



Informal Settlements and Human Rights in South Africa

Submission to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Socio-Economic Rights Institute of South Africa (SERI)

in collaboration with

Members of the Steering Group of the South Africa's Ratification Campaign of the
International Covenant on Economic, Social and Cultural Rights and its Optional Protocol

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1. Introduction

In 2018, the United Nations (UN) Special Rapporteur on the right to adequate housing announced her intention to devote her forthcoming report to the UN General Assembly to the issue of informal settlements and human rights. She published an invitation for interested parties to furnish her with relevant information on informal settlements and human rights from their countries.

This submission on informal settlements and human rights in South Africa (focused on selected issues) is a joint initiative of members of the Steering Group of the South Africa's Ratification Campaign of the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol (the Campaign) in collaboration with the Socio-Economic Rights Institute of South Africa (SERI), and with input and participation of some individual experts.

This submission provides background to the Campaign, its work and the non-governmental organisational members (NGOs) that participate in the workings of the Campaign; and provides more information about informal settlements in South Africa. In particular, the submission aims to address questions 1, 2, 3, 4, 5, 6 and 8 of the Special Rapporteur's questionnaire on informal settlements and human rights.

2. The Campaign

The Campaign was organised in response to the delay of the South African government to ratify the ICESCR, despite having signed it in October 1994 and became operational in May 2009. Following its ratification of the ICESCR in January 2015, the Campaign's focus is on raising awareness of the ICESCR and ensuring its effective implementation (including domestication). In relation to the Optional Protocol to the ICESCR, the Campaign focuses on raising awareness of the Optional Protocol and its mechanisms, as well advocating for its ratification by South Africa.

Current non-governmental organisation members of the Steering Group of the Campaign are:

- **Black Sash**,¹ which works towards the realisation of socio-economic rights, as outlined in the South African Constitution 1996, with emphasis on social security and social protection for the most vulnerable particularly women and children. It also works towards exploring options to significantly reduce poverty and inequality.
- **Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI)**,² based at the University of the Western Cape, promotes the realisation of socio-economic rights in South Africa and the African region. It conducts engaged, multi-disciplinary research, human rights education and actively campaigns around key social justice issues. Through engaged research, teaching and advocacy, the Institute supports processes in South Africa and the region to build inclusive, resilient states that are

¹ For more information on Black Sash's activities, see <https://www.blacksash.org.za/>.

² For more information on Dullah Omar Institute's activities, see <https://dullahomarininstitute.org.za/>.

accountable to citizens and responsive to human rights. It aims to be the leading think tank on multi-level governance and human rights in Africa.

- **People's Health Movement South Africa (PHM-SA)**³ is the South African Chapter of the People's Health Movement (PHM), a global network of grassroots activists, civil society and academics, predominantly from low and middle-income countries. PHM-SA was started in 2003 by a small group of health activists and launched in 2007 with its Right to Health Campaign. PHM-SA focuses on advocating for improved healthcare services for all. It also works with communities and civil society organisations to improve the social determinants of health (SDH), i.e. "the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. These forces and systems include economic policies and systems, development agendas, social norms, social policies and political systems."
- **Socio-Economic Rights Institute of South Africa (SERI)**⁴ is a non-profit organization and public interest legal services organization that provides professional and dedicated socio-economic rights assistance to individuals, communities, community-based organisations (CBOs) and social movements in South Africa. litigates in the public interest, facilitates civil society mobilisation and coordination, and conducts popular education and training. SERI's core work relates to the advancement and protection of access to socio-economic rights in socio-economically marginalized (poor) communities. One of SERI's primary thematic focus areas is 'Securing a Home', which includes protecting and fulfilling the right of access to adequate housing; challenging unlawful evictions; promoting greater tenure security for the urban poor; informal settlement upgrading; advocating for spatial justice; and defending and promoting access to basic services such as water, sanitation and electricity, particularly in informal settlements. Over the last ten years, SERI has been involved in legal, research and advocacy work around evictions, relocations, affordable rental housing, allocation of state-subsidised houses, and informal settlement upgrading. We have published several resource guides, research reports and working papers
- **Studies in Poverty and Inequality Institute (SPII)**⁵ is an independent research think tank which focuses on generating new knowledge, information and analysis in the field of poverty and inequality studies. Through facilitating collaborative partnerships with and between institutions of democracy academia and civil society organisations, SPII seeks to promote sustainable development and support the development of a tradition of effective public participation in policy making and implementation. SPII has developed a unique measurement tool of the progressive realisation of the constitutional socio-economic rights by the state, which includes policy and budget reviews of line state departments. In addition, SPII has developed and populated indicators measuring quality, access and adequacy of enjoyment of these rights in South Africa, in partnership with the South African Human Rights Commission.

³ For more information on PHM-SA's activities, see <http://phm-sa.org/>.

⁴ For more information on SERI's activities, see <https://www.seri-sa.org>.

⁵ For more information on SPII's activities, see <http://www.spii.org.za/>.

In addition, to the above organisations, some individual experts actively participate in the work of the Campaign, including Jackie Dugard⁶ and Lilian Chenwi⁷ (both based at the School of Law, the University of the Witwatersrand (Wits), South Africa; both are also members of the SERI Board).

The submission has been compiled with input from the following: Michael Clark, Maanda Makwarela and Daiyaan Halim (SERI); Ebenezer Durojaye and Gladys Mirugi-Mukundi (DOI); and Lilian Chenwi (Wits School of Law and SERI Board members).

3. Informal Settlements

South Africa has a progressive legal and policy framework governing the right to housing. South Africa has established a comprehensive state-subsidised housing programme, which seeks to redress the legacy of apartheid and grant eligible beneficiaries a variety of state-subsidised housing options. State-subsidised housing therefore plays a critical role in addressing the acute shortage of affordable housing available to poor and low-income households in South Africa.

The South African government has, in terms of this framework, been able to make considerable gains over the years. However, these gains mask various systemic challenges that continue to compromise the enjoyment of the right of access to adequate housing. These challenges stem not from the legal and policy framework governing housing but rather from the manner in which this legal framework has been implemented in practice. The implementation of the right to adequate housing has, for example, been plagued by poor planning, a lack of coordination, insufficient capacity, a failure to adequately monitor the implementation of government policies, and a lack of political will.

These challenges are particularly acute in the context of informal settlements and inner-city 'slum' buildings. As this submission indicates, those living in informal settlements experience inadequate housing, lack access to basic services or their maintenance and face the threat of evictions among other challenges. In fact, "informality, characterised by poor living conditions as well as social and economic exclusion"⁸ is a critical challenge in the country.

3.1 Statistical data on the numbers of people living in informal settlements

As a result of the critical lack of affordable housing many poor and low-income households have had to resort to living in South Africa's growing informal settlements. As provided in South Africa's National Housing Code, informal settlements are typically identified on the basis of the following characteristics: illegality and informality; inappropriate locations; restricted public and private sector investment; poverty and vulnerability; and social stress.⁹ Informal

⁶ For more information on Jackie Dugard, see: <https://www.wits.ac.za/staff/academic-a-z-listing/d/jackiedugardwitsacza/>.

⁷ For more information on Lilian Chenwi, see: <https://www.wits.ac.za/staff/academic-a-z-listing/c/lilianchenwiwitsacza/>.

⁸ United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, Initial Reports of States Parties due in 2017: South Africa*, UN Doc. E/C.12/ZAF/1 (2017), para 100.

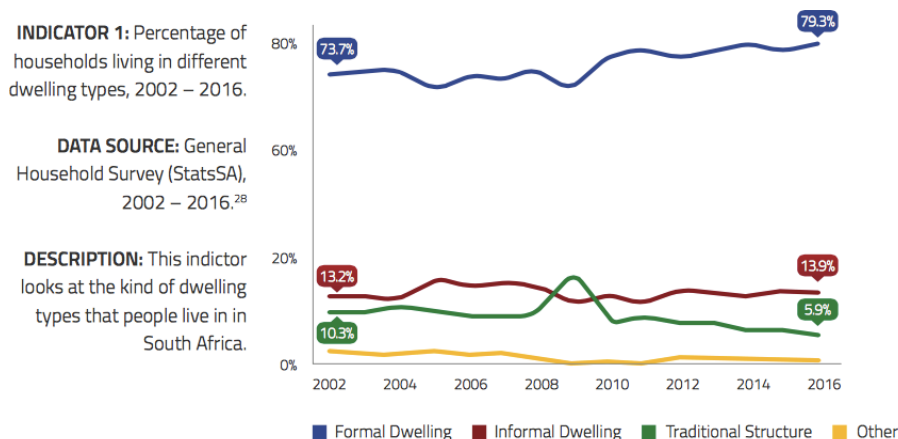
⁹ Department of Human Settlements (DHS), 'Upgrading of Informal Settlement Programme', Part 3 of the *National Housing Code* (2009), p. 16, available at:

settlements in South Africa demonstrate one or more of the above characteristics.¹⁰ Despite the setting out of the above characteristics in national policy, it should be noted that varied definitions of informal settlements exist at municipal level, some of which do include some of the above characteristics.¹¹

According to conservative estimates in 2011, between 1.1 and 1.4 million households, or between 2.9 and 3.6 million people lived in informal settlements in South Africa.¹² However, given the insecure tenure arrangements in informal settlements and the fluidity of residence in these areas, the number is likely to be significantly higher.

The extent of the housing crisis in South Africa becomes more evident when disaggregating the number of households by dwelling type. Data from Statistics South Africa (StatsSA)'s General Household Survey indicate that 79.3% of households in South Africa live in formal dwellings, while 13.9% of households live in informal dwellings and 5.9% of households live in traditional dwellings.¹³ While the proportion of households living in formal dwellings has increased by 5.6% between 2002 and 2016, the percentage of households living in informal dwellings has also increased during the same period.

The figures indicate that in 2016, approximately 1 in 7 households in South Africa lived in informal dwellings (this figure is higher in metropolitan areas, where 1 in every 5 households lived in an informal dwelling).¹⁴ Moreover, the Housing Development Agency (HDA) has noted that these figures are likely to under-represent the real growth in informal settlements.¹⁵



http://www.dhs.gov.za/sites/default/files/documents/national_housing_2009/4_Incremental_Interventions/5%20Volume%204%20Upgrading%20Informal%20Settlement.pdf.

¹⁰ DHS, 'Upgrading of Informal Settlement Programme' (note 9 above),

¹¹ On the various definitions by municipalities, see Eighty20, 'What is an informal settlement?', *Eighty20* (2016), available at: <http://www.eighty20.co.za/what-is-an-informal-settlement/>.

¹² These figures are based on conservative estimates from 2011 and are therefore likely to be under-representative. See Mark Napier, 'Government Policies and Programmes to Enhance Access to Housing: Experience from South Africa', paper delivered at the Bank of Namibia Annual Symposium in Windhoek (29 September 2011); and Studies in Poverty and Inequality Institute (SPII), *Monitoring the Right of Access to Adequate Housing in South Africa*, SPII Working Paper No 16 (September 2017), p. 33, available at: http://www.spil.org.za/wp-content/uploads/2018/02/Right-to-Housing_2017.pdf.

¹³ The General Household Survey (GHS) describes a formal dwelling as any structure built according to approved plans i.e. a house, an apartment or a room within a formal dwelling. An informal dwelling is defined as a makeshift structure that is not erected in terms of approved architectural plans such as corrugated iron shacks or shanties in informal settlements, serviced stands or proclaimed townships, as well as backyard shacks and other dwelling types. Traditional structures are referred to as all dwellings constructed from clay, mud, reeds or other locally available materials such as huts. See SPII, *Monitoring the Right of Access to Adequate Housing* (note 12 above) p. 31.

¹⁴ SPII, *Monitoring the Right of Access to Adequate Housing* (note 12 above) p. 31.

¹⁵ In particular, these figures are likely to under-represent informal dwellings in backyards or adjoined to other formal dwellings due to issues arising from outdated survey sampling frames or the non-inclusion of newer settlements. Housing Development Agency (HDA), *South Africa: Informal Settlements Status* (2012), p. 9, available at: http://thehda.co.za/pdf/uploads/multimedia/HDA_Informal_settlements_status_South_Africa.pdf. See also, Housing Development Agency (HDA), *South Africa: Informal Settlements Status* (2013), p. 5, available at: http://www.thehda.co.za/uploads/files/HDA_South_Africa_Report_Ir.pdf.

These figures show that the majority of poor and low-income people in SA continue to live in informal settlements or slums and suggest that the government's housing programmes are failing to address the growing challenges posed by informal settlements.

In relation to specific groups, the government has confirmed that those living in informal settlements include people with disabilities, with “many” of the “persons with disabilities living in informal settlements and in shacks” being “further disadvantaged by not having access to other basic amenities, including sanitation and clean water”.¹⁶ It has been observed further that children with disabilities “are more likely to live in ... informal settlements than their non-disabled counterparts”.¹⁷ No specific figures were provided. However, in relation to children in general, the government reported in 2014 that “over two million children live in backyard dwellings or shacks in informal settlements; over 40% of these children are within the particularly vulnerable 0–5-year age group”.¹⁸

3.2 Access to basic services in informal settlements

Informal settlements in South Africa are characterised by profound inequalities in access to basic services such as water, sanitation, and electricity. This is particularly apparent in relation to informal settlements located in rural areas. For example, as regards children, there is “serious divide in access to basic services and an adequate standard of living in the country on the basis of race, geography and economic status, with a disproportionate disadvantage for children living in rural areas and in urban informal settlements”.¹⁹ On children with disabilities, the government has “acknowledged that young African children with disabilities, living in impoverished homes and communities, especially ... informal settlements, experience multiple deprivations”.²⁰ In fact, it is acknowledged in national policy on disabilities that children with disabilities “are less likely to have access to adequate housing, water and sanitation than their non-disabled peers”.²¹ On persons with disabilities in general, the government has reported that “many persons with disabilities living in informal settlements and in shacks are further disadvantaged by not having access to other basic amenities, including sanitation and clean water”.²²

Unfortunately, information about the availability and accessibility of basic services in informal settlements is rarely available except for the isolated pockets from which we have drawn the

¹⁶ UN Committee on the Rights of Persons with Disabilities, *Consideration of Reports submitted by States Parties under article 35 of the Convention Initial Reports of State Parties due in 2009: South Africa*, UN Doc. CRPD/C/ZAF/1 (2015), para 328. See also, South Africa, *White Paper on the Rights of Persons with Disabilities*, Government Gazette No 39792 (9 March 2016), p. 77, available at: https://www.gov.za/sites/www.gov.za/files/39792_gon230.pdf.

¹⁷ South Africa, *White Paper on the Rights of Persons with Disabilities* (note 16 above), p. 76.

¹⁸ African Committee of Experts on the Rights and Welfare of the Child, *South Africa's Initial Country Report on the African Charter on the Rights and Welfare of the Child - Reporting period: January 2000 – April 2013* (2014), para. 244.

¹⁹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of South Africa*, UN Doc. CRC/C/ZAF/CO/2 (2016), para. 23.

²⁰ UN Committee on the Rights of Persons with Disabilities, *Initial report of South Africa* (note 16 above), para. 23.

²¹ South Africa, *White Paper on the Rights of Persons with Disabilities* (note 16 above), p. 76.

²² South Africa, *White Paper on the Rights of Persons with Disabilities* (note 16 above), para. 328. It is worth noting that persons with disabilities in informal settlements are particularly vulnerable given that “exclusion errors” in access to disability grants “disproportionately affect the poorest, especially orphans and children, persons with disabilities and the aged, on farms, in remote rural areas and *poorly accessible informal settlements*” (para. 316, emphasis added).

data below. This is largely due to the fact that basic services monitoring data is collected on a household basis and is then aggregated to the metro, district or provincial level. As informal dwellings in informal settlements are not considered formal households, data on their accessibility and availability of access to services is rarely collected.

(a) Water

Local governments (municipalities) have the sole mandate as water services authorities to provide access to, at least, the minimum level of services to all of the people living within their municipal area.²³ Municipalities, such as the City of Cape Town, aim to provide one water tap for every 25 families within a 200m radius, one toilet for every five families, and weekly refuse removal (the municipality claims that this is in compliance with the minimum requirements for a basic water supply and the Emergency Housing Programme (EHP) despite court cases suggesting that this may be insufficient).²⁴

Access to water in informal settlements is generally limited to communal water sources. According to the 2011 Census, 12% of the 1,068,572 households in the City of Cape Town relied on a communal stand for access to tap water.²⁵ For example, in the Marikana informal settlement, located in Phillipi outside Cape Town, the City of Cape Town has provided 50 communal standpipes to provide water to at least 60,000 residents.²⁶ This has led to high demand and long queues.

Municipally supplied communal standpipes are usually placed along road servitudes and often at inconvenient locations on the perimeters of informal settlements. The effect of this is that retrieving water from communal standpipes creates a barrier to access, especially for people with disabilities and the elderly who may not be able to carry 'jerry cans' (25 litre water containers from the standpipes to their homes). The primary duty to collect water, however, often falls on women and children. Surveys from 45 developing countries have shown that women and girls in low-income countries are responsible for collecting water for the household.²⁷ In this vein, the South African Human Rights Commission (SAHRC) has referred to women and girls as the "bearers of water".²⁸ Relying on communal standpipes is especially arduous for women and girls in informal settlements who bear the burden of fetching water while being at an increased risk of violence or sexually assault while doing so.

²³ This is clear from sections 152(b) and 153(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution) which provides that municipalities should "ensure the provision of services to communities in a sustainable manner" and must "give priority to the basic needs of the community; and ... promote the social and economic development of the community".

²⁴ City of Cape Town, *Basic Services for Informal Settlements*. See also *Beja and Others v Premier of the Western Cape and Others* 2011 (10) BCLR 1077 (WCC) (*Beja*), available at: <http://www.saflii.org/za/cases/ZAWCHC/2011/97.html>.

²⁵ Statistics South Africa (StatsSA), *Census 2011 Municipal Report: Western Cape*. Available at: www.statssa.gov.za/census/census_2011/census_products/WC_Municipal_Report.pdf.

²⁶ Socio-Economic Rights Institute of South Africa (SERI), 'Our Land to Keep: Marikana Informal Settlement', in *Informal Settlements in South Africa: Norms Practices and Agency* (forthcoming, 2018) (on file with SERI).

²⁷ World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), *Progress on Sanitation and Drinking-Water: Joint Monitoring Programme 2010 Update* (2010), p. 29.

²⁸ South African Human Rights Commission (SAHRC), *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa* (2014), p. 7, available at: [www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%202014%20March%20-%20Water%20%20Sanitation%20low%20res%20\(2\).pdf](http://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%202014%20March%20-%20Water%20%20Sanitation%20low%20res%20(2).pdf).

In response to standpipes being placed in often inconvenient locations, some communities create makeshift water connections closer to their homes. For example, in 2005, residents of Slovo Park informal settlement, a settlement housing over 3,000 households south of Johannesburg, installed household connections themselves to reduce their reliance on the more difficult to access communal taps.²⁹ The settlement originally had only four communal standpipes on each street.

Unfortunately, in some provinces, the situation is deteriorating instead of improving. StatsSA has found that between 2002 and 2015, two rural provinces (the North West and Limpopo) reported rapid decreases in access to improved drinking water in informal settlements.³⁰

(b) Sanitation

Sanitation continues to be a concern in informal settlements, which lack infrastructure for waste disposal and sewage. Toilets, in particular, present a serious challenge. The figures illustrate the severity of the challenges faced by informal settlement residents. According to StatsSA, more than two-thirds (68%) of households living in informal dwellings are forced to share toilet facilities (this far surpasses households in formal dwellings who are forced to share toilet facilities (19%)).³¹ Moreover, approximately 6.8% of households in informal settlements rely on the 'bucket system' compared to 0.1% of residents living in formal housing;³² and informal settlement residents are approximately five times more likely practice open defecation than those living in formal dwellings (2.1%).³³

As a result of the acute shortage of sanitation services in informal settlements, many municipalities have resorted to using short-term measures to attempt to provide long-term solutions. Many municipalities do this by providing access to chemical toilets (a short-term solution, which has become *de facto* permanent). For example, StatsSA reports that approximately 25% of the 400,000 people living in informal settlements in the Gauteng province (the most populous province) rely on chemical toilets as their primary form of sanitation.³⁴ However, chemical latrines are extremely ill-suited to long-term use as they deposit waste into small tanks that are treated with chemicals to ensure greater hygiene and reduce odour. These tanks must be serviced and emptied regularly to remain usable. However, municipalities have struggled to ensure that these facilities are serviced with the necessary frequency. In most cases, municipalities out-source these functions to service providers and struggle to hold these service providers accountable.

²⁹ Kate Tissington, 'Towards Greater Community Participation in Informal Settlement Upgrading: A Case Study from Slovo Park, Johannesburg', in Good Governance Learning Network (GGLN), *Putting Participation at the Heart of Development // Putting Development at the Heart of Participation* (2012), pp. 50-61, available at: <http://ggln.org.za/media/k2/attachments/SoLG.2012-SERI.pdf>.

³⁰ Statistics South Africa (StatsSA), *General Household Survey (GHS) Series Volume VIII: Water and Sanitation In-Depth Analysis of the General Household Survey 2002–2015 and Community Survey 2016 data* (2016).

³¹ StatsSA, *GHS Series Volume VIII: Water and Sanitation* (note 31 above) p. 101.

³² The bucket system refers to a dry on-site sanitation system consisting of a top-structure with a seat positioned over a bucket or other container located in a small compartment beneath. In some areas, the buckets are collected during the week by municipalities or their service providers and in other areas households are expected to dispose of their buckets themselves. StatsSA, *GHS Series Volume VIII: Water and Sanitation* (note 31 above) p. 101.

³³ StatsSA, *GHS Series Volume VIII: Water and Sanitation* (note 31 above) p. 95.

³⁴ Housing Development Agency (HDA), *Gauteng: Informal Settlements Status*, HDA Research Report (2013), available at: http://thehda.co.za/pdf/uploads/multimedia/HDA_Gauteng_Report_Ir.pdf.

For example, in 2016, the City of Cape Town erected 371 chemical toilets to accommodate the approximately 60,000 people living in the Marikana informal settlement in Phillipi, outside Cape Town (this comes to 1 toilet for every 32 households).³⁵ The toilets were located on a public road along the periphery of the informal settlement, meaning that most residents have to travel long distances to make use of them. Residents claim that the toilets expose them to safety risks and provide little or no privacy.³⁶ The chemical latrines are supposed to be emptied, serviced and cleaned by the City's service provider on a regular basis. However, the latrines are only collected on Mondays, Wednesday and Fridays, meaning that they are often over full on weekends and public holidays.³⁷ In an effort to maintain cleanliness and privacy, some people have resorted to locking the toilets closest to their shacks to limit the number of people who can use them.³⁸ This diminishes the number of toilets that are available to be used and places additional strain on the toilets that are not locked.

The lack of access to adequate sanitation disproportionately impacts women, girls and people with disabilities.³⁹

(c) Electricity

Electrification of informal settlements, which requires the creation of micro-grids or connection to the major grid system, is also extremely limited. A 2013 study by the Housing Development Agency (HDA) found that only 43% of the estimated 1,249,777 recorded households in that live in informal settlements had access to electricity for lighting, heating or cooking in 2011.⁴⁰ Disaggregated data shows that 21% of the households living in the North West province and 19% of households in Gauteng province were in informal settlements.⁴¹ Johannesburg alone estimates a population of 500,000 residents in 180,000 households in informal settlements.⁴² In informal settlements such as the Slovo Park informal settlement in Johannesburg, residents have traditionally created unsafe connections to syphon electricity from neighbouring buildings, often resulting in electrocution deaths⁴³ and fires.

Some informal settlements have existed for decades without access to electricity. The Makause informal settlement located in Germiston in the province of Gauteng is home to more than 10,000 people, many of whom have lived there for more than 20 years. For most of this time, residents have lived without electricity. In October 2008, while the community resisted a forced eviction and advocated for *in situ* upgrading, the Ekurhuleni Metropolitan Municipality installed two communal water standpipes and five high mast street lights in the settlement. The standpipes and the high mast lighting was inadequate given the size of the settlement (which spans approximately 60 hectares).⁴⁴ More recently in 2018, the residents of Makause

³⁵ SERI, 'Our Land to Keep' in *Informal Settlement in South Africa* (note 26 above).

³⁶ SERI, 'Our Land to Keep' in *Informal Settlement in South Africa* (note 26 above).

³⁷ SERI, 'Our Land to Keep' in *Informal Settlement in South Africa* (note 26 above).

³⁸ SERI, 'Our Land to Keep' in *Informal Settlement in South Africa* (note 26 above).

³⁹ SAHRC, *Report on the Right to Access Sufficient Water* (note 28 above), p. 14.

⁴⁰ Housing Development Agency (HDA), *South Africa: Informal Settlements Status* (2013).

⁴¹ See, in general, StatsSA, *GHS Series Volume VIII: Water and Sanitation* (note 31 above).

⁴² City of Johannesburg, 'More Informal Settlements Get Electricity', Press Statement (undated), available at: <https://www.joburg.org.za/media/Newsroom/Pages/2016%20%20%2015%20Articles/More-informal-settlements-in-Joburg-get-electricity.aspx>.

⁴³ Since 2016, 16 people in Slovo Park informal settlement have died as a result of electrocution.

⁴⁴ See, generally, SERI, 'Makause: Resisting Relocation on the East Rand', SERI Community Practice Note: Informal Settlement Series (August 2014), available at: http://www.seri-sa.org/images/Makause_CPN_Final.pdf.

are petitioning the municipality to grant them access to solar lighting to reduce the level of violent crime and the risk of fires caused by unlawful electrical connections.

3.3 Data on the environmental, health, or security concerns facing informal settlement residents

Informal settlements are often viewed as criminalized, temporary spaces, which result in informal settlement residents being viewed as marginal and suffering endless prejudices.⁴⁵ Their vulnerable position is made more precarious by environmental conditions, including the threat of natural disasters, inadequate access to basic services such as water, sanitation and electricity, pollution, and poisoning by hazardous waste, and susceptibility to infectious diseases.

(a) Health concerns

No disaggregated health statistics are available in relation to the life expectancy and mortality of informal settlement residents in South Africa. However, indications of increased health risks in these areas implies a lower life expectancy than in more formal settlements. For example, a 2012 study by the Human Sciences Research Council (HSRC) found that the rate of new HIV infections in people two (2) years and older was twice as high in urban informal settlements that in urban formal areas. Informal settlements showed consistently high rates of HIV infection in HRSC surveys conducted in the 2002, 2005, 2008, and 2012.⁴⁶ The prevalence of HIV/AIDS in South Africa has been identified as a key factor in the country's low life expectancy.⁴⁷

In addition, residents in informal settlements are also more vulnerable to infectious diseases. For example, latent tuberculosis (TB) is most highly prevalent (88%) in 30 to 39 year olds living in informal settlements.⁴⁸ StatsSA has also identified TB as one of the leading causes of death in South Africa in 2015, along with diabetes and cerebrovascular disease.⁴⁹

In addition to physical health concerns, residents of informal settlements are also more likely to experience major mental health challenges. Poor mental health and symptoms of depression have been linked to other poor outcomes and HIV-risk behaviours.⁵⁰ Studies link indications of poverty, such as food insecurity, low levels of education, social class, and financial stress, with symptoms of depression. In South Africa specifically, studies have shown that "the legacy of apartheid and the high levels of poverty amongst black South Africans has

⁴⁵ Paula Meth, 'Informal Housing, Gender, Crime and Violence: The Role of Design in Urban South Africa', *The British Journal of Criminology*, 57(2) (2017), pp. 240-241.

⁴⁶ Meth, 'Informal Housing, Gender, Crime and Violence' (note 46 above), pp. 240-241.

⁴⁷ Wan He, Daniel Goodkind and Paul Kowal, *An Aging World, 2015: International Population Reports*, U.S. Census Bureau Report (2016), available at: <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p95-16-1.pdf>.

⁴⁸ South African National Tuberculosis Association, 'Latent TB' (undated), available at: www.santa.org.za/latent-tb.html.

⁴⁹ Statistics South Africa (StatsSA), 'Mortality and Causes of Death 2015', Press Statements (28 February 2017), available at: <http://www.statssa.gov.za/?p=9604>.

⁵⁰ Andrew Gibbs, Kaymarlin Govender and Rachel Jewkes, 'An Exploratory Analysis of Factors Associated with Depression in a Vulnerable Group of Young People Living in Informal Settlements in South Africa', *Global Public Health* (2016), p. 2.

contributed to poor mental health outcomes.”⁵¹ These symptoms of depression are especially high in young male and female residents of informal settlements.⁵²

(b) *Environmental concerns*

Informal settlements are often unplanned and have little, if any, infrastructure. Informal settlements are therefore often serviced by unpaved roads that are unnamed or unnumbered, the individual dwellings are frequently not numbered, they do not have access to fire hydrants, and they do not have street lighting. This lack of basic infrastructure makes informal settlements especially vulnerable to natural disasters and devastating fires. The dwellings themselves are often constructed using cheap and highly flammable, and easily available, materials such as plastic, cardboard, and untreated wood.⁵³ This makes them highly permeable to the elements and easily destroyed by fire. Between January 1995 and December 2004, of the 18,504 fire incidents reported, 8,554 (46.2%) were in informal settlements.⁵⁴

Informal settlements are also often built with little or no planning with regard to drainage or sewage systems, which exposes residents to flooding and diseases from still water and uncollected waste. The Disaster Mitigation for Sustainable Livelihoods Programme (DiMP) at the University of Cape Town found that 20% of the dwellings in the 47 informal settlements they studied were built in areas of high flooding.⁵⁵ This flooding led to the loss of bedding, personal belongings, food, and clothing and cost each family an average of ZAR 2,750 (US\$ 225) per event – approximately 328% of their estimated monthly household income. These factors combined with high levels of poverty, high population density, and a lack of access to emergency services make households in informal settlements especially vulnerable to events that can undermine their health and livelihoods and have catastrophic consequences.⁵⁶

(c) *Security concerns*

People living in informal settlements are more likely to fall victim to crime than those living in more formal dwellings. As informal settlements are often located on vacant or undeveloped land, they are prone to accommodate areas of unchecked vegetation which have been identified as key sites for sexual assault, muggings, and dumping bodies.⁵⁷

Police generally acknowledge that informal settlements are more difficult to police than formal settlements. The former South African national police commissioner, Riah Phiyega, has been quoted as saying that policing informal settlements is dangerous for the police and for the public because informal settlements lack the “street and house numbers, decent sanitation and street flood lighting, among other things” that are necessary for proper policing.⁵⁸ On 2

⁵¹ Gibbs et al, ‘An Exploratory Analysis of Factors Associated with Depression’ (note 53 above) p. 9.

⁵² Gibbs et al, ‘An Exploratory Analysis of Factors Associated with Depression’ (note 53 above) p. 9.

⁵³ Mark Pelling and Benjamin Wisner, ‘Disaster Risk Reduction: Cases from Urban Africa’, *Earthscan* (2008), p. 113.

⁵⁴ Pelling and Wisner, ‘Disaster Risk Reduction’ (note 62 above) p. 112.

⁵⁵ Pelling and Wisner, ‘Disaster Risk Reduction’ (note 62 above) p. 111.

⁵⁶ Pelling and Wisner, ‘Disaster Risk Reduction’ (note 62 above) p. 106.

⁵⁷ Meth, ‘Informal Housing, Gender, Crime and Violence’ (note 46 above), p. 416.

⁵⁸ Groundup, “An open letter to the authorities about Marikana informal settlement”, *The Daily Maverick* (5 October 2017), available at: www.dailymaverick.co.za/article/2017-10-05-groundup-an-open-letter-to-the-authorities-about-marikana-informal-settlement/#.Wvvr2eYhubIV.

may 2018, at a dialogue held by the South African Human Rights Commission (SAHRC) and the African Policing Civilian Oversight Forum (APCOF) on Human Rights and Policing in Johannesburg, General Masemola of the South African Police Service (SAPS) stated that police officers often feel that the narrow pathways and high population density in informal settlements make policing difficult.⁵⁹ The lack of policing in informal settlements, however, seems to correlate with higher rates of crime in informal settlements, potentially because those who commit crimes act without fear of repercussion from the police.

No disaggregated data is available regarding crime in informal settlements. However, data regarding Khayelitsha in Cape Town may be indicative of the higher levels of crime and violence that are likely to be experienced in informal settlements.⁶⁰ Khayelitsha is the largest township in South Africa, and roughly half of its 118,000 households are located in informal settlements.⁶¹ Although the murder rate in South Africa is significantly high (32.2 murder per 100,000 persons), the murder rate in Khayelitsha's informal settlements ranges from 150 to 200 murders per 100,000 persons.⁶²

A community leader in the Marikana informal settlement in Phillipi outside Cape Town was quoted as saying that in Marikana, "people die like flies every day".⁶³ This was following a particularly traumatic week during which 18 people lost their lives as a result of gang violence. The community leaders argue that the inability of the police to effectively police the settlement has meant that gangmembers use the settlement as their "playground" and that vigilante community members have resorted to taking the law into their own hands.

Moreover, accessing basic services such as communal water or sanitation services in informal settlements requires residents to leave their homes, which exposes them to multiple security threats. The lack of lighting, overgrown vegetation, uncollected waste, and the distance women have to travel to reach communal standpipes and toilets have been attributed by many residents of informal settlements as increasing the risk of violent attacks and sexual assault.⁶⁴ Requiring residents to travel outside of the home at night also creates a challenge for any children that must be left unattended at home.

In addition, there is "high prevalence of gender-based violence against children, in particular in rural areas and urban informal settlements, both in the home and in schools".⁶⁵ The UN Committee on the Rights of the Child in particular has urged South Africa to conduct research into the "extreme levels of gender-based violence against girls in informal settlements" and develop tailored responses to address this pressing issue.⁶⁶ The Committee also urged South

⁵⁹ SERI, *Comments from SAPS General Masemola at SAHRC and APCOF Dialogue on Human Rights and Policing*, (2 May 2018), available at: https://twitter.com/SERI_RightsSA/status/991618953767280640.

⁶⁰ It should be noted that Khayelitsha's informal settlements are also characterized by high levels of gang-related violence, which may set it apart from other informal settlements in South Africa.

⁶¹ Kate O'Regan and Vusumzi Pikoli, 'Commission of Inquiry into Policing in Khayelitsha established into Section 206(5) of the Constitution: Handover Statement of the Commissioners' (August 2014).

⁶² Lorenzo Wakefield and Sean Tait, 'Crime and Violence in Formal and Informal Urban Spaces in South Africa Citizen Security Dialogues Dispatches from South Africa: Foreword', *Stability: International Journal of Security and Development*, 4, 1 (2015), pp. 1-4.

⁶³ Vicky Abraham, "'People die like flies every day' at Marikana informal settlement", *The Citizen* (2 October 2017), available at: www.citizen.co.za/news/south-africa/1674049/people-die-like-flies-every-day-at-marikana-informal-settlement/.

⁶⁴ Meth, 'Informal Housing, Gender, Crime and Violence' (note 46 above), p. 415.

⁶⁵ UN Committee on the Rights of the Child, *Concluding observations: South Africa* (note 19 above), para. 37(a).

⁶⁶ UN Committee on the Rights of the Child, *Concluding observations: South Africa* (note 19 above), para. 38(b).

Africa “to develop, adopt and implement effectively a comprehensive national strategy to prevent and address all forms of violence against children and to protect and support child victims of violence”, which should, inter alia, “[p]ay due attention to groups of children at heightened risk of exposure to violence, including children living in rural areas and urban informal settlements”.⁶⁷ South Africa is yet to respond on its implementation of these recommendations.

3.4 Primary reasons for people living in informal settlements

(a) *Apartheid-era forced evictions and race-based town planning*

Apartheid-era legislation led to both insecure land rights and a lack of housing for the majority of South Africa’s population.⁶⁸ Spatial segregation policies initially removed individual land ownership rights for black Africans, and evolved to prevent black, coloured (mixed race), and Indian/Asian South Africans from living in well-located areas (which were exclusively reserved for white South Africans). Townships demarcated for black people housed the majority of the South African population in the outskirts of cities. The apartheid state’s failure to invest in the development of housing and municipal services in these townships led to an unprecedented shortage of housing, overcrowding, and the establishment of informal settlements.⁶⁹ Hence, the “lack of affordable and adequate housing is resulting in the creation of informal settlements, and the practice of forced evictions from such settlements persists”.⁷⁰

Despite constitutionally mandated land reform measures, the post-apartheid state has not yet been able to address the legacy of apartheid spatial planning.⁷¹ Black South Africans are disproportionately confined to urban peripheries in dense and poorly serviced settlements, have very low rates of home ownership and sometimes live in extremely peripheral peri-urban areas which, without the apartheid context, makes no sense at all.⁷²

(b) *Poverty, inequality and unemployment*

⁶⁷ UN Committee on the Rights of the Child, *Concluding observations: South Africa* (note 19 above), para. 34.

⁶⁸ The Natives Land Act of 1913 formalised limitations on ownership of land by black South Africans and made only 8% of the total land in the country available for ownership by black people. Although black people were extended an allocation of 13% of land, the Natives Land and Trust Act of 1936 abolished individual land ownership for black people. Privately owned land was expropriated and provided to community trusts that would administer the paltry area of land for nearly 80% of the South African population. The Group Areas Acts of 1950 and 1966 led to the forced evictions of Indian, coloured, and black people from what would become well serviced white only areas.

⁶⁹ Noah K Marutlulle, ‘Causes of Informal Settlements in Ekuruleni Metropolitan Municipality: An Exploration’, *Africa’s Public Service Delivery & Performance Review*, 5(1) (2017), p. 131.

⁷⁰ UN Committee on the Rights of the Child, *Concluding observations: South Africa* (note 19 above), para. 57(b).

⁷¹ The recent legislative motion proposed by the Economic Freedom Fighters, a minority political party, and amended by the African National Congress, the South African governing political party, passed in South African Parliament on 27 February 2018 acknowledges that a recent land audit claims that black people own less than 2% of rural land and less than 70% of urban land.

⁷² Josh Budlender and Lauren Royston, *Edged Out: Spatial Mismatch and Spatial Justice in South Africa’s Main Urban Areas*, Socio-Economic Rights Institute of South Africa (SERI) Research Report (2016), available at: http://www.seri-sa.org/images/SERI_Edged_out_report_Final.pdf.

Income inequality in South Africa is among the worst in the world, and continues to be split mainly along racial lines.⁷³ Poverty rates are highest for black Africans, followed by coloureds, Indian/Asians, and then whites, representing exactly the racial hierarchy imposed by the apartheid state.⁷⁴ Across South Africa, spatial mismatch in which the unemployed and poor are located far away from employment opportunities is a quintessential poverty trap.⁷⁵

High rates of poverty and unemployment have made well-located formal housing inaccessible for a large number of South Africans. Although government has attempted to encourage banks to provide financial loans to lower income households, with an unemployment rate over 30% and a practice of bank foreclosures on housing loans, bank financing of private homes remains a largely elite preserve. In terms of rental properties, in most urban areas, and particularly metropolitan municipalities, market-related rentals are unaffordable for low- or no-income households.⁷⁶

The majority of the urban poor and low-income households therefore continue live in the dense urban peripheral settlements created through apartheid spatial planning.

(c) Inner-city occupied buildings

With the dismantling of the legislative framework that propped up the apartheid state, many non-white South Africans were able to relocate to areas previously reserved for the white population to seek opportunities for employment. However, as a result of prevailing unemployment, inequality, and poverty, and the legacy of spatial planning, formal housing remains unaffordable to the lowest income households. This is despite efforts by government to develop affordable social housing projects, and the subsidising of housing purchases.

In the 1990s, the state implemented programs subsidising the purchase of inner-city housing units by their existing low-income tenants – many who had moved into the city from peripheral informal settlements. These subsidies were awarded to tenants despite the fact that many were unable to afford the costs associated with ownership and maintenance of their individual units and the common property.⁷⁷ Coupled with inadequate knowledge of the rules and law relating to the ownership and management of the property scheme, buildings rapidly deteriorated and grew susceptible to unlawful appropriation by third parties (known as “building hijacking”).⁷⁸ Tenure security in the inner-city has since eroded as landlords and owners have abandoned their units. Failure to pay rates and taxes, and inner-city

⁷³ Budlender and Royston, *Edged Out* (note 58 above). South Africa’s income Gini coefficient was recorded as 0.67 in 2012 while the net wealth Gini coefficient stood at 0.9. Data from 2010 estimates that 5% of South Africans hold 79% of the country’s net wealth.

⁷⁴ Budlender and Royston, *Edged Out* (note 58 above).

⁷⁵ Budlender and Royston, *Edged Out* (note 58 above).

⁷⁶ Jackie Dugard with Michael Clark, Kate Tissington and Stuart Wilson, *The Right to Housing in South Africa*, Foundation for Human Rights (FHR) Position Paper (2016), p. 32, available at: <http://www.seri-sa.org/images/Housing.pdf>.

⁷⁷ Taffy Adler, *Affordable Housing for the Poor: A Case Study of the Guarantee Mechanisms Intended to Overcome the Financial Blockages to the First Inner City Co-operative Housing*, Master Thesis, University of the Witwatersrand, Johannesburg (1994).

⁷⁸ See, generally, Melinda Silverman and Tanya Zack, ‘Land Use Management and Democratic Governance in the City of Johannesburg - Case Study: Hillbrow & Berea’, Centre for Urbanism and Built Environment Studies (CUBES) and PlanAct Research Report (2007); and Alex Wafer, Jackie Dugard, Muzi Ngwenya and Shereza Sibanda, *A Tale of Six Buildings: The Lived-Realities of Poor People’s Access to Basic Services in Johannesburg’s Inner-City*, Centre for Applied Legal Studies (CALS) Research Report (2008).

gentrification, have led to the sales in execution of apartments for paltry amounts and thus precarious tenure for the occupiers of these buildings. Consequently, an informal property market has emerged in which units are divided and rooms, or even a space on a bed, are sub-let to low-income earners who are unable to afford formal housing close to employment opportunities.

In Johannesburg, the largest metropolitan municipality in South Africa, 30% of the population live in households with gross income of only ZAR 3,200 per month (US\$ 250.20). The City of Johannesburg has itself acknowledged an “urgent need” for a public rental housing sector that caters for the rental range of between R300 and R600 per month (US\$ 25 - 46). However, the few social housing projects that exist are aimed at the upper lower income market (households that earn between ZAR 3,500 and 7,500 per month (US\$ 273 and 586 per month)).⁷⁹

Those residents who are unable to afford formal housing, or who find themselves occupying informal inner-city housing, face the persistent risk of eviction – which renders them homeless or forces them to find accommodation in peripheral informal settlements.

3.5 National laws and policies governing informal settlements in South Africa

The right of access to adequate housing, enshrined in section 26 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is undoubtedly the most contested and frequently litigated socio-economic right in the South African context. The volume of litigation over the right has meant that the applicable law is frequently re-interpreted and the related rights and underlying principles have been more significantly developed than any other socio-economic right.

This is unsurprising given the apartheid legacy of denying the majority (black) population access to adequate housing, valorising property ownership at the expense of all other forms of property rights and using evictions as a means to systemically relocate black people far away from urban centres and opportunities.

These practices were reinforced by statutes such as the Prevention of Illegal Squatting Act 52 of 1951 (PISA) but were also buttressed by the common law, in terms of which the *rei vindicatio* gave owners a bare right to evict unlawful occupiers regardless of their circumstances and the text of lease contracts was for the most part taken at face value and not underwritten by any notions of fairness or equity.

This section examines the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act), a piece of legislation that ensures that unlawful occupiers are granted protection against arbitrary eviction. It also evaluates the Housing Act 107 of 1999 (the Housing Act), and two government programmes that are specifically aimed at addressing the challenges posed by informal settlement upgrading.⁸⁰

⁷⁹ Dugard et al, *The Right to Housing in South Africa* (note 62 above).

⁸⁰ For additional reading on policy responses, see Lilian Chenwi, ‘Legislative and judicial responses to informal settlements in South Africa: A silver bullet?’, *Stellenbosch Law Review*, 23(3) (2012), pp. 546-551.

(a) The PIE Act

In 1998 the first democratic Parliament replaced PISA with the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The PIE Act gave effect to section 26(3) of the Constitution's requirement that a court consider all the relevant circumstances before making an eviction order. It required the eviction of an unlawful occupier to be "just and equitable", having regard to a range of factors, including the personal circumstances of the occupiers and whether alternative accommodation could be made available by the state.

The PIE Act was intended to protect the millions of South Africans in urban areas who had no common law entitlement to the land that they lived on, at least until housing could be rolled out at scale. In this sense, the PIE Act sought to invert the legal order in relation to evictions: from a legal framework that targeted unlawful occupation and "land invasion", to one that sought to prevent illegal evictions.

(b) Development of eviction law

Since 2000, a number of important eviction-related cases have come before the Constitutional Court, including *Grootboom*, *Modderklip*, *PE Municipality*, *Olivia Road*, *Blue Moonlight*, *Skurweplaas* and *Mooiplaats*.⁸¹

In the *Port Elizabeth Municipality v Various Occupiers (PE Municipality)* judgment, handed down by the Constitutional Court in 2005, Sachs J reviewed the way in which the apartheid legal order – particularly through PISA – deliberately sought to make evictions as easy as possible. He characterised section 26(3) of the Constitution and the PIE Act as an inversion as has substantially altered the law relating to evictions by recognising that the "normal ownership rights of possession, use and occupation" are now offset by "a new and equally relevant right not arbitrarily to be "a new and equally relevant right not arbitrarily to be deprived of a home".

Section 26(3) of the Constitution, according to Sachs J "evinces special constitutional regard for a person's place of abode" acknowledging that "a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security."⁸² According to Sachs J:

⁸¹ For an analysis of the development of eviction and housing rights cases in South Africa, see Michael Clark and Stuart Wilson, *Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of Jurisprudence and Implications for Local Government*, SERI Research Report (March 2016), available at: http://seri-sa.org/images/Jurisprudence_Revised_2016_Final_to_print.pdf. See also *Modder East Squatters and Another v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd* 2004 (3) All SA 169 (SCA) (*Modderklip*); *Occupiers of Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg* 2008 (3) 208 (CC) (*Olivia Road*); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA (CC) (*PE Municipality*); *Abahlali baseMjondolo Movement SA and Another v Premier of KwaZulu Natal and Others* 2010 (2) BCLR 99 (CC) (*Abahlali*); *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Pty) Ltd* 2012 (2) SA 104 (CC) (*Blue Moonlight*); *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries* 2012 (4) BCLR 382 (CC) (*Skurweplaas*); and *Occupiers of Portion R25 of the Farm Mooiplaats v Golden Thread* 2012 (2) SA 337 (CC) (*Mooiplaats*).

⁸² *PE Municipality* (note 95 above), para. 17.

It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence. Hence the need for special judicial control of a process that is both socially stressful and potentially conflictual.⁸³

According to *PE Municipality*, while the Constitution and the PIE Act do not provide that under no circumstances should a home be destroyed, a court should be reluctant to conclude that an eviction would be just and equitable unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending access to permanent housing.⁸⁴

The constitutional provision promising everyone access to adequate housing and the protections contained in the PIE Act stand in stark contrast to pervasive realities of housing backlogs, evictions and removals. This is one of the main reasons that the right of access to adequate housing has been so regularly invoked in court. The volume of litigation has meant that the law in relation to the right to housing, evictions and alternative accommodation is continuously changing and adapting as the South African courts have incrementally and progressively developed the right.

The development of this right has led to concomitant obligations on local government. The constantly developing legal framework has given rise to a new cluster of relationships in relation to housing and eviction law. These relationships, in turn, are characterised by a series of rights and obligations pertaining to various parties. However, municipalities have been hesitant, unable or unwilling to act on the obligations laid down in case law. More generally, across the country municipalities have failed to devise and implement proactive, programmatic and coherent responses to evictions and the provision of alternative accommodation in instances of eviction within their jurisdictions.

Instead, municipalities have often responded in a largely uncoordinated *ad hoc* manner by providing alternative accommodation only after being ordered (sometimes several times) by courts to do so. In cases where the municipalities have sought to implement a more coordinated response, the strategies have often failed to adequately internalise the substantial protections encapsulated in jurisprudence and human rights law.

Since the Constitutional Court's judgment in *PE Municipality* and indeed even before it, much judicial energy has focused on developing principles concerning the relevant circumstances that courts should consider, as well as what constitutes a "just and equitable" eviction in order to govern the instances in which courts should or should not order evictions. Through interpreting section 26 and the PIE Act, the courts have developed the law to establish a set of transformative principles that now govern evictions from homes. These include the following: that the state is required to develop a reasonable housing policy; various procedural safeguards; the provision of alternative accommodation by the state to unlawful occupiers who are at risk of being rendered homeless as a result of an eviction; meaningful engagement; that the state cannot bypass the PIE Act; the limitation of private property ownership rights; and what would constitute an eviction in terms of section 26(3) of the Constitution.

⁸³ *PE Municipality* (note 95 above), para. 18.

⁸⁴ *PE Municipality* (note 95 above), para. 28.

(c) Housing Act and the Housing Code

The Housing Act 107 of 1999 (the Housing Act) is the primary piece of legislation dealing with housing in South Africa. The Act provides for the national housing development process by laying down general principles for housing development in all spheres of government; defining the functions of national, provincial and local governments in respect of housing development; and laying the basis for the financing of the national housing programmes.⁸⁵

Section 2(1) the Housing Act provides that all spheres of government must give priority to the needs of the poor in respect of housing development, and are mandated to meaningfully consult with individuals and communities affected by housing development. The Act further provides that the state must ensure that housing developments offer as wide a choice of housing and tenure options as is reasonably possible; are economically, fiscally, socially and financially affordable and sustainable; are administered in a transparent, accountable and equitable manner; and uphold the practice of good governance.⁸⁶

In addition, section 9(1)(a)(i) and (iii) of the Housing Act are important in the context of informal settlement residents' rights to housing and access to basic services. These provisions state:

- (1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to –
 - (a) ensure that –
 - (i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis; [and] ...
 - (iii) services in respect of water, sanitation, electricity, roads, storm-water drainage and transport are provided in a manner which is economically efficient...

The bulk of the regulatory framework relating to housing - the main principles, policy choices and implementation rules - are not set out in the Act but in the National Housing Code.⁸⁷ Section 4 of the Housing Act requires the Minister of Human Settlements to publish the National Housing Code and specifies that the Code should include the national housing policy and administrative and procedural guidelines for the implementation of the policy. According to the Housing Act,⁸⁸ the Code is delegated legislation that is legally binding on provincial and local level.⁸⁹ This means that both the Act and the Code constitute concrete, legally

⁸⁵ Kate Tissington, *A Resource Guide to Housing in South Africa 1994-2010: Legislation, Policy, Programmes and Practice*, Socio-Economic Rights Institute of South Africa (SERI) Resource Guide (2011), p. 27, available at: http://seri-sa.org/images/stories/SERI_Housing_Resource_Guide_Feb11.pdf.

⁸⁶ Section 2(1) of the Housing Act. See also Tissington, *A Resource Guide to Housing* (note 99 above) p. 14.

⁸⁷ See Michael Clark and Kate Tissington, 'Courts as a Site of Struggle for Informal Settlement Upgrading in South Africa', in Liza R Cirolia, Tristan Görgens, Mirjam van Donk, Warren Smit and Scott Drimie (eds), *Upgrading Informal Settlements in South Africa: A Partnership-Based Approach* (2016), p. 378. This arrangement has been criticised on the basis that crucial components of housing development are not legislated in national legislation or deliberated in Parliament. See, for example, Kirsty McLean, "Housing", in Stuart Woolman, Theunis Roux, Jonathan Klaaren, Anthony Stein, Matthew Chaskalson and Michael Bishop (eds), *Constitutional Law of South Africa*, 2 ed (2006).

⁸⁸ Section 7(3) of the Housing Act, which states that the Member of the Executive Committee (MEC) responsible for human settlements (a provincial official) is obliged to administer every national housing programme contained in the Code.

⁸⁹ Delegated legislation refers to laws made by persons or bodies who are granted law-making powers in terms of primary legislation. This is ordinarily done by expressly granting a government official (such as a Minister or MEC) the power to develop policy or regulation through a piece of primary legislation. See Clark and Tissington,

enforceable legislative instruments and that the implementation of national housing programmes must be consistent with the prescripts laid out in the Code.

In 2009, the South African government published the revised Code.⁹⁰ The Code sets out the government housing programmes that are available. In the context of informal settlement upgrading or resettlement, the most important of these programmes are the Emergency Housing Programme (EHP),⁹¹ and the Upgrading of Informal Settlement Programme (UISP).⁹² The prescripts and implementation record of each of these programmes is briefly discussed below.

(d) Emergency Housing Programme (EHP)

The Emergency Housing Programme (EHP) makes provision for local government to apply for grants from provincial government to provide emergency housing to those affected by emergencies.⁹³ As the EHP states, the aim is to enable local government to “provide temporary relief to people in urban and rural areas who find themselves in emergencies” through the provision of land, engineering services, relocation assistance and accommodation.⁹⁴ The cost of consumption of certain basic services can also be funded through the programme for a period of three years (provided approval is obtained from provincial government officials and local government is unable to fund these services from its own resources).⁹⁵ Evictions and the threat of imminent evictions are specifically classed in the programme as emergencies.⁹⁶

The programme provides for a broad range of possible emergency housing options, including various types of temporary and permanent housing.⁹⁷ A housing option that is particularly relevant in the context of informal settlement residents facing eviction is “temporary assistance with resettlement to a permanent temporary settlement area” in cases where local governments choose to establish such areas for affected persons until permanent housing at another location becomes available.⁹⁸ However, ultimately it is within the discretion of the local government to determine whether assistance is required in terms of the programme and decide what approach should be adopted based on the emergency housing need. The EHP

⁹⁰ Courts as a Site or Struggle (note 101 above), pp. 378-379; *Melani v City of Johannesburg*, South Gauteng High Court, Case No. 02752/2014 (22 March 2016) (*Melani*), para. 32.

⁹¹ The Code was first published in 2004 and revised in 2009. See Department of Housing, National Housing Code (2004); and DHS, National Housing Code (2009), <http://www.dhs.gov.za/content/national-housing-code-2009>.

⁹² DHS, ‘Emergency Housing Programme’, Part 3, Volume 4 of the National Housing Code (2009).

⁹³ DHS, ‘Upgrading of Informal Settlement Programme’ (note 9 above).

⁹⁴ DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 14-15. For a full description of the EHP see Tissington, *A Resource Guide to Housing* (note 99 above), pp. 94-96; and Housing Development Agency (HDA), *Guidelines for the Implementation of the Emergency Housing Programme* (2012).

⁹⁵ DHS, ‘Emergency Housing Programme’ (note 105 above), p. 9. See also Tissington, *A Resource Guide to Housing* (note 99 above), p. 94.

⁹⁶ The services that the EHP could fund are water consumption, sanitation services, refuse removal and high-mast street lighting (where applicable). DHS, “Emergency Housing Programme” (note 105 above), p. 18.

⁹⁷ DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 15-16.

⁹⁸ DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 31-37.

⁹⁹ DHS, ‘Emergency Housing Programme’ (note 105 above), p. 34.

prescribes certain minimum and maximum requirements in relation to the temporary shelter and basic engineering services provided.⁹⁹

Two critical principles that guide the implementation of the EHP are important opportunities for the use of the programme to provide temporary housing assistance to informal settlement who are evicted from their homes. First, the EHP creates a strong preference for allowing occupiers to remain on the land they occupy by providing that relocations should only be carried out as a last resort once other alternatives have been exhausted.¹⁰⁰ Along with the on-site development options offered in the programme, this principle creates opportunities for utilising the EHP to repair or reconstruct existing housing or, at the very least, make genuine attempts to identify ways in which informal settlement residents could be accommodated on the land from which they are being evicted. Second, the EHP provides that the provision of alternative accommodation in the wake of an eviction or emergency should, wherever possible, be the first step in providing permanent housing. As the programme states, temporary alternative accommodation should wherever possible be “an initial phase towards a permanent housing solution”.¹⁰¹ Moreover, if this is not possible, the EHP says that temporary alternative accommodation should be provided “while steps are being taken to prepare and develop land for permanent settlement purposes in terms of the approved municipal IDP and development priorities”.¹⁰² These provisions ensure that the EHP can be used to provide immediate relief to people rendered homeless due to an eviction or other emergency and indicates that funding provided in terms of the EHP could be used strategically to ensure that the housing or infrastructure developed through the EHP could be upgraded or redeveloped through other housing programmes.

Despite the potential usefulness of the EHP for addressing the temporary housing needs of evictees in rural and urban areas, local and provincial governments seem to be reluctant to use the programme. Research conducted by the Social Housing Foundation and Urban Landmark in 2009 indicates that the programme has only occasionally been used to address emergencies or evictions.¹⁰³ The study found that only six of South Africa’s nine provinces had disbursed funds in terms of the programme and that the programme was primarily used to provide assistance in cases of natural disasters and floods in rural areas.¹⁰⁴

The programme has not been widely used to provide temporary alternative accommodation in instances of eviction. Some commentators argue that this is due to narrow conceptions of what constitutes an emergency at local and provincial government levels.¹⁰⁵ Local governments have also complained of provincial governments’ reluctance to release funds in

⁹⁹ DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 38-39. See also the technical specifications laid out in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC), paras. 9-10.

¹⁰⁰ DHS, ‘Emergency Housing Programme’ (note 105 above), p. 37. See also *Abahlali baseMjondolo Movement SA v Premier of KwaZulu-Natal* 2010 (2) BCLR 99 (CC) (*Abahlali*), paras. 114 and 126.

¹⁰¹ DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 14, 31 and 38.

¹⁰² DHS, ‘Emergency Housing Programme’ (note 105 above), pp. 14, 31 and 38.

¹⁰³ Social Housing Foundation (SHF) and Urban Landmark, ‘An Investigation into an Apparent Increase in Evictions from Private Rental Housing: Report and Position Paper’ (2010), pp. 18-20 and 55. See also Tissington, *A Resource Guide to Housing* (note 99 above), pp. 95-96.

¹⁰⁴ SHF and Urban Landmark, ‘An Investigation into an Apparent Increase in Evictions’ (note 117 above), p. 55.

¹⁰⁵ Tissington, *A Resource Guide to Housing* (note 99 above), p. 96.

terms of the programme claiming that they have struggled to access funding despite making multiple requests over the years.¹⁰⁶

However, the programme has been used to develop temporary relocation areas (TRAs) or 'transit camps' across the country ostensibly as a temporary solution to the housing backlog. TRAs, as well as the temporary structures provided in these areas, have been criticised by academics, practitioners and the people living in these areas. The primary criticism levelled against TRAs is that they fail to satisfactorily address the housing and development needs of those living in these areas and that households are "often left [in these areas] indefinitely with no timeline on when they will receive permanent accommodation".¹⁰⁷ Some have also argued that households that are moved to TRAs are "off the 'backlog radar'" as they are neither in dire need of housing assistance nor have they received formal housing assistance from the state.¹⁰⁸ To exacerbate these issues, local government officials have been hesitant to invest further in these areas given their temporary nature.¹⁰⁹

The potentially wide application of the EHP and the flexibility it offers means that it is a critical policy instrument that could be employed by local government to provide temporary alternative accommodation to informal settlement residents that are evicted or are at risk of eviction. However, the problems with the implementation of the EHP raise questions about its effectiveness in providing assistance to farm dwellers in the wake of evictions.

(e) Upgrading of Informal Settlements Programme (UISP)

The Upgrading of Informal Settlement Programme (UISP) provides for municipalities to apply for funding from provincial government to redevelop informal settlements by incrementally providing occupiers with infrastructure, tenure security, and access to basic services in an inclusive and participatory manner.¹¹⁰

The programme funds the creation of serviced stands through the installation of both interim and permanent municipal engineering services. Where interim services are provided, they should always constitute "the first phase of the provision of permanent services". The UISP does not provide assistance for the construction of housing, which should be funded through one of the other national housing programmes in the final phase of the upgrading project. Tenure security is a central component of the UISP and can be achieved through "a variety of

¹⁰⁶ See Tissington, *A Resource Guide to Housing* (note 99 above), p. 96, who refers to the City of Johannesburg's multiple unapproved requests over the years.

¹⁰⁷ Tissington, *A Resource Guide to Housing* (note 99 above), p. 96. See also Mark Hunter, 'Case Study: The Difference that Place Makes: Some Brief Notes on the Economic Implications of Moving from an Informal Settlement to a Transit Camp', Department of Geography, University of Toronto (2010); Kerry Chance, Marie Huchzermeyer and Mark Hunter, 'Listen to the Shackdwellers', *Mail & Guardian* (24 June 2009); Biënne Huisman, 'From Boerestaat to Blikkiesdorp', *Times LIVE* (11 March 2012) (who describes TRAs as "human dumping grounds"); and David Smith, 'Life in "Tin Can Town" for South Africans evicted ahead of the World Cup', *The Guardian* (1 April 2010) (who describes TRAs as "concentration camps").

¹⁰⁸ See Tissington, *A Resource Guide to Housing* (note 99 above), p. 96.

¹⁰⁹ Tissington, *A Resource Guide to Housing* (note 99 above), p. 96.

¹¹⁰ Funding in terms of the programme is provided in three phases: Phase 1 includes for land surveying, registration, community participation, development facilitation, dispute resolution, geotechnical investigation, pre-planning for land acquisition and the provision of interim municipal engineering services; and phases 2 and 3 provide funding for detailed town planning, contour surveying, land survey examination, civil engineering and project management. In addition, the programme makes funding available for land rehabilitation and possible relation. See Tissington, *A Resource Guide to Housing* (note 99 above), p. 86.

tenure arrangements [that] are to be defined through a process of engagement between local authorities and residents”.¹¹¹ Moreover, the programme envisages an inclusive and participatory relationship between beneficiary communities and municipalities by expressly providing for the funding of different types of community participation throughout the upgrading process.¹¹²

The UISP creates a strong preference for *in situ* upgrading and the minimisation of the disruptive effects of relocation. However, the latter is an option under the programme as a measure of last resort when other alternatives have been exhausted.¹¹³ In the context of informal settlements, this means that all efforts should be made to accommodate the occupiers on the land where they currently reside before considering relocation to alternative land. On-site upgrading is particularly tenable when considering that the programme empowers the state to purchase or expropriate land, rehabilitate land that may be unsuitable for conventional low-income housing development and install interim services pending the decision to upgrade an informal settlement. This suggests that occupied land could be purchased or subdivided to develop UISP projects for informal settlement residents.

Implementation of the programme has, however, been lacking. As one commentator wrote, “at all levels of government, and in all parts of the country, there has been a systematic failure to implement the substantive content of [the housing policy] that recommends and makes financial provision for participatory and collective *in situ* upgrades”.¹¹⁴

There are a number of interconnected reasons for this lack of implementation. First, the institutional and bureaucratic framework for the provision of housing is geared towards building state-subsidised housing in greenfield projects.¹¹⁵ Many local governments and housing developers are familiar with developing greenfield housing and are uncomfortable with implementing *in situ* upgrading projects. This is partially due to the lack of institutional capacity and political will on the part of government officials to engage directly with communities in informal settlements.¹¹⁶

Second, local and provincial governments often feel that many of the functions provided for in the UISP are in conflict with fiscal frameworks prohibiting “wasteful and inefficient expenditure”. The combined effect of these challenges is that local and provincial governments generally refrain from initiating incremental upgrading projects, preferring instead to focus on fully formalised housing developments.

¹¹¹ Occupiers could be granted a range of tenure rights, including rental agreements, the gratuitous loan of the site to occupiers for the purposes of occupation (so-called commodatum) or full ownership (during phase 4). DHS, ‘Upgrading of Informal Settlement Programme’ (note 9 above), pp. 15 and 38.

¹¹² See DHS, ‘Upgrading of Informal Settlement Programme’ (note 9 above), p. 15. See also Clark and Tissington, ‘Courts and a Site of Struggle’ (note 101 above), pp. 386-389; *Beja* (note 24 above), paras. 53-67; and *Melani* (note 103 above), para. 34.

¹¹³ DHS, ‘Upgrading of Informal Settlements Programme’ (note 9 above), pp. 9 and 32. See also *Melani*, paras. 34-35; and Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), p. 379.

¹¹⁴ Richard Pithouse, ‘A Progressive Policy without Progressive Politics: Lessons from the Failure to Implement “Breaking New Ground”’, *Town Planning Journal*, 54 (2009), p. 1. See also Marie Huchzermeyer, *Cities with ‘Slums’: From Informal Settlement Eradication to a Right to the City in Africa* (2011), pp 170-171; and Tissington, *A Resource Guide to Housing* (note 99 above), pp.89-92.

¹¹⁵ Tissington, *A Resource Guide to Housing* (note 99 above), p. 31; Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), p. 376.

¹¹⁶ Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), p. 376.

The widespread unwillingness to implement the UISP has been challenged by communities living in informal settlements through litigation.¹¹⁷ These cases have shown that communities can compel local governments to consider the application of the UISP in relation to their informal settlement and, if municipalities believe that the UISP does not apply, communities can challenge the decision not to apply the UISP before a court.¹¹⁸

As the court stated in *Melani*, “the [local government] had to at least consider whether the UISP applies ... without making a decision to completely ignore *in situ* upgrad[ing] and relocate the residents”.¹¹⁹ Accordingly, local governments are legally obliged to consider whether the UISP applies to all informal settlements in their municipal areas. If local governments fail to do so, communities can approach a court to force local governments to consider the UISP.

As with the EHP, the UISP is focused on providing immediate relief and long term security. This is evident in the provisions allowing for the installation of interim services, on the one hand, and the incremental focus and development of serviced stands, on the other. These dual objectives mean that the UISP is ideally suited to address the housing and basic service needs of informal settlement residents. Moreover, the provisions empowering the state to purchase or expropriate land for upgrading projects mean that upgrading projects could be pursued on private land currently occupied by informal settlements.

3.6 Successful upgrading or resettlement projects

Informal settlement upgrading has benefitted from the use of litigation¹²⁰ and a reliance on existing political structures within the settlements to motivate *in situ* upgrading. The Upgrading Informal Settlement Programme (UISP) and Emergency Housing Program (EHP) (National Housing Code), both assign municipalities the responsibility to “initiate, plan, and formulate applications for projects” relating to emergency housing (EHP) and upgrading of informal settlements (UISP). This UISP programme takes a four-stage approach to upgrading informal settlements which focuses with *in situ* upgrading of informal settlements with active community participation and input.¹²¹

(a) Litigation

The *Joe Slovo* case affirmed that the UISP prioritizes upgrading informal settlements *in situ*, with minimal relocation.¹²² In this case, the residents of the Joe Slovo informal settlement in Cape Town opposed relocation as the community would have been relocated away from social networks and employment and the relocation plan failed to take the input of the community into account. The case and the judgment were influential as they highlighted the importance of meaningful engagement. The Constitutional Court ruled in favour of the eviction, but later

¹¹⁷ See *Nokotyana v Ekuthuleni Metropolitan Municipality* 2010 (4) BCLR 312 (CC) (*Nokotyana*); *Beja* (note 24 above) and *Melani* (note 103 above). See also Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), pp. 380-389.

¹¹⁸ *Nokotyana* (note 131 above), paras. 55-57; and *Melani* (note 103 above), paras. 42-50.

¹¹⁹ *Melani* (note 103 above), para. 43.

¹²⁰ For additional reading on judicial responses, see Chenwi, ‘Legislative and Judicial Responses to Informal Settlements in South Africa’ (note 94 above), pp. 551-562.

¹²¹ DHS, ‘Upgrading or Informal Settlement Programme’ (note 9 above).

¹²² *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* (CCT 22/08) [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC) (*Joe Slovo*).

suspended the order of eviction.¹²³ Following this decision, the Joe Slovo informal settlement has been engaged in an upgrading process that is more inclusive.

The *Abahlali* case also clarified the meaning of “engagement” in the context of informal settlement upgrading.¹²⁴ Abahlali baseMjondolo, a social movement based in Durban, opposed legislation that would potentially lead to the mass homelessness of residents informal settlements.¹²⁵ The Constitutional Court found that proper engagement required the needs of the affected community to be comprehensively assessed. The decision also affirmed the principle that in situ upgrading of an informal settlement had to be considered before evictions or relocation.

Beja and Others v Premier of the Western Cape and Others, 2011 (10) BCLR 1077 (WCC) dealt directly with the importance of consultation with communities during the upgrading process, and specifically focused on the provisions in the UISP. A complaint was filed by residents of the Makhaza informal settlement in Cape Town claiming that 55 open-air waterborne toilets that had been built under the auspices of UISP upgrading violated the residents’ rights to human dignity. The municipality defended the decision to build the unenclosed toilets by citing an agreement reached with the community where the residents themselves would be responsible for enclosing the toilets if the municipality provided a toilet for each household.¹²⁶ The Western Cape High Court ordered the municipality to enclose the toilets and handed down a judgment which emphasized the importance of engaging communities in developing plans for settlement upgrading, but stressed that any such agreement must still meet the reasonableness requirement of the Constitution. The Court emphasized the importance of meaningful engagement with the community and reiterated the importance of observing privacy, protection against the elements, and adequate sanitary facilities when developing adequate housing in informal settlements.

(b) Community Participation

The Slovo Park informal settlement in Johannesburg was established more than two decades ago and is home to more than 10,000 residents. Since its establishment, Slovo Park has had no municipal provision of electricity. In 2007, residents formed the Slovo Park Community Development Forum (SPCDF) to engage with the city regarding upgrading of the settlement and the provision of basic services such as electricity. With the help of the Socio-Economic Rights Institute of South Africa (SERI), the people of Slovo Park litigated against the City of Johannesburg and received a judgment in April 2016 their favour ordering the City to upgrade the settlement *in situ*.¹²⁷ The Court found that the City’s decision to ignore the UISP in favour of pursuing a plan of eviction and relocation was in breach of section 26 of the Constitution

¹²³ Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), pp. 381-382.

¹²⁴ *Abahlali Basemjondolo Movement SA and Another v Premier of the Province of KwaZulu-Natal and Others* (CCT12/09) [2009] ZACC 31; 2010 (2) BCLR 99 (CC) (*Abahlali*).

¹²⁵ The KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act No. 6 of 2007 (the Slums Act). Section 16 of the Act was found unconstitutional as it was inconsistent with right to adequate housing. It was found to preclude meaningful engagement as has been read into section 26 of the Constitution, it violated the provision that evictions and relocations must only be considered as a last resort, and it undermined the protection against illegal evictions contained in the Prevention of Illegal Eviction from and Unlawful occupation of Land Act No. 19 of 1998.

¹²⁶ Clark and Tissington, ‘Courts as a Site of Struggle’ (note 101 above), pp. 386-388.

¹²⁷ *Melani* (note 103 above).

and the Housing Act 107 of 1997. The judgment required the City to make an application to the province for a grant to upgrade the settlement in terms of the UISP.

The Slovo Park community has been actively engaged in this upgrading process, reviewing and rejecting an application put forth by the City which insisted on relocating the majority of Slovo Park residents. The SPCDF is now a member of a task team specifically convened to submit a new funding application to upgrade Slovo Park in situ. The task team is a multi-stakeholder body comprised of representatives from the Slovo Park informal settlement, government officials at local, provincial and national levels, practitioners in the field of urban design and architecture, and legal representatives on behalf of Slovo Park, the City and the provincial government. The residents of Slovo Park, represented by the SPCDF, now have a clear path to electrification and in situ upgrading.

4. Conclusion

The South African government is making efforts, with some noteworthy strides, in addressing the question of informal settlements in the country and the challenges faced by those who live in these settlements as well as the housing challenges that result in the creation of the settlements. As the policy responses are, however, riddled with problems of effective planning and implementation, informal settlements characterised by, inter alia, inadequate access to basic services, and disproportionately affected by, poverty and inequality, amongst others, continue to be a critical challenge. While the judicial responses have, generally speaking and to a large extent, sought to ensure protection of the rights of informal settlement dwellers, effective implementation of the decisions also remain a challenge. The South African experience as has been observed, “highlights the need in dealing with informal settlements to adopt an integrated approach aimed at addressing poverty and that promotes partnership and meaningful community participation” as well as “consider the relationship between social relations, property and informal settlements”.¹²⁸ South Africa’s experience on upgrading of informal settlements shows that there are several challenges in relation to, inter alia, “respect for and the protection of the right to have access to adequate housing and ensuring the effective participation of communities in housing development”; and should thus “not just be about the eradication of [informal settlements], but should include understanding people’s existing circumstances and contributing to improving people’s lives in a meaningful way”.¹²⁹

¹²⁸ Chenwi, ‘Legislative and Judicial Responses to Informal Settlements in South Africa’ (note 94 above), p. 563.

¹²⁹ Chenwi, ‘Legislative and Judicial Responses to Informal Settlements in South Africa’ (note 94 above), p. 562.