The main considerations, according to the Committee, inevitably become the following:

- whether the steps taken by the state party are necessary;
- whether the steps taken are in tandem with, and limited by, the available resources;
- a demonstration that every effort has been made to use all the resources that are available at a state party's disposal; and
- an assessment if the *correct priorities* [emphasis added] have been set.[32]

5.2 Comparative approaches

Elsewhere on the African continent, the approach has been that socio-economic rights such as a right to shelter are not in fact available and instantly on demand but rather flow from the broader ideal of distributive justice. [33] The case of *Government of the Republic of South Africa and Others v Grootboom and Others,*[34] a case concerning the threatened eviction of people in a squatter settlement from a private

[32] See General Comment No. 3 on the nature of the state parties' obligation under article 2 para 1 12/12/90 para 10.
[33] *Minister of Health and Others* p. 22 at para 32.
[34] Cited as (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

property, is considered to be of persuasive value. In this case, many poor persons without shelter had waited for long for low-cost housing but without any success.

In answering the question of whether the state of South Africa had complied with its obligation to provide access to adequate housing as a right, the High Court in *Grootboom* held that the state had 'taken reasonable legislative and other measures within its available resources to achieve the progressive realisation of [this right]'.[35] The Court also rejected the notion that 'minimum core content' entitled persons to adequate housing as a right by holding that the provision of any shelter, rudimentary as it may appear, sufficiently discharges the state party's obligation. On appeal, the issue turned around South Africa's obligation of respecting, protecting, promoting and fulfilling the right to 'access to adequate housing',[36] and involved clarifying what the phrase 'core minimum content' means.

The *Grootboom* decision was taken a step further when the South African Constitutional Court introduced the concept of 'meaningful engagement' in *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg*

[35] *Ibid*., p. 11 para 14.
[36] *Ibid.,* p. 17 para 20. See also article 11(1) of the Covenant, which provides: 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.'

v City of Johannesburg and Others,[37] and thus carried forward these debates.[38] All of the decisions above underscore that economic and social rights are about the duty of government to attend, as a matter of priority, to the basic needs of the poor. They are all authority for the view that the right of access to housing cannot be interpreted in isolation, since there is a close correlation between it and other socio-economic rights. These rights must be considered as interrelated, interdependent and mutually supportive.

5.3 The meaning of 'minimum core content'

'Minimum core content', as understood by the Constitutional Court of South Africa in *Grootboom*, is 'the floor beneath which the conduct of the state must not drop if there is to be compliance with the obligation … a "minimum essential level" that

[37] [2008] ZACC 1; 2008 (5) BCLR 475 (CC); 2008 (3) SA 208 (CC). In that case, the municipality was acting in response to a request by developers to secure vacant possession of certain properties. The properties were overcrowded, unhygienic and unsafe apartment blocks in or near central Johannesburg, and the owners wished to have the buildings cleared for development purposes. The Court introduced the concept of 'meaningful engagement' between the occupiers and the city as a major precondition for determining whether an eviction order is just and equitable. In this way, the Court introduced a better solution to the housing conundrum by balancing competing claims through getting the parties themselves to find functional solutions according to their respective needs and interests, with the Court establishing the parameters of what is just and equitable.

[38] In *Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others* [2008] 5 BCLR 475 (CC) at paras 17–18 the decision of the court was that the state was obliged to provide temporary shelter for people who are unable to find shelter. The Court asserted that the absolute priority must be the principle of upholding human dignity. It also placed an immediate obligation on the government to incrementally upgrade informal settlements through the Upgrading Informal Settlements Programme (UISP). Moreover, the Court's judgment enhanced the Emergency Housing Policy (EHP), which is applied by the state when people are threatened by unsafe buildings. The court also clarified the need for consultation and meaningful engagement and prioritised the rights of vulnerable groups by asserting that all parties in the engagement must act with reasonableness and that no party may act in an intransigent manner or make unreasonable, non-negotiable demands. *Thubelisha Homes and Others v Various Occupants and Others* (CCT 22/08) ZACC 16; 2009 (9) BCLR 847 the decision of the court placed an immediate obligation on the government to incrementally upgrade informal settlements through the Upgrading Informal Settlements Programme (UISP).

must be satisfied by the states parties'.[39] According to the Court, while the asymmetrical nature of the needs of the different segments of the population is key, the general guidance is that in all circumstances it is better to adopt a reasonable test.

The definition of minimum core content is, by its nature, evolving, and the accepted mandatory minimum level may change over time; however, it remains so that the state must secure the minimum existential conditions that make a dignified existence possible. This duty is grounded in the principle of human dignity in conjunction with the welfare state principle. Article 2(1) of the ICESCR refers to the progressive realisation of the rights enshrined in the treaty and acknowledges, in this regard, that in many cases the full realisation of these rights will require gradual implementation.

However, the Committee on Economic Social and Cultural Rights has made it clear that not every duty arising from the obligations set out in the Covenant is qualified by the idea of progressive realisation and that some duties have immediate effect. While certain of the duties associated with economic and social rights may be qualified by the concept of progressive realisation, thus according the state some leeway in which to decide on the proper timeframe and allocation of resources according to their availability, other duties must be complied with immediately by the state – and no delay is permissible.

To use a familiar Ugandan expression, the minimum core content is comparable to a basement or starting-point from which an assessment for compliance with the bare minimum obligation must begin. Thus, according to the *Grootboom* decision, the minimum core content of the right to adequate shelter

> 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

[39] See *Grootboom and Others* (n 33), p. 26 at para 31.

> financing of all of these, including the building of the house itself … there must be land, there must be services, there must be a dwelling ... State policy dealing with housing must therefore take account of different economic levels in our society.[40]

The African Commission's Principles and Guidelines identify three minimum core obligations in relation to the right to adequate housing.[41] In the present case, only the third minimum core obligation is applicable. The obligation provides that all Member States of the African Union must ensure at the very least basic shelter for everybody. The guidelines also provide that the human right to adequate housing is the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity. It includes access to natural and common resources, safe drinking water, energy for cooking, heating, cooling and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage, and emergency services.

6 Adopting the minimum core content

In answering the question of whether the respondent has complied with the obligation of respecting, protecting, promoting, and fulfilling the right to access decent shelter, it becomes important to examine what legislative and other measures are in place. The phrase 'other measures' here incorporates both legislative and policy interventions. These are discussed briefly in the paragraphs that follow, beginning with a look at the legal framework on proper housing in Uganda.

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[40] *Grootboom and Others* (n 33) p. 29 at para 35.

[41] African Commission on Human and Peoples' Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. Available at https://achpr.au.int/index.php/en/node/871 available on 27-02-02024

6.1 Access to decent housing in Uganda

Under Uganda's constitutional scheme and legislative frameworks, the High Court is vested with the power to hear and determine disputes by any person or organisation that may allege any human rights violation for a remedy.[42] It is conceded that any court will almost always face procedural challenges in enforcing a right to access a decent shelter in the absence of a specific and separate right in the Bill of Rights. It is likely that within the scope of broader welfare state aspirations, the Constitution merely promises 'access to a decent shelter' as a bare minimum.[43]

The wording of this promise clearly suggests that the drafters of the Constitution were aware that it would be difficult to promulgate a more concrete form of access to a decent shelter as a right. According to the directive principles of the state (or what I call 'state promises'), it is required that all laws and policies must, as governance tools, be agreeable with the above constitutional aspiration.[44]

[42] Article 50 of the Constitution and section 4 of the Human Rights (Enforcement) Act vest the High Court as well as magistrates' courts with the power to hear and determine any alleged human rights violations.

[43] See National Objectives and Directive Principles of State Policy (NODPSP) No. xiv of the Constitution of Uganda, which provides as follows: 'The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that – (a) all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.'

[44] Article 8A provides as follows: 'National interest: (1) Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy. (2) Parliament shall make relevant laws for purposes of giving full effect to clause (1) of this article.'

The approach of the Constitution, therefore, is to make it possible for a court to expand on this promise in terms of the right to life,[45] human dignity,[46] privacy,[47] and a clean and healthy environment.[48] For example, the promise of a decent shelter can be expanded upon to mean a right to live freely, alone and in peace. It can also be expanded to mean that without a decent shelter, there is no way a human being could enjoy life and lead a life of dignity. [49] Indeed, this view finds support in the decision of the Supreme Court in *Attorney General v Salvatory Abuki.*[50] In this case, Wambuzi CJ as he then was stated:

> [t]o my mind the act of rendering a human being homeless is both inhuman and degrading. A clear distinction in behaviour between the human being and the wild animal, is that the human lives in a home while the beast lives in the wilderness. In my opinion, throwing a person out of his/her home or habitat, to roam and live at large, is to dehumanise and degrade such person. I think the dramatic illustration of this, is the daily pitiful sight, not only in Uganda, but the world over, of persons displaced from their homes, whether by natural disasters or human engineered conflicts. Such people are not only traumatised by their experiences, but they are debased by the fact of being thrown from their homes, because a home is the anchor of human dignity. Whether by the multitudes or individually, being made homeless is dehumanising and degrading.

[45] Article 22(1) provides that '[n]o person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court'.
[46] Article 24 provides that '[n]o person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment'.
[47] Article 27(1) provides that '[n]o person shall be subjected to – (a)unlawful search of the person, home or other property of that person; or(b)unlawful entry by others of the premises of that person'.
[48] Article 39 provides that '[e]very Ugandan has a right to a clean and healthy environment'.
[49] C Mbazira 'Reading the right to food into the African Charter on Human and Peoples' Rights' *ESR Review* Vol. 5(1) pp. 1–7.
[50] Cited as (Constitutional Appeal No. 1 of 1998) [1999] UGSC 7 (25 May 1999).

This approach was also adopted by the African Commission on Human and Peoples' Rights. The African Charter is silent on the right to adequate housing, but to fill this gap, the Commission, drawing on the principle of the interdependency of rights, has creatively interpreted other rights in the Charter to include a right to adequate housing. In *Social and Economic Action Centre and the Centre for Economic and Social Rights v Nigeria (SERAC)*,[51] the Commission stated that although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under article 16 of the Charter, the right to property, and the protection accorded to the family, forbids adversity to shelter because property, health, and family life are adversely affected. It noted that the combined effect of articles 14, 16, and 18(1) reads into the Charter a right to shelter or housing, which in the case above Nigeria had apparently violated.

6.2 Legislative and other measures

In Uganda, Parliament has followed through on the Constitution's commitment to access to a decent shelter by enacting several legislative measures. The first of these is the Physical Planning Act 2010, which declares the entire country a planning area. This law also centrally regulates all physical and development plans in the country.[52] Secondly, there is the Land Act Cap 227, which mandates that all land in Uganda be used in accordance with physical planning frameworks.[53] A third measure is the

[51] Communication 155/96, 15th Annual Activity Report of the ACHPR (2002); 10 IHRR 282 (2003). The case concerned alleged violations by the Nigerian government of rights in the African Charter due to condoning and facilitating the operations of oil corporations in Ogoniland; this gave rise to protests and, resultantly, to fatalities and the destruction of homes, crops, and farms.
[52] This law repealed the Town and Country Planning Act (13 September 1951), which previously regulated 'the orderly and progressive development of land, towns and other areas, whether urban or rural'.
[53] See section 45 of the Land Act (LA) Cap 227.

regulation of building standards in urban areas to ensure that no building shall be erected there unless it conforms to strict, specific standards.[54]

The right to access a decent shelter is equally supported by the enactment of the Condominium Property Act 2001, which supports collective property ownership and use, especially so by persons of middle-income status.[55] Finally, there is the Kampala Capital City Authority Act 2010, which centralises the city's functions so as to facilitate efficient use of resources; here, a risk exists, however, that many Kampala city dwellers might not know exactly which order of government is vested with the mandate to provide access to decent housing as a right.[56]

In addition to the legislative schemes above, a host of further measures are in place, such as Uganda's Urban Policy which, like other policy interventions, aims to transform urban areas by ensuring that they are made 'livable' in an organised and inclusive way. The policy notes the challenges posed by high rates of urbanisation (20 per cent of the population live in urban areas, a figure projected to increase to 50 per cent by 2050), but points out the major contribution that proper urban planning can make to a country's economic development. The policy identifies three problem

[54] See section 13 of the Public Health Act and sections 34–45 of the Building Control Act 2013. These laws may be discussed together with section 3 of the National Environmental Act, Cap 153, but mainly in the context of the protection of the right to a decent environment.

[55] See section 2 of the Condominium Property Act 4 2001. However, Private Sector Foundation Uganda 'Review of the Legal Framework for Land Administration: Final Draft Issues Paper – Review of the Condominium Property Act 2001' 2010 pp. 3–4 finds the framework too rigid to respond to the modern mixed-development needs of urban dwellers.

[56] The long title of the Act in part provides that purpose of the law is 'to provide, in accordance with article 5 of the Constitution, for Kampala as the capital city of Uganda; to provide for the administration of Kampala by the Central Government; to provide for the territorial boundary of Kampala; to provide for the development of Kampala Capital City; to establish the Kampala Capital City Authority as the governing body of the city …; to provide for the devolution by the Authority of functions and services; to provide for a Metropolitan Physical Planning Authority for Kampala and the adjacent districts …'

areas in the country's urbanisation: slums and informal settlements; poor sanitation and waste management; and environmental degradation.[57]

6.3 Reasonableness of interventions

I have already noted that the obligations of the respondent concerning the right to adequate housing are, in terms of our country's human rights framework, to respect, protect, promote, and fulfil it. These four levels of obligation, which entail a combination of positive and negative duties, were recognised by the African Commission in the *SERAC* case above.

The state's obligation to respect housing rights requires that it, and by extension all of its organs and agents, abstain from carrying out, sponsoring, or tolerating any practice, policy or legal measure that violates the integrity of individuals or infringes upon their freedom to use those material or other resources available to them in a way that they find most appropriate in satisfying their personal, family, household

[57] See Ministry of Lands, Housing and Urban Development, Uganda National Urban Policy June 2017. According to its executive summary, the major focus areas of the policy are 'high population growth, urban poverty, poor waste management, unemployment, environmental degradation, urban safety and security, inadequate urban infrastructure and services, inadequate transportation and traffic management, poor urban governance, and inadequate urban financing …'. The above policy is supported by various other government polices, such as the National Vision 2040, which takes the view that planned urbanisation enhances 'livability'; the National Development (Planning) II, the major themes of which are commerce and industrialisation, with a focus on the control of urban sprawl and increased density settlement; the National Land Use 2007, which sets the country's direction on land use, planning, and management; the National Local Economic Development Policy (LED) 2014, which seeks to deepen decentralisation through inclusive growth; the Nation Population Policy (NPP) 2008, which establishes a leaner relationship between population and development processes; the Public Private Partnership Policy (PPP) 2010, which aims at mitigating the dangers of the free market system through improved quality of services; the Decentralization Policy (2010), which focuses on inclusive development and grass-roots democracy through subsidiarity; the National Housing Policy (2016), which advocates for affordable housing in order to improve quality of life; the National Slum Upgrading Strategy (NSUS) 2008, which links the upgrading of impoverished areas to national development; and the Sector Strategic Plans, the coordinate role of which is to improve quality of services, budgeting processes, and funding.

or community housing needs. The state's obligations to protect oblige it to prevent the violation of any individual's right to housing by any other individual or non-state actors, such as landlords, property developers, and land owners; where such infringements do occur, the state should act to preclude further deprivations as well as to guarantee access to legal remedies.

That said, I should begin by noting that the state has no obligation to provide 'freebies' to the police under the guise of access to a decent shelter. The guidance of the United Nations Habitat[58] is that states should at the minimum adopt a national housing policy or plan that

a) defines their objectives for the development of the housing sector, with a focus on disadvantaged and marginalised groups;

b) identifies the resources available to meet these goals;

c) specifies the most cost-effective way of using these resources;

d) outlines the responsibilities and timeframe for the implementation of the necessary measures; and

e) monitors results and ensures adequate remedies for violations.

The states must, therefore, progressively and to the extent allowed by their available resources, prevent and address homelessness; provide the physical infrastructure required for housing to be considered adequate;[59] and ensure adequate housing to individuals or groups who are unable, for reasons beyond their control, to enjoy the right to adequate housing, with states doing so through housing subsidies and other measures. The courts in South African and elsewhere in the world have adopted a

[58] See UN Habitat, The Right to Adequate Housing Fact Sheet No. 21/Rev.1.

[59] This would include taking steps for ensuring universal and non-discriminatory access to electricity, safe drinking water, adequate sanitation, refuse collection, and other essential services.

reasonableness approach when determining whether the state has failed to observe its obligation to fulfil the right to adequate shelter.[60]

The courts have adopted the reasonableness approach as a means of giving leeway to the political branches of government to make the necessary and appropriate policy choices to meet their socio-economic rights obligations. The approach requires the courts to consider whether the measures taken are reasonable, as opposed to questioning whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent.[61] Moreover, the approach creates the ongoing possibility of challenging socio-economic deprivations in the light of changing historical, social, and economic contexts, as it is a context-sensitive approach and applied on a case-by-case basis.

In several cases, South African courts have held that the reasonableness approach requires that measures aimed at implementing housing rights must be comprehensive, coherent, inclusive, balanced, flexible, transparent; properly conceived and properly implemented; make short-, medium- and long-term provision for those in desperate need or in crisis situations and housing needs; not exclude a significant segment of society; not ignore those whose housing needs are the most urgent and whose ability to enjoy all human rights is most in peril; clearly set out the responsibilities of the different spheres of government and ensure that financial and human resources are available for their implementation; be tailored to the particular context (for example, the urban or rural context) in which they are to apply; take account of different economic levels in society, including of those who can afford to pay for housing and those who cannot; allow for meaningful or

[60] The South African Constitution provides a useful case study for evaluating the connections between reasonableness, proportionality, and economic and social rights.
[61] *Grootboom*, supra (n 33) at para 41.

reasonable engagement with the public or affected people and communities; and be continuously reviewed.[62]

7 Applying comparative principles

As understood by this court, the argument remains that the respondent has failed to provide decent shelter to junior police officers, which would constitute a violation, inter alia, of the officers' rights to decent housing, right to privacy, right to security of family life, and right to a clean and healthy environment. The picture painted by the applicant, together with the supporting affidavit by Mr Isabirye, reveals that a number of police officers reside in shelters that are indeed in less than good repair.

This evidence, however, is not enough to suggest that any police officer, or indeed any citizen at all, could come into this court at any time and after a few months walk away with the kind of shelter promised by our Constitution.[63] What the applicant should have done was to furnish this honourable court with other material evidence to prove that the respondent has unreasonably failed to provide the right to a decent shelter to junior police officers in Uganda and to the required standard. The question whether the content of the state's minimum core obligation for police officers differs from that of an ordinary citizen could have been answered had an argument been advanced along those lines.

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[62] See *Grootboom*, supra (n 33) at paras 37, 42–44; *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd and Others* [2005] 8 BCLR 786 (CC) at para 49; *Port Elizabeth Municipality v Various Occupiers* [2004] 12 BCLR 1268 (CC) at para 19; *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* [2009] 9 BCLR 847 (CC) at para 378.

[63] The oft-cited case of *Grootboom* (n 33) teaches us that, no matter the country, noble court declarations alone do not build decent houses for citizens. Mrs Grootboom, the key complainant, died eight years after the Constitutional Court passed judgement. Even with all the numerous interdicts, she could not access shelter under the order of the court because she was never further up the queue of the most deserving. See 'Grootboom dies homeless and penniless' *Mail & Guardian* (2008). Available at https://bit.ly/3wxqNwM.

7.1 The standard of reasonableness

The standard of reasonableness requires that all sectors of society, including the most vulnerable, be catered for in any given policy directed at housing, health care, food, water, social security, or education. In *Grootboom*, the court held the following propositions to be reasonable:

1) Measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise.

2) Those whose needs are most urgent and whose ability to enjoy all rights is, therefore, most in peril must not be ignored by the measures aimed at achieving realisation of the right.

3) 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.

4) The Constitution requires that everyone be treated with care and concern.

In this case, the respondent seeks to rationally explain the nature and extent of the interventions made and the specific efforts so far made in providing accommodation to its police officers. It appears that the respondent considers the steps taken so far to address to housing shortage for its forces to be reasonable and therefore capable of discharging its obligation in terms of both international law and the Constitution. It is a given that it is impossible to meet the accommodation needs of police officers all at once.

8 Final decision

I have considered evidence of the steps taken by the respondent in constructing housing units for the Naguru police barracks and other such barracks in the rest of

the country. I have also considered the strategy adopted by the respondent – namely to encourage external financing through supplier credit; dispose of prime land in the Kampala metropolitan area to raise money for creating a budget-neutral approach; and to promote a mortgage scheme for individual home ownership so as to help mitigate the housing deficit – as reasonable.

The evidence that the government has made several investments in accommodation – including in 10,000 new 'unipots', as well as in building additional apartments with separate bedrooms for adults and children – has not been contradicted, and therefore, points to reasonable intervention by the respondent. It becomes difficult, going by the evidence on record and considering the obligations that flow from the existing human rights framework – to fault the respondent.

The evidence presented is not only insufficient to support the allegations and pleadings of the applicant, but also inadequate for enabling this court to grant any of the declarations sought. For instance, the applicant's affidavits assert that enquiries were made to the responsible authorities, but no such evidence was presented before this court, barring the scanty testimony of a single police officer; furthermore, no police budget was attached, nor any evidence provided to prove misappropriation of the allocated money.

I empathise with the applicant in the present case, but because of the insufficient evidence provided, this honourable court was left with limited evidence and facts on which to hold the respondent liable for violation of the right to a decent shelter of the relevant police officers. In the result, this application must fail, and it is dismissed with no orders as to costs.

9 Obiter

Had the applicant presented verifiable evidence around fiscal responsibility, this court would have been able to make appropriate declarations in terms of priority-setting. I must therefore add that, in the future, litigants in a case like the one before me may enlist subject matter expertise perhaps in form of *amici curiae* so as to place sufficient material before the Court and in turn enable the Court arrive at an appropriate decision. I note that South Africa's rich jurisprudence in the area of Economic Social and Cultural Rights has greatly benefited from substantial evidence presented both by the parties and *amici curiae* interventions. That said, the court would do well to retrain itself from advising litigants altogether and simply decide the dispute on the evidence availed to it.

Douglas Karekona Singiza
Acting Judge
1 March 2024