Different Davids vs One Goliath: A Critical Affirmation of Individuals' and Peoples' Self-Advocacy for the Preservation of Human Rights as Entrenched in Judicial Decisions

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Abstract

It often occurs that South Africans suffer human rights violations at the hands of other South Africans. In these cases, the adjudication is generally straightforward and remedied between the two parties in a court of law. This case note, however, explores the complex human rights transgressions perpetuated by the State which are accompanied by peculiar reprehension due to the constitutional standards of appropriate conduct that the State is under in its role as protector and provider of its people. To illustrate this, the judgments of *Johannes Moko v Acting Principal Malusi Secondary School, Tlou Mokgonyana and Others* (CCT 297/20) [2020] ZACC 30; 2021 (4) BCLR 420 (CC); 2021 (3) SA 323 (CC) (28 December 2020) and *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 200236). The note focuses on the realisation that people have had to resort to self-advocacy against the State to garner enjoyment from their guaranteed human rights. This, in turn, manifests itself in a crack in the trust relationship between the State and the people. Despite self-advocacy lacking novelty in South African judicial culture, what does stand out is the State's seeming ignorance of the damage to the sacred social-trust relationship upon which the credibility of the State's government rests. Without this trust component, the author argues, the credibility of the government evaporates and, more importantly, the fabric of constitutionalism is tarnished.

Keywords: Right to education; self-advocacy; human rights; transformation; public trust

UNISA university of south africa PRESS
Southern African Public Law
https://unisapressjournals.co.za/index.php/SAPL
#9476 | 13 pages
https://doi.org/10.25159/2522-6800/9476
ISSN 2522-6800 (Online), 2219-6412 (Print)

Introduction

This note's purpose is to affirm one's will to self-advocate against an infringement of their human rights by their government and its agencies and representatives. As a preliminary acknowledgement, the successful litigious advocacy for one's human rights against their government may be correctly welcomed as witnessing the active functioning of the judiciary. However, this note seeks to probe the underbelly of this notion. The underbelly is characterised by the scarring on the trust relationship between a government and its constituents if they feel like they have no other option but to seek judicial intervention to enforce their human rights against those meant to guard them. Consequentially, on the one side is the political blowback. The government's credibility is placed in jeopardy and, it would be for the government to contend with the repercussions flowing therefrom. However, the more calamitous effect of the scarring of the trust relationship is the frustration of the constitutional pursuit, which is not only an issue for the government but one which it shares with its people.

Askvik introduces the potential of trust in public institutions as a fundamental condition for the effective functioning and viability of a democratic government.[1] He further references Mishler and Rose's statement that trust increases popular support for the regime and its policies, reduces resistance and promotes participation.[2] This is an illustration of the imperative of this trust relationship.

To illustrate the above, an analysis of *Moko v Acting Principal Malusi Secondary School, Tlou Mokgonyana and Others*[3] (*Moko* case) and the *Minister of Health and Others v Treatment Action Campaign and Others*[4] (*TAC* case), will be central. The *Moko* case details the experience of a young scholar who had to resort to self-advocacy in defending his right to education when it was threatened by those meant to secure it. The *TAC* case centres on the activist organisation litigiously defending the right to access to healthcare services of pregnant women and their newborn children to combat mother-to-child HIV transmission.

Despite having different factual bases, the two cases share the common denominator of triggering the same kind of advocacy to defend against infringements of their human rights.

1 Russell Askvik, 'Trust in the Post-Apartheid Government of South Africa: The Roles of Identity and Policy Performance' (2008) 46(4) Commonwealth & Comparative Politics Commonwealth & Comparative Politics 516.

2 ibid; William Mishler and Richard Rose, 'Learning and Re-learning Regime Support: The Dynamics of Post-communist Regimes' (2002) 41 1 European Journal of Political Research.

3 (CCT 297/20) [2020] ZACC 30; 2021 (4) BCLR 420 (CC); 2021 (3) SA 323 (CC) (28 December 2020).

4 (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002).

The Facts of the Cases

The *Moko* Case

Mr Johannes Moko was a matriculant at Malusi Secondary School in Limpopo, where he was scheduled to write his Business Studies Paper 2 examination. Upon his arrival on the morning of the examination, he was met at the school entrance by the first respondent, the Acting Principal—Mr Tlou Mokgonyana. The first respondent barred Mr Moko from entering the school premises and, saliently, from the entrance into the examination and, tendered the reason that Mr Moko had not attended certain extra lessons in preparation for entry into the examination. The first respondent further instructed Mr Moko to return home and not to come back to the school—unless he was accompanied by his guardian or parents.[5] Mr Moko complied with the instruction but could not successfully locate and bring to the school any adult family member or parent.[6] As such, upon his return to the school, the gates were locked and, notwithstanding eventual entry into the school premises, the examination was already in progress. The first respondent declined all requests for entry into the exam session.[7] Set in his decision, the first informed Mr Moko that the only feasible alternative was a supplementary exam the following year.[8]

Dissatisfied with the outcome, Mr Moko daringly launched an urgent application against the decision respondent of the first respondent with the Polokwane High Court for an order that he be granted an opportunity to write the exam imminently.[9] For reasons incomprehensible in nature, the Court decided to strike the matter off the urgent roll, citing that it lacked the requisite urgency.[10] The Court further relied on the alternative Mr Moko was offered of a supplementary exam in the coming year of 2021, stating that he could complete his examinations at a later stage.

The unwavering determination of Mr Moko compelled him to approach the Constitutional Court, on an urgent basis, utilising the direct access avenue of section 167(6)(*a*) of the Constitution, for an order to permit Mr Moko to write the examination before the release of the examination results.[11]

5 *Moko v Acting Principal of Malusi Secondary School and Others* (CCT 297/20) [2020] ZACC 30; 2021 (4) BCLR 420 (CC); 2021 (3) SA 323 (CC) (28 December 2020) (*Moko* case) para 7.

6 ibid.

7 *Moko* (n 5) para 8.

8 *Moko* (n 5) para 9.

9 Mr Moko also cited the Member of the Executive Council in the Limpopo Department of Education, the Head of the Limpopo Department of Education, the Minister of Basic Education, as well as Umalusi as Respondents in the High Court proceedings.

10 *Moko* (n 5) para 11.

11 *Moko* (n 5) para 12.

The Constitutional Court's Approach and Critique

The Constitutional Court,[12] per Khampepe J, welcomed Mr Moko's approach to the Court on an urgent and direct basis.[13] Despite the traditional trajectory through the hierarchy of the courts which a case must undertake prior to being entertained by the Constitutional Court, section 167(6)(*a*) of the Constitution allows for certain cases, when it is in the interests of justice and with leave of the Constitutional Court, to be brought directly to the Constitutional Court.[14] Khampepe J honoured and concretised the constitutional function of the right to education as one which is of fundamental importance due to its transformative nature for individuals and societies alike.[15] It is for this reason that Khampepe J chastised the High Court for ignoring the constitutional imperative of this case, thus putting Mr Moko in 'an invidious position.'[16]

To further correct the High Court, Khampepe J noted that the disregard for the urgency of this matter could have significant adverse ramifications for the future endeavours of Mr Moko.[17]

The Court extended this by stating that a postponement of Mr Moko's examination would have resulted in another postponement of Mr Moko's tertiary education until 2022.[18] Moreover, Khampepe J recognised that a material delay in the educational progression of Mr Moko bore the threat of demotivating and demoralising him to the

12 The application was decided on papers, thus there was no hearing. Further, the Justices were unanimous in their decision; this at the very least, illustrates the solemnity of the protection, preservation, and promotion of the right to education.

13 *Moko* (n 5) para 23.

14 Section 167(6)(*a*) Constitution ought to be read, understood, and implemented within the scope of rule 18 of the Rules of the Constitutional Court of 2003. One of the gate-keeping requirements to be satisfied before direct access is granted to the applicant is that the application must rest on grounds which directly affect and are in the interests of justice.

15 *Moko* (n 5) para 20. The constitutional imperative of the right to education is one which has, attached to it, extensive universal significance such that the Constitutional Court rejected a restrictive approach to it in the case of *Centre for Child Law, the School Governing Body of Phakamisa High School & 37 Children v the Minister of Basic Education & 4 Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) (12 December 2019). In paras 76–77 of the judgment, the Constitutional Court held that s 28 must be given a wider interpretation to encompass 'every child,' and not only children who are South African citizens, children who are lawfully present in the country, or children in possession of birth certificates. The Court further concretised its position with regards to the right to education for even the children who are detained for purposes of deportation as 'illegal foreigners' as being bearers of the right enshrined in s 28. Moreover, as held in para 77, it is therefore one of the intentions of the *Phakamisa High School* case to enhance the right to education as it related to each and every matter wherein the preservation of the best interests of the child are pursued. This sentiment was later verified in the *AB and Another v Pridwin Preparatory School* case through the Court stating that s 28 must be interpreted in a manner that promotes the foundational values of human dignity, equality and freedom. This is underlined by the notion that s 28 is not restricted by foreigner status.

16 ibid.

17 *Moko* (n 5) para 21.

18 ibid.

point where Mr Moko might have disregarded his own future aspirations.[19] Such a delay would also, conceivably, hamper Mr Moko's attempts to secure employment opportunities as he would lack a matric certificate.[20]

These are the vital foresights that the High Court lacked in striking the matter off the roll. It is that requisite foresight that the Constitutional Court paid deserved consideration to in deciding to adjudicate on this application on an urgent and direct basis. After the ventilation of core issues regarding the definition of 'basic education', the Court was able to reach the position that the education which Mr Moko stood to gain at Malusi Secondary School fell squarely within the ambit of the definition and scope of 'basic education' which the respondents were mandated to deliver to candidates like Mr Moko.[21]

The Court followed with a confirmation of the Applicant's cause in stating that, as an organ of State, the first respondent had, not only a duty to ensure that Mr Moko's right to education was protected and secure, but also had a duty not to impair Mr Moko's right to basic education as he had done.[22] Khampepe J also criticised the dereliction of duties by the first respondent in stating that the first respondent's actions were the very antithesis of the description of school principals as key delivery agents in the education system, as well as being the most important entrenchment partners in education.[23] The Department of Education further proceeds to entrench school principals as the biggest drivers of better education outcomes and lists the areas being of core purpose to the principal to include developing and empowering self and others and working with and for the community.[24]

The determination of Mr Moko in fighting for and defending his constitutional right was rewarded by the Court's order to the second to fifth respondents to grant Mr Moko an opportunity to write the Business Studies Paper 2 examination.[25] This order had the effect of affirming Moko's constitutional right to education which was described as a catalyst to the opening of doors that were only a dream to people like him.[26] The Court further ordered that Moko's examination results were to be released simultaneously with the general release of the 2020 National Senior Certificate examination results in January or February 2021.[27]

19 ibid.
20 ibid.
21 *Moko* (n 5) para 33.
22 *Moko* (n 5) para 34.
23 ibid.
24 Department of Education, 'Importance of Principals' (Basic Education Department website 2019) <https://www.education.gov.za/Informationfor/Principals.aspx> accessed 28 April 2021.
25 This was ordered in para 48.3 of the judgment.
26 *Moko* (n 5) para 1.
27 *Moko* (n 5) para 18.

The *TAC* Case

Due to the high HIV infection rates in South Africa, particularly among pregnant women and their newborns, the TAC pursued the government for the acceleration of the programme for the prevention of intrapartum mother-to-child transmission of HIV.[28] However, it was informed by the Minister of Health that the acceleration would not be implemented due to safety and efficacy concerns of the anti-retroviral drug Nevirapine.[29] In August of 2000, the Minister confirmed the initial stance that the drug would still not be made generally available.[30] Despite the drug being freely offered to South Africa for five years,[31] it would not be widely distributed but, each province would demarcate two sites for further research with the drug being restricted to those sites thereby denying most mothers access to the treatment. [32]

The TAC launched a constitutional challenge, alleging a violation of the right to access healthcare services as governed by section 27(1)(*a*) of the Constitution and demanded a programme to make the drug available throughout the country.

Essentially, the Court had to address two main issues. First, whether government had fulfilled its duties to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right to reproductive healthcare services, including the right to health. Second, whether the Court in making a ruling on the reasonableness of the measures, was prescribing policy to the government.

The High Court ruled in favour of TAC, ordering that Nevirapine be made available to infected mothers giving birth in State institutions and that the government present to the court an outline of how it planned to extend the provision of the medication to its birthing facilities, countrywide. The government appealed the decision to the Constitutional Court. The High Court, per Botha J granted interim relief pending the appeal. The Constitutional Court rejected the appeal, finding that the restrictions of Nevirapine to pilot sites excluded those who could reasonably be included in the programme.[33] The Court ordered the government to extend the availability of Nevirapine to hospitals and clinics, to provide counsellors, and to take reasonable measures to extend the testing and counselling facilities throughout the public health sector.[34] As will be expanded on below, the self-advocacy of individuals and groups of people against even a democratic government for the realisation of their rights could be viewed as the plausible functioning of a judicial branch of state. However, the less

28 *Minister of Health and Others v Treatment Action Campaign and Others* (*TAC* case) para 10.
29 ibid.
30 ibid.
31 *TAC* (n 28) para 19; 48.
32 *TAC* (n 28) para 10.
33 *TAC* (n 28) para 78.
34 *TAC* (n 28) para 135(3)(a), (c), (d).

commemorable facet of this visual is the illustration of the chasms in the fulfilment of the transformative constitutionalism project.

The Constitutional Court Ruling and its Implications

The Court provided the assessment that socio-economic rights and the government's constitutional commitments cannot be measured in a vacuum, but in their social and historical context of the reality of South Africa.[35] The government's arguments to the contrary were rejected. The primary question that the Court dedicated itself to addressing was whether the policy of confining Nevirapine to research and training sites was reasonable. The Court adopted the view that socio-economic rights impose positive and negative obligations, namely the obligation to take reasonable legislative and other measures within its available resources and, the obligation to progressively realise the right to health.[36] Section 27(2) of the Constitution entrenches and delimits the scope of the positive obligation imposed upon the State, since the right to health can only be realised within the State's available resources.[37] Henceforth, it would be self-evident that people ought not to expect more than what is achievable within the government's available resources.

The Court rejected the concept of minimum core obligation and interpreted section 27 as not empowering everyone to require that a minimum core be provided to them immediately.[38] However, it must be understood that the government is expected to provide access to the right to health progressively, as guaranteed by the Constitution.[39]

The Court concluded that the right to health is not a self-standing and independent positive right enforceable irrespective of the lack of resources.[40] However, the right to health must be read together as defining the scope of the positive right that everyone has.[41]

Further, the government warned that courts are constrained by the principle of separation of powers from ordering a specific government relief order in socio-economic rights cases sought by TAC, which was essentially dictating policy for the executive.[42] The Court rejected government's argument and reaffirmed that the Constitution contemplates a restrained and focused role for the courts to require the State to take measures to meet its constitutional obligations, and to subject the reasonableness of these measures to evaluation.[43] The evaluation of such measures may

35 *TAC* (n 28) para 24.
36 *TAC* (n 28) para 30; 46.
37 Section 27(2) Constitution, 1996.
38 *TAC* (n 28) para 24; 32; 125.
39 Section 27(2) Constitution, 1996.
40 *TAC* (n 28) para 28; 39.
41 ibid.
42 *TAC* (n 28) para 97.
43 *TAC* (n 28) para 38.

have budgetary implications even if they are not directed in rearranging budgets. Therefore, the Court held that respecting the landscape of other branches of government does not mean that courts cannot and should not make orders that have an impact on policy if they find that the government has indeed contravened a socio-economic obligation.[44]

In answering the efficacy inquiry, the Court noted that the provision of Nevirapine will save the lives of a considerable number of infants, even if it is administered without the full package and support services. The Court further noted that the possibility of resistant strains of HIV to Nevirapine at a later stage could not be compared with the potential benefit of providing a single tablet of Nevirapine.[45] The nature of suffering is so grave that the risk of resistance is worth taking. The concerns on the safety of Nevirapine were also rejected by the Court on the premise that there was no evidence suggesting that a dose of Nevirapine was harmful to both mother and child. This is evident from its registration by the Medicines Control Council and the decision by government to administer it in pilot sites which affirmed its quality, safety and efficacy.[46] The sternness of the chastisement against the government in the *Moko* case was also seen here with the Court stating that it is unthinkable that government would gamble with the lives or health of thousands of mothers and infants.[47] The Symptoms of Self-Advocacy in the Quest for Transformative Constitutionalism

In 2006, former Pius Langa CJ acknowledged the open-endedness of the notion of transformative constitutionalism.[48] The former Chief Justice referenced another former Dikgang Moseneke CJ in stating that the meaning of transformation in juridical terms as being as highly contested as it is difficult to articulate.[49] So eloquently, Langa observed that it is in fact in keeping with the spirit of transformation that there is no one stable understanding of transformative constitutionalism.[50]

Devenish also comments on the understanding of constitutionalism as being the idea that constitutional norms, values and principles are not predetermined, but rather are products of the political, economic, social and cultural history prevailing at the time of the adoption of the constitution.[51] Granted, we may not enjoy a universally defined idea of transformative constitutionalism, but some security can be garnered from knowing what it is not.

44 *TAC* (n 28) para 38; 98.
45 *TAC* (n 28) para 57.
46 *TAC* (n 28) para 61.
47 *TAC* (n 28) para 62.
48 Pius Langa, 'Transformative Constitutionalism' (2006) 3 Stell LR 351.
49 ibid; Sanele Sibanda, 'Not Purpose-made! Transformative Constitutionalism, Post-independence Constitutionalism and the Struggle to Eradicate Poverty' (2011) 3 Stell LR 484.
50 Langa (n 48).
51 Sibanda (n 49); George Devenish, *A Commentary on the South African Constitution* (Butterworths 1998) 4.

Eric Kibet and Charles Fombad describe the reality of much of the African post-colonial experience in stating, in most parts of the continent, independence was largely a failed project.[52] Indicators from which they conclude this assessment include political instability, military coups, countercoups, corruption and mass human rights violations.[53] In the South African context, the manifestation of a democratic nation and, by extension, transformative constitutionalism ought to be a different experience from the apartheid era. Thus, racial segregation, discrimination, and specifically disenfranchisement and general socio-economic under-development ought not to find space in South African society. However, as we have seen through the cases mentioned above, and many others decided in the Constitutional Court, this is not yet the case.

Notwithstanding the absence of a definition of transformative constitutionalism, the premise upon which we find its expected characteristics is the Postamble to the Interim Constitution, 1993.

It states, *inter alia*, that the Constitution is a 'historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.'[54] Synonymous to the contents of the Preamble to the Constitution 1996, both drafts centralise a South African future established on the recognition of human rights, democracy and peaceful coexistence and, sharing of the nation and all its opportunities for the benefit of all those who live in it.[55] The pillars of this constitutional dispensation include the values of substantive equality, human rights, social justice and equal enjoyment of the protection of the law.[56]

Equally as imperative as the theoretical dimension of transformative constitutionalism is the actualisation of it. This, according to former Langa CJ, assumes a social and economic revolution.[57]

Through a socio-economic prism, transformative constitutionalism would connote a broadened and substantive access to housing, food, water, healthcare services and electricity.[58] Access to these rights is constitutionally guaranteed but continues to be the subject of litigious battles between the people and the government built to realise and preserve them.

52 Eric Kibet and Charles Fombad, 'Transformative Constitutionalism and the Adjudication of Constitutional Rights in Africa' (2017) 17 AHRLJ 341.
53 ibid.
54 Postamble to the Interim Constitution, 1993.
55 ibid; Preamble to the Constitution, 1996.
56 ibid.
57 Langa (n 48) 342.
58 Langa (n 48) 343.

The constitutional frustrations Mr Moko were subjected to, have compelled him to self-advocate for the protection of his rights.[59]

The most lamentable aspect of such self-advocacy is the fact that Mr Moko had to advocate for himself against the very body and system which was assembled and equipped to realise and protect his constitutional rights.

It is the most regrettable position a person in a democratic nation, led by a government who bears the constitutional and legislative obligation to be the advocate and protector of these rights, can find themselves in. What is far more inexcusable is that there are many more victims and communities who have had to litigiously advocate for their human rights, just like Mr Moko and the TAC on behalf of HIV-positive pregnant women and their unborn.

The notion of litigious advocacy of rights by communities and individuals against the government signals a scoreboard of gains and losses for both parties. On the one hand, it illustrates the necessity and function of the judiciary and its needed cooperation towards protecting a nation's human rights framework. On the other, it signals that there was a shortcoming in the fulfilment of constitutional and legislative obligation by the government which, in turn, triggers litigious advocacy. Albeit a sombre idea, it could be imagined that the existence of litigious advocacy depends on the existence of government's failures to pre-empt the human rights infringement which accrue from executive action or lack thereof.

Mantzaris and Pillay state that a government's failures in protecting its people against any form of human rights infringements may be a result of endogenous or exogenous factors which lead to adverse ramifications on the relationship of public trust in its government and its people.[60] The damage is also illustrated by the consequences of the severing of public trust in the government.[61] Research suggests that the increasing

59 A conscious use of the phrase 'self-advocacy' is intended. Notwithstanding the similarities between advocacy and public interest litigation, the objective here is to centralise the passion of the infringed party, namely Johannes Moko, to defend the enjoyment of his constitutional right to education. Public interest litigation complements this passion but features in a secondary role to self-advocacy. To this end, David Feldman states in 'Public Interest Litigation and Constitutional Theory in Comparative Perspective' (1992) 55(1) The Modern Law Review 46, that interest groups act as advocates who represent the perceived interests of their members or for whom the act as surrogates. Relying on the understanding of the words of the paras 8–10 of the Moko judgment, it is construed that the complainant himself bore the requisite conviction to defend against a rights infringement against him. This fact then transmutes the element of public interest litigation into a personal one rather than by a group for the defence of the perceived interests of others.

60 Evangelos Mantzaris and Pregala Pillay, 'Corruption and the Erosion of Citizen Trust in Brazil and South Africa' (2017) 9 (8) African Journal of Public Affairs 71.

61 ibid.

dissatisfaction with the South African leadership had seeped into and morphed into waning support for democracy itself.[62]

A further illustration of the lack of trust in our political institutions and the Executive is the negative effects it bears on the South African voting patterns.[63]

To this effect, Mantzaris and Pillay refer to Independent Electoral Commission registration drives which indicate, as a common denominator between the voting drives of 1999, 2009, 2014, that more people registered to vote than actually voted.[64]

The main issue attributed to the phenomenon of all registered voters not voting is the lack of trust in the political institutions and individuals holding political power such as the President.[65]

On the spectrum of the adverse outcomes of a government's failures in protecting its people against any form of human rights infringements, the proverbial tarnishing of the tenets and values which inform transformative constitutionalism may very well be the most egregious. Also linked to the tarnishing of the values of transformative constitutionalism is the supplementary consequence that where the foundations of constitutionalism are in a state of disrepair, the realisation and actualisation of the meaning of transformation in tangible forms is suspended further. This could translate into the perpetuation of the status quo of people having no other recourse available to them against their democratic government than to wage a litigious war for the preservation and realisation of their own rights.

Conclusion

The focal point of this note was to convey the realisation that people have had to resort to self-advocacy against the State to garner enjoyment from their guaranteed human rights. It ought not to be deduced from this note that South Africa is indifferent to human protection. This is not the case, and it is evident from our country's distinguished existing human rights framework. However, those outlying instances of neglect of constitutional duty cause such damaging impressions of the State and corrupt the state-people trust relationship that they ought to be promptly addressed and remedied in the most expedient manner. They also amount to the inappropriate eventuality of South Africans having to assume the role of defender of their own constitutional rights against the State.

62 Independent Electoral Commission, 'National and Provincial Elections Report' (2019) 22 <National%20and%20 Provincial%20 Elections%20Report.pdf> accessed 18 July 2021.

63 ibid.

64 Mantzaris and Pillay (n 60).

65 ibid.

The above conundrum secretes further ramifications, as stated above, for the accomplishment of transformative constitutionalism in South Africa. Again, some may view this eventuality as a desirable occasion of the everyday South African utilising the defensive legal and judicial remedies available to them to safeguard against human rights violations. The author does not entirely agree with this view. However, the author proposes another view and conclude that the long-term damage of the State's violation of human rights amount to a lasting and adverse impression of the State's character and role in a post-colonial democratic society.

The author advances to argue that the notion of the State being the provider and defender is thus corrupted by such instances and has the potential to impugn the underpinnings of the Preamble to the Constitution of healing the divisions of the past and establishing a society based on democratic values, social justice and fundamental human rights.

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