Debate

An overview of public interest litigation initiated by social movements in South Africa

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Abstract

A variety of South African social movements have been active in driving social change, both during the anti-apartheid struggle and during the past 25 years of our constitutional democracy. Some of this activism has resulted in public interest litigation that addresses historical disparities. A selection of cases is used to illustrate the role of social movements in initiating public interest litigation in the South African courts, as well as an emerging jurisprudence around class actions. However, the limitations of the law should be recognized and litigation should not be seen as the only means of lawful political and socio-economic struggle.

Keywords: Social movements, public interest litigation, human rights, South Africa.

Una descripción general de los litigios de interés público Iniciados por movimientos sociales en Sudáfrica

Resumen

Una diversidad de movimientos sociales sudafricanos ha estado activa impulsando el cambio social, tanto durante la lucha contra el *apartheid* como durante los últimos 25 años de nuestra democracia constitucional. Parte de este activismo ha resultado en litigios de interés público que abordan las disparidades históricas. Se utiliza una selección de casos para ilustrar el papel de los movimientos sociales en el inicio de litigios de interés público en los tribunales sudafricanos, así como una jurisprudencia emergente en torno a las acciones de clase. Sin embargo, las limitaciones de la ley deben reconocerse y los litigios no deben verse como el único medio de lucha política y socioeconómica legal.

Palabras clave: Movimientos sociales, litigios de interés público, derechos humanos, Sudáfrica.

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Public interest litigation in this context is best understood as the use of litigation to pursue objectives that extend beyond the interests of individual litigants in a case and that are normatively justifiable …
(Brickhill, 2018b: 13).

1. Introduction

Public interest litigation (PIL) can be described as the strategic and effective use of litigation to promote social change (Budlender *et al.*, 2014). It is a dynamic and topical approach to transformation that finds relevance not only with legal practitioners or legislatures, but also with academia, civil society, and national, regional and international communities and movements.[2] Jaichand points out that "…bringing selected cases to the courts is not the only public interest strategy, but it could include law reform, legal education, literacy training and legal services" (2018: 128).

Section 38 (d) of the Constitution of the Republic of South Africa (1996) provides for the right to seek relief from the courts if acting in the public interest. Therefore, South African's have the right to act in the "public interest". Amongst others, this right may serve to correct the entrenched racially, socially and economically divisive laws and practices that emanate from South Africa's past. In light of South Africa's history, not only did apartheid provide a vast platform for public interest litigation as a tool against discriminatory laws, the practice of PIL continues as supported by the values, objectives and principles that govern our transformative constitutional democracy.

There are numerous human rights in the Constitution that underpin socio-economic transformation in the public interest, including section 26, the right to housing and section 27, the right to healthcare, food, water and social security. Most of these rights, in some way or another, have been litigated in South African courts, some of which are discussed below.

While there is no specific legislation that deals with section 38(d), South Africa has prominent cases where social movements propelled PIL and where the courts, specifically the Constitutional Court (CC), engaged with the meaning of "public interest" and the concomitant development of factors and/or criteria to determine such interest (Swanepoel, 2016). This contribution begins by interrogating the importance of social movements –in their many guises– and public interest litigation in the South African context, and how the former has embarked on an agenda of realising the rights and values of the Constitution in order to ensure a better life for all-not only for a select few. The focus is thus on human rights-based activism

and litigation in a democratic context and a developmental state. This is followed by a brief overview of a selection of cases that illustrate the role of social movements in initiating public interest litigation in the South African courts. Lastly, we consider the changing tides of public interest by discussing how social movements are evolving and how "public interest" cases are being reshaped and reimagined in an ever-changing global context.

2. Importance of social movements and public interest litigation in South Africa

Social movements have typically been defined as collective actors constituted by individuals who understand themselves to share some common interest and who identify with one another, at least to some extent. Social movements are chiefly concerned with defending or changing at least some aspect of society and rely on mass mobilization, or the threat of it, as their main political sanction (Stammers, 1999: 984).

South Africa is no stranger to social movements in the form of public protests or "social activism". From pre –to post– democracy, protest action has been at the forefront of political and social change. Brickhill discusses PIL during the apartheid era as a prolific but largely uncoordinated, reactive, a defensive response to the laws at the time, and largely dependent on individual lawyers (2018: 37).

In the 1980s, community-led social movements began through trade unions, churches and political activists who collaborated with civil society organisations and PIL firms such as the Legal Resources Centre (LRC) or Centre for Applied Legal Studies (CALS) to initiate litigation on behalf of the public (Brickhill, 2018a). Litigation of this nature was oft a last resort because of an unwillingness by the state to properly engage with affected communities. Further, movements in the public interest also lost momentum especially as litigation became a drawn-out process; it then fell on the shoulders of the community to ensure that social mobilization was maintained (Cote & Van Garderen, 2011).

Public interest litigation found new purchase in South Africa following the constitutional dispensation and has become far more organised as a result of the spaces created by democracy to address human rights concerns. Thus, the importance of section 38 of the Constitution, which provides for substantial societal transformation and the creation of *locus standi* (standing) for potential litigants, cannot be underestimated (Swanepoel, 2016). Much of the discourse surrounding public interest litigation

in South Africa focuses on who has standing to bring a matter before the courts i.e. who may speak of the public's interest.

In August 1998, the South African Law Commission (SALC) filed a report on "the Recognition of class actions and public interest actions in South African law", known as *Project 88,* detailing the importance of public interest cases, access to justice, legal standing, and the creation of legislation to govern public interest actions. This was an extensively researched and well-compiled report that aimed to give effect to section 38 by outlining streamlined, regulatory processes and procedures that would govern public interest and class action cases, and potentially lighten the load not only on the judiciary but also on the state.

The report also created the distinction between public interest actions and class action in order to provide more clarity: "*Class action* means an action instituted by a representative on behalf of a class of persons in respect of whom the relief claimed and the issues involved are substantially similar in respect of all the members in the class…" (Project 88: vi).

> *Public interest* action means an action instituted by a representative in the interest of the public generally, or in the interest of a section of the public, but not necessarily in the representative's own interest. Judgment of the court in respect of a public interest action shall not be binding (*res judicata*) on the persons in whose interest the action is brought. (Project 88: v)

The Commission went further by also highlighting the importance of the distinction in the table below as both actions serve different purposes:

Public Interest Action	Class Action
Any person, irrespective of whether or not he or she has a direct interest in the relief claimed, may institute the action.	Any person, whether a member of the class or not, may apply for leave to institute the action as a class action.
The action must be identified as a public interest action.	The action must be certified as a class action in order to proceed as a class action.
The court appoints a representative to prosecute the action.	The court appoints a representative to prosecute the action.
The action proceed as an ordinary action.	The court may determine its own procedures.
	Some form of notice to absent class members is usually required.
	The court may determine the common issues and give judgment on the common issues.
	The court may determine the individual issues and give judgment on the individual issues.
Judgment is not **res judicata** against all interested parties. The doctrine of **stare decisis** makes public interest actions effective.	Judgment is **res judicata** against all class members who have not opted out.

Source: South African Law Commission (1998).

Therefore, it becomes clear that class actions are binding (*res judicata*) on the particular class of people, while public interest actions are not. This distinction is still used by South African courts when dealing with such matters. Further, before individuals can approach the courts in a class action, permission must be sought from the court confirming that an action may be brought *en masse* and those bringing the matter may represent the entire class of people, known as a "certification application". Project 88 was presented to the then Minister of Justice but unfortunately, the recommendations were never implemented and the courts were left to develop jurisprudence on public interest litigation based on the common law. However, the report remains a frequently utilised resource for the judiciary (Jephson, 2016).

Apart from the abovementioned definition provided by the SALC, there is still no single universally accepted definition of "public interest". One cannot have PIL without "public interest"–something has to fuel the fire. *Ferreira v Levin*[3] the CC laid out the following test–.

> whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to

> which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the court and the opportunity that those persons or groups have had to present evidence and argument to the court. These factors will need to be considered in the light of the facts and circumstances of each case. (1999: para. 234)

However, these factors are not rigid. Practically, a social movement does not become litigious without some form of genuine public outcry or observance/experience of a societal injustice. The SALC points out such importance by stating that: "Public interest litigation also helps enhance judicial decisions…the willingness of courts to listen to interveners is a reflection of the value that judges attach to people…our sense that participation is necessary to preserve human dignity and respect" (Project 88: 23).

Budlender, Marcus & Ferreira (2014) discuss the importance of strategy to PIL, highlighting four strategies necessary for social change namely,

- public information campaigns to raise awareness.
- the right timing and planning.
- providing advice to citizens outside litigation.
- use of social mobilisation and advocacy through communities and litigation. (pp. 96-108).

Moreover, these strategies have to be in alignment with those of the organisation in terms of time, resources, potential of success and so on.

> Most have adopted the perspective of courts (or court-watchers), rather than of the activist-lawyers who ran the cases or of the individuals, communities, social movements and other clients whom they represented. In other words, court decisions and the law are analysed in great detail, without much attention being paid to the social actors who use the law, their tactics and strategies, and empirical evidence of the effect of their work. (Brickhill, 2018a)

Admittedly, what is often seen in South Africa is the emphasis on and/or responsibility of social movements, non-governmental organisations and civil society to advocate for socio-economic change, which results in public interest litigation. Non-governmental organisations (NGOs), community advice offices, justice centres and legal clinics are important to PIL. South Africa has on average over 400 NGOs (Wango, 2019).

NGOs and PIL firms such as the LRC, founded in 1979 by former Chief Justice Arthur Chaskalson and Felicia Kentridge, is an organisation that fought the injustices of apartheid. LRC challenged, and still challenges, pertinent societal issues that affect South Africans with an aim to impact litigation, law reform and bring about participation and development (LRC, 2019). Others include the Centre for Applied Legal Studies, founded by Professor John Dugard in 1978; and Lawyers for Human Rights in 1979, which began as an association for lawyers (Brickhill, 2018b). At the heart of almost all of these endeavours, is the need for social change through law. However, the law, like all things, has its limitations.

Civil society and non-government organisations serve as access points in providing practical, legal advice to the public and enabling less privileged communities to have a platform whenever issues or public outcry arise, as the courts cannot litigate on hypothetical issues or causes that have not been brought before the judiciary. Different forms of public interest litigation have been employed to achieve different goals. These organisations are also critical to public interest litigation as they often have specialist areas of interest that assists communities and social movements in knowing which organisation to approach. Examples include:

Public Interest Organisations:	**Focus areas:**
Centre for Child Law	Promoting the best interests of children
Centre for Environmental Rights	Promoting the realization of section 24-environmental rights.
Corruption Watch	Anti-corruption and transparency
Freedom Under Law	Development of democracy, rule of law, accountability and judicial independence
Helen Suzman Foundation	Good governance, accountability and transparency
National Movement of Rural Women (formerly Rural Women's Movement)	Women's issues on land, traditional issues, gender and development
SECTION27	Healthcare, education, governance and accountability
Socio-Economic Rights Institute of South Africa (SERI)	Protection and advancement of socioeconomic rights (housing, water and sanitation, healthcare, fair labour practices, electricity, environment, and education).

South African Litigation Centre	Criminal Justice, children's rights, rule of law, human rights, property, refugee rights, LGBT rights, sex workers rights, disability rights, sexual and reproductive rights.
Students for Law and Social Justice	Human rights, prevention of discrimination, social justice and rule of law.
Women's Legal Centre	Equality, african feminism and gender advocacy.
Women + Men against Child Abuse	Child protection and children's rights

Source: Own elaboration.

Particular social movements, such as the Treatment Action Campaign (TAC) began as a response to government's inadequate reaction to the HIV/AIDS crises. The Landless People Movement was established to address the slow pace of land reform and redistribution. Abahlali baseMjondolo (translated means "shack dwellers") movement was formed to ensure the basic rights of the poor to land and proper housing. The Right2Know Campaign aimed to address access to information and the protection of freedom of expression. The Equal Education Movement established in 2008 advocates for quality and equal education. Sonke Gender Justice advocates for the movement towards gender equality, gender justice, gender transformation and the resistance of patriarchy. The Mining and Environmental Justice Community Network of South Africa (MEJCON-SA) is a network of community organisations advocating for protection of environmental and human rights against irresponsible mining activities.

Other social movements in South African include:

- The Mandela Park Backyarders based in the Western Cape.
- Sikhula Sonke women's farmworkers union based in the Western Cape.
- The South African Unemployed Peoples' Movement based in Durban, KZN and in Grahamstown in the Eastern Cape.
- The Poor People's Alliance, a national alliance of grassroots movements.
- The Social Justice Coalition based in the Western Cape.
- Reclaim the City based in Cape Town.
- Soweto Electricity Crisis Committee in Johannesburg.
- Khulumani Support Group, a national movement for survivors of apartheid and their families.

These movements tend to maintain close ties with each other as concerns of social justice involve a variety of socio-economic issues that necessitates the involvement of more than one particular movement/organisation. Furthermore, one also begins to see the importance of PIL strategy to jurisprudence, as NGOs, SCOs and social movements are allowed by the courts to intervene on public interest matters during litigation processes as *Amici Curiae* (friends of the court) in order to provide evidence-based analysis and clarity on issues that affect public interest (Spies, 2015).

But all is not smooth sailing for social movements and activist lawyers in South Africa. Cote and Van Garderen (2011) point out that social movements still face challenges especially in the areas of funding, resource allocations, social approval, mobilisation, political circumstances, employee turnovers and the lack of experience available in the transition from a movement into litigation. Funds provided to NGOs and CSOs contribute to minimise the costs involved in PIL. Organisations can often face backlash from governmental counterparts regarding funding because of the ties created by international subsidisation.

Similarly, it is also the case that state counterparts may become adversaries because PIL initiated by social movements impacts development plans and state budgets. Therefore, there is a constant balancing act between internal and external challenges that must be considered by organisations themselves before the movement even reaches litigation stage. Social movements tend to work outside the formal institutions of power, but some use the courts tactically to further their causes.

3. Public interest litigation cases in South Africa

South Africa has seen a fair share of cases involving issues of public interest and addressing historical socio-economic imbalances. In this section we discuss a few of the more effective cases of public interest litigation.

3.1 *Minister of Health v Treatment Action Campaign (TAC)*[4]

In the build up to this case, the Treatment Action Campaign as a new social movement raised awareness on the government's inadequate response to the HIV/Aids epidemic, the AIDS denialism of the then President Thabo Mbeki, and the fulfilment of the rights in section 27 of the Constitution. Section 27(1) (a) and (2) provide for access to healthcare service, including reproductive healthcare and places an obligation on the state to take reasonable measures to realise this right. Access to Nevaripine, an anti-retroviral

drug used to prevent mother-to-child transmission of HIV, was not made available by the government in state-owned hospitals even though it was made freely available to the government for a 5-year period. The government made a policy decision to limit access to the drug to certain areas only. It was however, available to mothers in private hospitals.

The TAC sought through public interest litigation to make access to these life-saving drugs available in the public health sector. NGOs and civil society began mass mobilisation, calling for the protection of the lives of pregnant women and their babies.[5] It also initiated unlikely activism when those considered "privileged" refused to take the anti-retroviral drugs accessible to them until those who had no access were given the same opportunity. Pharmaceutical companies who wanted to protect their Intellectual Property rights faced opposition from various organisations and the medication was even smuggled into the country at a cheaper rate than usual (Jaichand, 2018). This case essentially highlighted a social movement to protect the indigent and vulnerable of society. The impact was seen by the government changing its policy on the accessibility of ARVs, which saved countless lives.

3.2 *Government of the Republic of South Africa and others v Grootboom and others*[6]

This case involved residents living in an informal settlement in the Western Cape with no water, electricity or sanitation which led to illness within the community. The community members decided to move into a privately-owned vacant land which they were unaware was earmarked for development of low-income housing. They were then forcibly evicted with no alternative accommodation under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) of 1998. This case sparked the obligation of the state to provide adequate housing under section 26 of the Constitution. An obligation defined by 3 elements: (a) the obligation to "take reasonable legislative and other measures"; (b) "to achieve the progressive realisation" of the right; and (c) "within available resources" (2001: para 38).

The court in *Grootboom* found that the measures taken by the State to provide housing were unreasonable because no provision was made for shelter for homeless people. Such inaction on the part of the government was unreasonable because it ignored the plight of the marginalised members of society. However, the obligation of the State towards the realisation of the rights pertaining to housing and other social and economic rights, is qualified by resources-as mentioned above. However, the qualification does not

mean that the State must detract from its constitutional obligation; rather the State must provide a basis in determining whether the reasons the State puts forward for the non-fulfilment of the rights are rational and justifiable.

This case garnered attention because much like the TAC case, the rights of children were affected. The limitation and qualifications that apply to justiciable, socio-economic rights generally, do not apply to children as per section 28 of the Constitution. Children are thus entitled to immediate shelter. The LRC intervened to provide much needed clarity on the importance of socioeconomic rights and "managed to analyse government's housing programme with a sophistication and nuance that was lacking in the plaintiff's case" (Budlender *et al*., 2014: 42). The impact of this case, once again, led to a change in government's housing policies.

3.3 *Abahlali baseMjondolo Movement SA and others v. Premier of the province of Kwazulu, and others*[7]

This matter was heard almost ten years after the *Grootboom* case and involves the protection of land rights and the eviction of communities in informal dwellings. The *Abahlali* case involved the constitutionality of the Kwazulu-Natal Elimination and Prevention of Emergence of Slums Act 2007[8] which allowed the state to authorise the institution of eviction proceedings in informal settlements and render residents homeless with no alternative accommodation. It was held that eviction be a last resort remedy, after attempts are made at communication, mediation and the provision of alternative housing.

This case is important as it made the failure to consider the upgrade of an informal settlement a decision that could be subject to administrative review processes. It also solidified the tenure rights of those in informal settlements (ESCR-Net, 2011). Further, this matter was championed by the Abahlali baseMjondolo movement which is renowned for championing the land, housing and basic rights of the poor living in informal settlements in the Kwazulu-Natal province. The movement adopted a rights-based strategy to organise and mobilise themselves that resulted in effective litigation (Dugard & Alcaro, 2013).

3.4 *National coalition for gay and lesbian equality & another v Minister of Justice*[9]

This landmark 1998 case involved the Constitutional Court declaring unlawful and unconstitutional, the criminal prohibition of sodomy. This case

was a turning point for the LGBTQIA community and for communities who have faced unfair discrimination- contrary to the equality provisions of section 9 of the Constitution. This case was part of the ripple effect of precedent set in international courts.[10] Following this case, it is reported that in the period between 1994 and 2007, about seven matters were heard by the Constitutional Court on gay and lesbian rights (Budlender *et al,* 2014). The National coalition for gay and lesbian equality was successful as a social movement in ensuring the protection of the rights of the LGBTQIA community, and at the same time brought concrete meaning to the right to equality in a human right based constitutional democracy.

Subsequent litigation resulted in ensuring that same sex partners had the same immigration rights and benefits, adoption rights, pension and succession benefits as heterosexual couples, and most importantly, led to the recognition of same-sex marriages.[11]

3.5 *Levenstein and others v Estate of the Late Sidney Lewis Frankel and others*[12]

This 2018 case dealt with the matter of eight women who were sexually abused when they were young, but no charges were brought against the accused because section 18 of the Criminal Procedure Act of 1977 provided a 20-year prescription period on sexual offences, with a few exceptions. This provision was declared unconstitutional by the CC for trivialising a traumatic event which has unlimited physical, psychological and emotional repercussions. The CC also reasoned that this section hindered the state's ability to comply with international obligations in prohibiting gender discrimination.[13] The LHR, CALS and the Women's Legal Centre, were granted intervention as *amici curiae* providing evidence on why section 18 should be found unconstitutional.

This case is one of many child abuse cases involving organisations such as the abovementioned, the Women and Men against Child Abuse and the South African Male Survivors of Sexual Abuse, and includes the Hewitt case, the De Vries child pornography case, and the Parktown Boys case.[14] The movement was termed "#MiniMeToo" and was built on the #MeToo and sexual harassment awareness campaigns taking place internationally.

3.6 *Nkala and others v Harmony Gold Mining Company Limited and others*[15]

As mentioned above, class actions are not well-known in South African law. However, an example of very successful advocacy is to be found in

the *Nkala* case, which involved a class action on behalf of mineworkers who had contracted silicosis or tuberculosis (TB) while working underground in goldmines. It was an immense development of class actions in South Africa. What originally began as five separate cases was consolidated into one class action in 2013 involving 32 mining companies. In May 2018, the parties reached a settlement agreement where mineworkers who suffered from silicosis, both alive and deceased, as far back as 1965 were entitled to compensation. The settlement amount was set at R5 billion (USSD 353 million) (Strydom & Mpemnyama, 2016).

The LRC represented the miners and their families, and the court allowed the TAC and the Sonke Gender Justice to be admitted as *amici curiae*. These organisations provided the history of the gold mining industry, socioeconomic circumstances of mineworkers, the impact of illness on the families, and the migrant labour system that was in place during apartheid (para 22). This case impacts the lives of over 500.000 people.

Further, beyond the class represented, the result has far-reaching effects on society at large as it addresses the conduct of mining companies in protecting the health of their employees and in terms of environmentally aware operating standards. It is therefore an interesting illustration of the overlap between public interest litigation and class actions, as the public benefitted from the actions taken to compensate miners and their families, who had suffered harm from the unethical conduct of the mining sector.

The abovementioned cases, although not the only ones, were ground-breaking as they created ripple effects that impacted society and communities and clearly illustrated the importance of social movements and the public interest litigation firms that supported them. These cases also allowed the courts to develop jurisprudence related to PIL in the lacuna where legislation, as recommended by the SALC, would have been beneficial. The existent precedent, not only comes from the courts, but also from the narratives of social movements and public interest organisations that focus on careful strategy, timing, continued mobilisation and adequate resources.

An interesting strategy was followed by Khulumani Support Group when its attempts at obtaining decent reparations for apartheid era abuses were frustrated by the South African government. As a result of the fact that customary international law does not recognise corporate responsibility for human rights abuses, Khulumani instituted a legal claim for reparations against multi-lateral corporations (MNCs) in the United States of America in terms of the Alien Tort Claims Act (ATCA), also known as the Alien Tort Statute (ATS). On the face of it, the Act allows for civil actions brought by

foreigners to be heard in the US. Such cases are complex in nature as they require a court to balance the need to promote justice with the duty to uphold state sovereignty in foreign relations (Bohler-Muller, 2013).

After more than ten years of litigation starting in 2002, Khulumani lost their battle in the US courts in 2013. The court held that the basis of the dismissal was the argument that the Alien Tort Statute (ATS) does not reach the extra-territorial conduct in this case. Majorie Jobson, the national director of Khulumani Support Group, which represents about 100.000 apartheid victims and survivors, described the loss as:

> a massive blow for the survivors of apartheid but also for the world because the mechanisms to hold corporations accountable for perpetrating human rights are very weak … This has very serious implications because US companies are involved in military activity all over the world and many countries were hoping that the Khulumani case would strengthen their chances of taking action against US companies for their involvement in human rights violations. (2013: para. 3)

In a positive development, one of the MNCs, General Motors Company (GMC), has acknowledged the stories of members of Khulumani who suffered serious human rights abuses under the apartheid regime by offering largely symbolic reparations in a "show of good faith". The settlement amount of $1.5-million was to be shared between the Khulumani group and the claimants (Bohler-Muller, 2013).

4. Shifting tides of public interest litigation

Change is constant, inevitable. Social movements metamorphose unexpectedly or coincide to create large-scale movements with far reaching consequences. Emerging public interest trends include the private use of marijuana,[16] the legalisation of sex work, anti-corruption, sexual abuse, immigration and xenophobia, abuse of public power and access to the internet and data.

Individuals, communities and organisations are mobilising around more than one cause and seeking to bring about reparations in the interest of the public at large, beyond borders. Collective action and social movements in the Global South are focusing increasingly on the climate crisis, environmental degradation, inequality, poverty, food insecurity and technological developments that may threaten jobs. It is therefore important for more attention to be paid to how mechanisms of coordinating collective action in supporting or hindering social change are developing.

It has become clear that it is a combination of social mobilisation, political engagement and litigation strategies that has the greatest potential to alter laws and policies and thus bring about social change. However, the limitations of the law should be recognised and litigation should not be seen as the only – or even predominant - means of lawful political and social struggle in a society. Social justice requires a myriad of responses, with public interest litigation and activist lawyers playing a part alongside communities and social movements.

Notes

1 Democracy, Governance and Service Delivery research programme, Human Sciences Research Council, South Africa.
2 Budlender, S., Marcus, G. & Ferreira, N. (2014). Public interest litigation and social change in South Africa: Strategies, tactics and lessons. *South Africa: The Atlantic philanthropies publishing*.
3 1996 (1) SA 984 (CC).
4 2002 (5) SA 721 (CC).
5 Organizations involved were the Treatment Action Campaign; Save Our Babies; Children's Rights Centre; Institute for Democracy; Community Law Centre and Cotlands Baby Sanctuary.
6 2001 (1) SA 46 (CC).
7 2010 (2) BCLR 99 (CC).
8 Provincial Act 6 of 2007.
9 1999 (1) SA 6 (CC).
10 Budlender *et al.,* make reference to the Dudgeon and United Kingdom (1982) 4 EHRR 149 and the Norris v Republic of Ireland (1991) 13 EHRR 186 cases.
11 Fourie & another v Minister of Home Affairs & others 2005 (3) SA 429 (SCA).
12 2018 (2) SACR 283 (CC).
13 At para 60.
14 Women and Men Against Child Abuse (2019).
15 2016 (5) SA 240 (GJ).
16 Minister of Justice and Constitutional Development and others v Prince (Clarke and others intervening) 2018 (6) SA 393 (CC).

References

Abahlali baseMjondolo (2006). A Short history of Abahlali baseMjondolo, the Durban Shack Dwellers' Movement. Retrieved from http://abahlali.org/a-short-history-of-abahlali-basemjondolo-the-durban-shack-dwellers-movement/.

Bohler-Muller, N. (2013). Reparations for apartheid-era human rights abuses: The ongoing struggle of Khulumani support group. *Speculum Juris 1. 1*(24). Retrieved from http://www.saflii.org/za/journals/SPECJU/2013/1.pdf.

Brickhill, J. (2018a). Public interest litigation in South Africa. *Advocate. 31*(3). pp. 36-43. Retrieved from https://www.sabar.co.za/law-journals/2018/december/2018-december-vol031no3-pp36-43.pdf.

Brickhill, J. (2018b). Public interest law and the struggle for social justice. *Mail & Guardian Online.* Retrieved from https://mg.co.za/article/2018-10-12-00-public-interest-law-and-the-struggle-for-social-justice

Budlender, S., Marcus, G. & Ferreira, N. (2014*).* Public interest litigation and social change in South Africa: Strategies, tactics and lessons. *South Africa: The atlantic philanthropies publishing.*

Cote, D. & Van Garderen, J. (2011). Challenges to public interest litigation in South Africa: external and internal challenges to determining the public interest. *South African Journal of Human Rights. 27*(1). pp. 167-182. Retrieved from https://doi.org/10.1080/19962126.2011.11865010.

Davids, N. & Waghid, Y. (2016). #FeesMustFall: History of South African student protests reflects inequality's grip. *Mail & Guardian Online*. Retrieved from https://mg.co.za/article/2016-10-10-feesmustfall-history-of-south-african-student-protests-reflects-inequalitys-grip.

Dugard, J. & Alcaro, A. (2013). Let's work together: environmental and socio-economic rights in the courts. *South African Journal of Human Right. 29*(1). pp. 14-31. Retrieved from https://doi.org/10.1080/19962126.2013.11865064.

International Network for Economic, Social & Cultural Rights (ESCR-Net) (2011). *Abahlali BaseMjondolo Movement SA and others v. Premier of the province of Kwazulu, and others, 2010 (2) BCLR 99 (CC).* Retrieved from https://www.escr-net.org/caselaw/2011/abahlali-basemjondolo-movement-sa-and-others-v-premier-province-kwazulu-and-others-2010.

Jaichand, Vinodh (2004). Public interest litigation strategies for advancing human rights in domestic systems of law. *Sur. Revista Internacional de Direitos Humanos. 1*(1). pp. 134-149. Retrieved from https://dx.doi.org/10.1590/S1806-64452004000100006.

Jephson, G. (2014). A false start in the development of class action law? *Constitutional Court Review 6*(1). pp. 286-299. Retrieved from https://constitutionalcourtreview.co.za/wp-content/uploads/2018/10/CCR-VI.pdf

Nicholson, Z. (2013). Apartheid lawsuit dismissal a blow. *Business Report Online.* Retrieved from: https://www.iol.co.za/business-report/economy/apartheid-lawsuit-dismissal-a-blow-1567003.

South African Law Commission (1998). *The recognition of class actions and public interest actions in South Africa*. Retrieved from http://www.justice.gov.za/salrc/reports/r_prj88_classact_1998aug.pdf.

Spies, A. (2015). Considering the impact of Amicus Curiae participation on feminist litigation strategy. *South African Journal of Human Rights. 31*(1). pp. 136-150. Retrieved from https://doi.org/10.1080/19962126.2015.11865238.

Stammers, N. (1999). Social Movements and the Social Construction of Human Rights. *Human Rights Quarterly. 21*(4). pp. 980-1008. Retrieved from http://www.jstor.org/stable/762754.

Strydom, T.J. & Mpemnyama, Z. (2016). South African court allows silicosis class action suit against gold firms. *Reuters.* Retrieved from https://www.business-humanrights.org/en/gold-miner-silicosis-litigation-re-so-africa

Swanepoel, C. F. (2016). The public interest action in South Africa: the transformative injunction of the South African Constitution. *Journal of juridical science. 41*(2). pp. 29-46 Retrieved from https://dx.doi.org/10.18820/24150517/JJS41.v2.3.

Wango (2019). *Worldwide NGO Directory*. Retrieved from https://www.wango.org/resources.aspx?section=ngodir&sub=list&newsearch=1&regionID=18&col=BFB07D.

Women + Men Against Child Abuse (2019). *2018: The year that set new standards for the way we look at child abuse*. Retrieved from http://www.wmaca.org/2018-the-year-that-set-new-standards-for-the-way-we-look-at-child-abuse/.