PRESS STATEMENT
22 SEPTEMBER 2015

SERI PARTICIPATES IN HISTORIC FIRST DECISION OF UN COMMITTEE ON SOCIAL RIGHTS

Committee finds violation of the right to housing in Spain, and bases its conclusions on South African law

On 18 September 2015, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) considered South African and international jurisprudence in issuing its first recommendations. The Committee found that Spain violated the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR), by failing to provide effective protections and remedies to consumers in mortgage foreclosure proceedings. SERI, with partners from the Economic, Social and Cultural Rights Network (ESCR-net), was admitted to the case as third-party interveners.

The case, I.D.G. v. Spain (Communication 2/2014), marks the first time in history that the Committee has considered an individual complaint filed under the Optional Protocol to the ICESCR, which allows individuals to lodge complaints directly to the committee for violations of the covenant.

The case concerned a homeowner whose home was auctioned when she fell behind on payments during the economic crisis in Spain. The homeowner only became aware of the case against her after a judgment was handed down, when the sheriff delivered a letter notifying her of the impending auction of her home. When she took the matter to the Spanish Constitutional Court as a housing rights violation, her case was dismissed. She then took the matter to the UN Committee. The committee found that state parties must ensure effective remedies for homeowners who have defaulted on mortgage payments, and to ensure that appropriate measures are taken to ensure personal notification of foreclosure proceedings.

In making its recommendations, the Committee referred extensively to the South African jurisprudence developed around foreclosure proceedings.

Among the cases the Committee relied on in its decision are Gundwana v Steko Development, where the Constitutional Court held that there must be judicial oversight over cases of foreclosure against residential property; Kubyana v Standard Bank, where the Constitutional Court found that banks must take every reasonable effort to notify the debtor of their payment default; and Absa v Lekuku, where the High Court in Johannesburg held that the bank must take reasonable steps to ensure that the debtor is aware of the court proceedings against her through personal service of the summons, if possible. SERI was centrally involved in each of these cases, acting for the appellant in Gundwana (read more on the case here) and Kubayna (read more on the case here), and as amicus curiae at the request of the Court in Lekuku (read more on the case here).

South Africa ratified the ICESCR in January 2015. SERI calls on the South African government to join the 22 other states which have ratified the Optional Protocol, under which the Committee operates. This will solidify South Africa’s reputation as a world leader in the protection of socio-economic rights.

Contact:

Nomzamo Zondo, director of litigation at SERI: 011 356 5868/ 071 301 9676/ nomzamo@seri-sa.org