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THE RIGHT TO HOUSING: GROOTBOOM - EXERCISE 2 (1/1 point)

2. It is sometimes said that courts are ill-equipped to deal with complex, multipolar issues, and that the adjudicatory setting is inappropriate for the resolution of problems of social policy. Stephen Holmes and Cass Sunstein concisely state the problem:

"Unlike a legislature, a court is riveted at any one time to a particular case. Because they cannot survey a broad spectrum of conflicting social needs and then decide how much to allocate to each, judges are institutionally obstructed from considering the potentially serious distributive consequences of their decisions. And they cannot easily decide if the state made an error when concluding, before the fact, that its limited resources were more effectively devoted to cases A, B, and C, rather than to case D (...)" (Stephen Holmes and Cass R. Sunstein, *The Cost of Rights. Why Liberty Depends on Taxes*, W.W. Norton, New York and London, 1999, p. 95).

Is there not a risk that allocating housing to the squatters having fled Wallacedene will further worsen the situation of all others, who are not represented in the court proceedings? Should the Grootboom family and the other squatters be given priority, simply because they've challenged the eviction order addressed to them? How does the judgment address this problem of multipolarity?

- ☐ The Court protects the rights of those who file judicial claims. If other homeless or landless people want to follow the example of the squatters in the Grootboom case, they should do so, and the Court will adjudicate their claims in the same way, without distinction;
- ☒ The Court can direct the attention of the State to the situation of the most vulnerable, who should be targeted as a matter of priority in public housing programmes; ✓
- ☐ The Court cannot provide a remedy to individual litigants without worsening the situation of others, and unduly favouring those who were the first to litigate the issue; therefore it is understandable that the Court abstains from granting any remedy at all.

EXPLANATION

The judgment acknowledges the problem of multipolarity quite explicitly: "it is a painful reality that their circumstances were no worse than those of thousands of other people, including young children, who remained at Wallacedene. It cannot be said, on the evidence before us, that the respondents moved out of the Wallacedene settlement and occupied the land earmarked for low-cost housing development as a deliberate strategy to gain preference in the allocation of housing resources over thousands of other people who remained in intolerable conditions and who were also in urgent need of housing relief. It must be borne in mind however, that the effect of

any order that constitutes a special dispensation for the respondents on account of their extraordinary circumstances is to accord that preference" (para. 81). However, though no immediate remedy is granted to the squatters in the *Grootboom* case, the judgment provides the following indication about the characteristics that the plan to improve public housing should present in order for it to "reasonably" support the realization of the right to access to housing: "It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test." (para. 44). Thus, the Constitutional Court orders that the plan to be devised should addresss, first and foremost, the situation of the most vulnerable.

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