# NOTES

## *Makana People's Centre v. Minister of Health and Others*: The Constitutional Court of South Africa Upholds Mental Health Care Framework After Life Esidimeni


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### I. OVERVIEW

In the wake of the infamous Life Esidimeni tragedy, in which 144 of South Africa's mental health care users died in state custody[1], Makana People's Centre (Makana) applied to the High Court of South Africa, Gauteng Division, Pretoria, challenging the constitutionality of certain provisions of South Africa's Mental Health Care Act (the Act).[2] Makana is a non-profit organization dedicated to improving the lives of South Africa's marginalized and previously disadvantaged people.[3] In its application to the High Court, Makana named the Minister of Health as first respondent in the High Court as well as the nine Members of the Executive Councils responsible for health care in each of South Africa's provinces.[4] Makana challenged sections 33 and 34 of the Act, which outlined the process of involuntary admission to a mental health facility.[5] Makana asserted that these sections of the Act violated sections 10, 12,

1. Makana People's Centre v Minister of Health and Others [2023] ZACC 15 at 18 n. 64.
2. *Id.* at ¶ 5.
3. *Id.*
4. *Id.* at ¶ 6.
5. *Id.* at ¶ 45.

and 34 of the Constitution of the Republic of South Africa because the sections did not prescribe an adequate judicial review process when an individual is involuntarily admitted.[6] Makana argued that involuntary mental health care users should be treated similarly to persons arrested for crimes and those detained as illegal immigrants in that such persons are brought before a court or another independent authority before or soon after they are taken into custody.[7] The High Court declared sections 33 and 34 of the Act unconstitutional because the sections did not provide for an automatic independent review immediately following or before a person is involuntarily admitted to a mental health facility.[8]

Makana applied to the Constitutional Court for confirmation of the High Court's declarations of constitutional invalidity.[9] The Constitutional Court of South Africa *held* that the deprivation of liberty under sections 33 and 34 of the Act is procedurally fair and did not confirm the High Court's declaration of constitutional invalidity.[10] *Makana People's Centre v. Minister of Health and Others* [2023] ZACC 15.

## II. BACKGROUND

### *A. The United Nations Convention on the Rights of Persons with Disabilities*

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006 "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."[11] Article 12 of the CRPD affirms that persons with disabilities are entitled to equal recognition before the law.[12] The CRPD directs member nations to guarantee that people with disabilities "[e]njoy the right to liberty and security of person."[13] States are also supposed to ensure that such persons "[a]re not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the

6. *Id.*
7. *Id.*
8. *Id.* at ¶ 26.
9. *Id.* at ¶ 5.
10. *Id.* at ¶ 118.
11. U.N. Convention on the Rights of Persons with Disabilities, Mar. 30, 2007, 2515 U.N.T.S. 3, (ratified by South Africa Nov. 30, 2007) [hereinafter CRPD].
12. *Id.* at Art. 12.
13. *Id.* at Art. 14(1)(a).

law, and that the existence of a disability shall in no case justify a deprivation of liberty."[14]

In 2015, The UN's Committee on the Rights of Persons with Disabilities issued guidelines on the meaning of Article 14 of the CRPD.[15] The guidelines explain that Article 14 is essentially a non-discrimination provision, reaffirming that Article 14 does not allow a person to be detained due to said person's "actual or perceived impairment."[16] The committee goes a step further and says that even if other reasons for detention exist outside their perceived impairment, such as if the individual is found to be a danger to themselves or others, a person may not be detained based on his or her impairment or on the appearance of an impairment.[17] The guidelines state that involuntary admission contradicts the CRPD because involuntary commitment in mental health institutions entails the denial of the person's legal capacity to make decisions regarding care, treatment, and admission to a hospital or institution and thus breaches Articles 12 and 14 of the CRPD.[18] If a person with a disability is deprived of their liberty in a manner violative of sections 12 or 14, they "are entitled to have access to justice to review the lawfulness of their detention, and to obtain appropriate redress and reparation."[19]

### *B. The Mental Health Care Act*

The Mental Health Care Act was enacted in 2002, prior to the CRPD being ratified.[20] The Act refers to persons receiving mental health care at mental health facilities as "mental health care users" or "users."[21] One of the stated objectives of the Act is to manage mental health care in such a way that "makes the best possible mental health care, treatment and rehabilitation services available to the population equitably, efficiently and in the best interest of mental health care users within the limits of the available resources."[22] The Act orders the Executive Council responsible for health in each of South Africa's nine provinces to establish a mental health review board, and the relevant provincial department must appoint

14. *Id.* at Art. 14(1)(b).

15. GUIDELINES ON ARTICLE 14 OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: THE RIGHT TO LIBERTY AND SECURITY OF PERSONS WITH DISABILITIES ¶ 1 (Sept. 2015) [hereinafter Guidelines on Article 14].

16. *Id.* at ¶¶ 4, 6.

17. *Id.* at ¶ 6.

18. *Id.* at ¶ 10.

19. *Id.* at ¶ 24.

20. Mental Health Care Act 17 of 2002 (S. Afr.)

21. *Id.* at § 1.

22. *Id.* at § 3(a).

between three and five persons to serve on the board.[23] The review board must consist of at least one mental health care practitioner, one attorney or other person admitted to practice law, and one concerned member of the community.[24] The review board must at times make decisions regarding the admission of assisted and involuntary mental health care users to mental health facilities as well as review determinations made by the person in charge of the facility on whether further care is necessary.[25]

Like the CRPD, the Act forbids discrimination against persons based on their mental health status.[26] Under the Act, there are three circumstances in which a mental health facility may provide care to a prospective user.[27] Mental health services may be administered if the user has consented to treatment.[28] Mental health services may also be administered if a court or the review board has ordered treatment.[29] Finally, services may be administered to a non-consenting user if waiting on the courts or the review board to approve treatment could result in death or "irreversible" harm to the user, the user causing serious harm to themselves or others, or the user inflicting serious damage to their own property or the property of others.[30] Under the first two circumstances, a health care provider must inform the user of their rights in an appropriate manner prior to administering care.[31] If a user is admitted under the third circumstance, the facility does not have to inform the user of their rights, but it must report the admission to the review board and may not continue care past twenty-four hours unless an application is made under Chapter V of the Act within twenty-four hours.[32]

Sections 32 through 38 of the Act outline the process of involuntary treatment in detail.[33] Under section 32, a user must receive involuntary care if three conditions are met: (1) a written application is made to the head of the prospective health establishment to obtain care and the application is granted; (2) when the application is made, it is reasonable to assume that user's illness is to such a degree that they are likely to cause significant harm to themselves or others, or care is needed to protect the

23. *Id.* at §§ 18, 20.
24. *Id.* at § 20.
25. *Id.* at § 19.
26. *Id.* at § 10(1); *see* CRPD, *supra* note 11, at Art. 14.
27. Mental Health Care Act at § 9(1).
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* at § 17.
32. *Id.* at §§ 9(2), 17.
33. *Id.* at §§ 32-38.

reputation or monetary interests of the user; and (3) when the application is made, the user is unable to make an informed decision regarding their care and is unwilling to receive such care.[34] Section 33 prescribes the application process.[35] Normally, an application must be made by the spouse, next of kin, partner, associate, parent, or guardian of the user, but if those persons are unwilling or unable to make an application, a health care provider can do so.[36] An applicant must have seen the user within seven days prior to the application.[37] After the application is submitted, the head of the proposed mental health facility must allow for the user to be examined by two health care professionals.[38] The head of the facility may only grant the application if the two health professionals agree that the prospective user satisfies the three requirements for involuntary admission.[39] If the head of the facility does grant the application, he or she must notify the applicant and arrange for the user to be admitted to the facility he or she is in charge of (or another facility) within forty-eight hours of granting the application.[40]

Section 34 of the Act details the steps that must be taken after a user is admitted involuntarily.[41] After admission, the head of the facility must ensure that the user is given adequate care.[42] The head of the facility must then arrange for a medical professional and another mental health professional to observe the user for seventy-two hours.[43] These two professionals must consider whether treatment should continue, and if they determine it should, whether inpatient or outpatient treatment is more appropriate.[44] After the seventy-two hour assessment concludes, the head of the facility must use all the information available to him or her to determine the next step regarding the user.[45] The head of the facility may determine that the user no longer needs involuntary treatment, in which case the user must be immediately discharged, unless the user consents to further treatment.[46] The head of the facility may also determine that the

34. *Id.* at § 32.
35. *Id.* at § 33.
36. *Id.* at § 33(1).
37. *Id.*
38. *Id.* at § 33(4).
39. *Id.* at § 33(7).
40. *Id.* at § 33(9).
41. *Id.* at § 34.
42. *Id.* at § 34(1).
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.* at § 34(3).

user does need further involuntary treatment, though on an outpatient basis, in which case the user must be discharged with certain conditions to ensure treatment is provided and the review board must be informed in writing.[47] The final determination the head of the facility can make is that the user needs further involuntary inpatient treatment.[48]

If the head of the facility determines that the user needs further involuntary inpatient treatment, he or she must submit a written request to the review board for it to approve further involuntary care within seven days after the end of the seventy-two-hour assessment period.[49] The request must include a copy of the original application for care, a copy of the notice given to the applicant after the determination that involuntary treatment was necessary, a copy of the findings after the seventy-two-hour assessment, and the basis for the request.[50] The head of the facility must then notify the applicant of the date all the materials were submitted to the review board.[51] After the review board receives the materials from the head of the facility, it must consider the request within thirty days and give the original applicant, the health care providers who made the initial assessment, an independent practitioner, and the head of the facility an opportunity to give written or oral testimony on the matter.[52] The review board must then send its decision in writing to the head of the facility and the applicant, with reasons.[53] If the review board grants the request for continued involuntary treatment, then it must send all the documents it received from the head of the facility to the registrar of the High Court.[54]

If the review board sends the documents to the High Court for its review, the court must review those documents within thirty days of receipt.[55] While making its decision, the High Court may request further information from any relevant party to assist in the review process.[56] After its review, the High Court must either order continued involuntary care of the user or immediately discharge the user.[57] After the High Court's decision, the Act provides for a periodic review and annual reporting

47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at § 34(7).
53. *Id.*
54. *Id.*
55. *Id.* at § 36.
56. *Id.*
57. *Id.*

process.[58] The head of the mental health facility must ensure that an involuntary user's status is reviewed six months after care commences and then annually for the duration of the user's admission.[59] After each review, there must be a report stating the user's ability to express himself or herself on whether they need care; if the user is likely to cause serious harm to themselves or others; if there are any alternative treatment methods that can be utilized that would be less restrictive of the user's rights; and make a recommendation for further care.[60] The head of the facility must send the report to the review board, and it must consider the report and obtain necessary information before it sends a written notice of its decision to all interested parties within thirty days.[61] If the review board decides that the involuntary user should be discharged, then all care must cease in a safe manner, and the user must be discharged unless they consent to further care.[62] The head of the facility must follow the directive of the review board, and the High Court must be informed in writing that the user was discharged.[63]

### *C. Case Law*

In *C v. Department of Health*, the Constitutional Court declared sections 151 and 152 of the Children's Act unconstitutional because these sections did not provide for an automatic review before a court after a child was removed from his or her family home by the state.[64] The court determined that the above sections of the Children's Act violated sections 28[65] and 34[66] of the Constitution of the Republic of South Africa.[67] In its analysis, the court made the point that there are of course circumstances that warrant a child being removed from his or her home by the state, but the court struck down the scheme as unconstitutional due to the lack of an automatic judicial review in the presence of the child and the parents of

58. *Id.* at § 37.
59. *Id.* at § 37(1).
60. *Id.* at § 37(2).
61. *Id.* at §§ 37(3), 37(4).
62. *Id.* at § 37(5).
63. *Id.*
64. C v. Department of Health and Social Development, Gauteng 2012 (2) SA 208 (CC) at ¶ 83.
65. S. AFR. CONST., §28. This section deals with the rights of children in South Africa.
66. *Id.* at §34. "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."
67. *C*, (2) SA 208 at ¶¶ 77, 79.

the child.[68] The respondents in this case were unable to offer any justification for the restriction of the rights held under sections 28 and 34, and the court was unable to find any such justification on its own.[69] Therefore, the court found that the limitation of these rights could not be justified and held the limiting sections of the Children's Act unconstitutional.[70]

## III. THE COURT'S DECISION

In the noted case, the Constitutional Court of South Africa thoroughly reviewed the statutory scheme of the Mental Health Act, several international instruments, and its own constitutional jurisprudence.[71] The court first laid out the issues to be decided and stated that it must consider international law when determining these issues.[72] The court then proceeded to give a detailed analysis of the relevant international law governing the noted case.[73] The court went on to determine the merits of the constitutional challenge to sections 33 and 34 and of the Act with regard to sections 12(1), 34, and 10 the Constitution, finding that the Act did not violate the rights conferred by any of these sections.[74] The court then considered the secondary issue regarding the independence of the review boards, outlined by Chapter IV of the Act, and found that no such issue existed.[75]

The court first reviewed several international resources that had bearing on the noted case.[76] The court found that when determining what constitutes a fair procedure under section 12(1) of the Constitution, international law is useful.[77] The court also noted that under section 233 of the Constitution of South Africa, when an act allows for multiple interpretations, it must abide by the interpretation that best comports with international law.[78] Among the sources the court considered were the Universal Declaration of Human Rights (UDHR),[79] the African Charter

68. *Id.* at ¶ 81.
69. *Id.* at ¶¶ 81-82.
70. *Id.* at ¶ 83.
71. Makana People's Centre v Minister of Health and Others, ZACC 15 at ¶¶ 9, 82, 112.
72. *Id.* at ¶¶ 79-80.
73. *Id.* at ¶ 82.
74. *Id.* at ¶ 188, 193, 195.
75. *Id.* at ¶ 201.
76. *Id.* at ¶ 82.
77. *Id.*
78. *Id.*
79. Universal Declaration of Human Rights, G, A, Res, 217(III) A, U.N. Doc. (Dec. 10, 1948).

on Human and Peoples' Rights (ICCPR),[80] and the International Covenant on Civil and Political Rights.[81] The court found that each document makes clear that nobody may be deprived of freedom except for under circumstances previously outlined by the law.[82] The court then reviewed the CRPD and the UN's Guidelines on article 14 of the CRPD.[83] It noted that the UDHR, the African Charter, and the ICCPR were all ratified prior to the enactment of the Mental Health Care Act but that the CRPD and its subsequent guidelines were ratified after enactment.[84] The court found that the preceding international instruments "plainly influenced" the Mental Health Care Act and that the Act passed under this regime of international law.[85] The court noted that the CRPD has many similarities to the previous international regimes, namely that it does not allow for persons with disabilities to be deprived of their liberty without due process.[86] However, the court took issue with CRPD's addition that "the existence of a disability shall in no case justify a deprivation of liberty."[87] The court thought this language was categorical and unrealistic, finding that there is no legal system in the world that does not have some type of involuntary inpatient treatment procedure for persons with mental illnesses.[88] However, the court found that it was unnecessary to square the CRPD with the Mental Health Care Act because Makana did not challenge the validity of involuntary care, only the process.[89]

The court then proceeded to the constitutional challenge to sections 33 and 34 of the Act brought by Makana.[90] It first considered the sections under section 12(1) of the Constitution, which states in part that all persons have "the right not to be deprived of freedom arbitrarily or without just cause."[91] The court noted that this section of the Constitution essentially ensures a fair process, and focused its analysis under section 12(1) on whether a prospective user receives a fair process under sections

80. African Charter on Human and Peoples' Rights, Kenya, 27 OAU Doc. CAB/LEG/67/3, June 1981, rev. 5, 21 I.L.M. 58.

81. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 art. 31(1) (Dec. 16, 1996) (ratified by South Africa on December, 10 1998).

82. *Makana*, ZACC 15 at ¶ 83.

83. *Id.* at ¶ 100.

84. *Id.* at ¶ 109.

85. *Id.*

86. *Id.* at ¶ 110.

87. *Id.*; CRPD, *supra* note 11, at Art. 14(1)(b).

88. *Makana*, ZACC 15 at ¶ 111.

89. *Id.*

90. *Id.* at ¶ 112.

91. *Id.* at ¶ 113; S. AFR. CONST. at § 12(1).

33 and 34 of the Act.[92] To illustrate its finding that there are sufficient procedural safeguards in involuntary inpatient treatment process, the court contrasted the depravation of liberty occurring during involuntary inpatient treatment with the depravation of liberty in a criminal setting.[93] The court found the two circumstances different in many respects: (1) unlike a criminal detention where the alleged criminal is deprived of his or her liberty due to something that occurred in the past, a user is deprived based on his or her current mental health status; (2) a user's mental health status is likely to fluctuate during the course of their detention; (3) only a medical professional, not a judicial officer, is qualified to determine the mental health status of a user; (4) the detention is at a mental health facility, not a jail; and (5) the object of the process is not detention but treatment, though detention is necessary to provide such treatment.[94] This led the court to believe that the most effective procedural safeguards against an unwarranted involuntary detention of a user should ensure that the user is continually assessed as his or her condition evolves over time.[95] The court then concluded that the Act contains sufficient procedural safeguards, noting that before a user can be involuntarily admitted, he or she will have been examined by no less than two (and usually four) mental health care professionals.[96]

The court also held that the sections 33 and 34 of the Act did not violate section 34 of the Constitution.[97] Section 34 confers the right "to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."[98] The court noted that the Act does not prevent the user or any person acting on the user's behalf from seeking a judicial review of an involuntary admission.[99] Further, the Act requires a judge to automatically become involved, though the court conceded that involvement occurred at a relatively late stage.[100] The court distinguished *C v. Department of Health*, in which under the Children's Act, a single decision by a social worker could result in a child being removed from his or her parents' care for ninety days.[101] The court found

92. *Id.* at ¶ 119.
93. *Id.* at ¶ 135.
94. *Id.*
95. *Id.* at ¶ 136.
96. *Id.* at ¶ 137.
97. *Id.* at ¶ 193.
98. S. AFR. CONST. at § 34.
99. *Makana*, ZACC 15 at ¶ 189.
100. *Id.*
101. *Id.* at ¶ 191; C, (2) SA 208 at ¶ 5.

that the Mental Health Care Act was different because there are several assessments that occur in the shorter time period between admission and judicial determination.[102] Further, the court determined that the review board constitutes an "independent and impartial tribunal" for purposes of section 34 of the Constitution, as discussed later.[103] Regarding section 10 of the Constitution, which says that "[e]veryone has inherent dignity and the right to have their dignity respected and protected,"[104] the court held that the Act was not constitutionally invalid.[105] The court went as far to say that the withholding treatment from people deemed in need of involuntary care may in itself constitute a violation of dignity.[106] Due to the court's holding that the Act did not violate any constitutional provision, the court found it unnecessary to consider justification under section 36 of the Constitution.[107]

The court also discussed the independence of the review boards and found that they were sufficiently independent.[108] The court found that the requirement under the Act for at least two of the review board members to not be health care professionals pointed to the intended independence of the boards from mental health facilities.[109] The CRPD requires that any steps taken regarding persons with disabilities be "subject to regular review by a competent, independent and impartial authority or judicial body."[110] The court outlined several reasons why there is no institutional bias against users and no incentive for any non-judicial actors to deprive the liberty of prospective users without just cause.[111] First, there is no revenue earning incentive to detain persons that do not have the requisite mental health problems to be detained.[112] Second, there are several people who have to concur on a person's need for treatment for him or her to be admitted to a facility—there is no one person that can involuntarily admit a prospective user.[113] Third, at least two members of the review board will be bound by the ethical rules of their professions, and the members of the review board have no relationship with the heads of the mental health

102. *Makana*, ZACC 15 at ¶ 192.
103. *Id.*
104. S. AFR. CONST. § 10.
105. *Makana*, ZACC 15 at ¶ 195.
106. *Id.* at ¶ 194.
107. *Id.* at ¶ 188.
108. *Id.* at ¶¶ 150, 187.
109. *Id.* at ¶ 150.
110. CRPD, *supra* note 11, at Art. 12(2).
111. *Makana*, ZACC 15 at ¶ 159.
112. *Id.*
113. *Id.*

facilities.[114] For all these reasons, the court concluded that the review boards as outlined in the Act are sufficiently independent for constitutional purposes.[115]

## IV. ANALYSIS

The Constitutional Court's ruling is consistent with its prior jurisprudence and international law.[116] The court is cognizant of the importance of the rights of persons with disabilities but offers a detailed opinion describing why South Africa's Mental Health Act protects the rights of mental health care users.[117] The court gave due regard to the UN's Guidelines on Article 14 of the CRPD, noting as others have that completely abandoning any form of involuntary inpatient treatment is not only controversial but also perhaps dangerous.[118] Of course, the circumstances warranting involuntary inpatient ought to be narrow, and the Constitutional Court seems to agree.[119] Even though Makana did not challenge the existence of involuntary inpatient treatment under the Act, the court's discussion of the CRPD's seemingly outright ban of such a scheme could be helpful in future cases.[120]

After its review, the court found that the Act has proper procedural safeguards to protect against improper decisions to involuntarily admit a patient for care.[121] Part of the court's justification for that finding was the number of people who must see a patient and concur on his or her need for treatment for that person to be admitted.[122] Some scholars have found that there are inherent safeguards that occur before the user is admitted, namely the interactions the potential patient has with law enforcement, nurses, etc. prior to his or her initial seventy-two-hour assessment period.[123] It seems that the number of qualified professionals who assess the mental health status of prospective involuntary inpatients combined with the lack of any incentive to have more mental health patients made

114. *Id.*

115. *Id.* at ¶ 201.

116. *See id.* at ¶ 203.

117. *Id.* at ¶ 3.

118. *See id.* at ¶ 110; M (CA677/2017) v. Attorney-General (in respect of the Ministry of Health) [2020] NZCA 311 at para 114.

119. *See Makana*, ZACC 15 at ¶ 117.

120. *See id.* at ¶ 111.

121. *Id.* at ¶ 137.

122. *Id.* at ¶ 159.

123. *See* Marisha Wickremsinhe, *The Role of 'Micro-Decisions' in Involuntary Admissions Decision-Making for Inpatient Psychiatric Care in General Hospital in South Africa*, 87 INT'L J. OF L. AND PSYCH., 1, 7 (2023).

it much easier for the court to find that the sections 33 and 34 of the Act have strong enough procedural safeguards to warrant a depravation of rights under section 12(1) of the Constitution.[124] The court's distinguishing of *C v. Department of Health* regarding section 34 of the Constitution seems warranted as well.[125] Some speculate that that decision was based mostly on the section 28 of the Constitution, which deals with rights of children, and the section 34 analysis was secondary.[126] Even still, the court's determination that the review boards are sufficiently independent allows the Act to comply with section 34.[127]

While those responsible for the Life Esidimeni tragedy should be held accountable, it does not seem that sections 33 and 34 of the Mental Health Care Act contributed to the tragedy.[128] The tragedy began after the executive council of health in the Gauteng province decided to end its relationship with a third-party mental health facility, Life Esidimeni.[129] After termination, many of the users that were at Life Esidimeni were transferred to non-governmental organizations.[130] After the tragedy came to light, South Africa established the independent Office of the Health Ombud to investigate and offer its findings.[131] The report, proffered by the Health Ombud, found that all of the non-governmental organizations users were transferred to were not licensed mental health facilities and that roughly ninety-five percent of the deaths that occurred happened in these facilities.[132] The Health Ombud also found that the termination of the contract with Life Esidimeni violated the Mental Health Care Act, insofar as it rushed the deinstitutionalization of users where the act calls for this process to be carried out gradually.[133] The Health Ombud's report seems to support the contention by the respondents in the noted case that the Life Esidimeni tragedy was a dereliction of duty by a group of individuals, not indicative of a legislative defect.[134] And, as the court

124. *See Makana* ZACC 15 at ¶ 137.

125. *Id.* at ¶ 191.

126. *See* Meda Couzens, *The Constitutional Court Consolidates its Child-Focused Jurisprudence: The Case of* C v. Department of Health and Social Development, Gauteng, 130 S. AFR. L. J. 672, 687 (2013).

127. *See Makana*, ZACC 15 at ¶ 192.

128. *See id.* at 18 n. 64.

129. Ebenezer Durojay, *Contribution of the Health Ombud to Accountability: The Life Esidimeni Tragedy in South Africa*, 20(2) HEALTH AND HUMAN RIGHTS J. 161, 161 (2018).

130. *Id.*

131. *Id.* at 162.

132. *Id.*

133. *Id.*

134. *See id.* at 162-63; *Makana*, ZACC 15 at ¶ 74.

explained, "[c]onstitutionally compliant legislation may be implemented badly."[135] The state should pursue criminal charges against the perpetrators, but the legislative scheme is still constitutionally valid.[136]

## V. CONCLUSION

The Constitutional Court of South Africa's decision in *Makana People's Centre v Minister of Health and Others* reflects a thorough examination of the Mental Health Care Act in the context of international law and constitutional principles.[137] The ruling emphasized that the Act provides sufficient procedural safeguards to prevent arbitrary or unjust deprivation of liberty for involuntary mental health care users.[138] The court's analysis drew on international instruments including the United Nations Convention on the Rights of Persons with Disabilities, and it clarified that while the CRPD influenced the Act, its categorical prohibition on the deprivation of liberty based on disability was not applicable to the Act's process.[139] The decision highlights the importance of balancing the rights of mental health care users with the necessity of involuntary treatment under certain circumstances.[140] Importantly, the court's findings indicate that legislative compliance does not guarantee flawless implementation, as illustrated by the tragic Life Esidimeni incident, underscoring the need for accountability at both legislative and implementation levels.[141]

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135. *Makana*, ZACC 15 at ¶ 4.
136. *See id.* at ¶ 74.
137. *Id.* at ¶ 80.
138. *Id.* at ¶ 137.
139. *Id.* at ¶¶ 80, 110.
140. *See id.* at ¶ 118.
141. *See id.* at ¶ 4.

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