

**REPORT ON DISCRIMINATION, SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING**

1. We write to you from the Socio-Economic Rights Institute of South Africa (SERI), a public interest legal services organisation which litigates, undertakes research and advocates for the enforcement of socio-economic rights. We have a long track record in ensuring the enforcement of the right to adequate housing, the right to work and the right to freedom of expression and protest.
2. Since our establishment over a decade ago, SERI has focused on the protection of poor South Africans from arbitrary evictions. Our ongoing work is essential to help low-income households to resist evictions, homelessness and defy efforts entrenching spatial inequalities. We have been instrumental in the legal jurisprudence around evictions, the highlights of which include accentuating the rights of occupiers to access adequate housing, clarifying the state’s obligations to evictees whose evictions will result in homelessness and the obligations of judicial officers in adjudicating evictions.
3. We are grateful for the opportunity to respond to the call for inputs on housing discrimination and spatial segregation and thereby make a contribution to inform your reports to the General Assembly and the Human Rights Council.
4. In this letter we highlight the lack of viable formal rental options for inner city residents and how this exacerbates the challenges of unlawful occupations in South Africa. We discuss on-going unlawful evictions in spite of protective legislation preventing such, consider the reactive alternative accommodation strategies across municipalities and the relocation of evictees to distant and peripheral areas. Lastly, we discuss the failure to dismantle Apartheid spatial planning and implement progressive legislation in order to achieve spatial justice goals.

Housing discrimination and unlawful evictions

1. Rental is an important form of tenure for those who cannot afford to buy a house or who have other reasons to choose to rent, related to life cycle stage, the need for flexibility, migration and investments in a home elsewhere. In South Africa about 22% of households rent their accommodation.[[1]](#footnote-1) Gauteng province has the highest percentage of renters in the country, with over 35% of the total number of renters in the country renting in the province.[[2]](#footnote-2) It is estimated that over 40% of households that rent nationally live in what could be characterised as slum conditions, pointing to a need for affordable, quality accommodation.[[3]](#footnote-3)
2. No formal rental options exist in either the social housing or private rental sectors that accommodate the majority of poorer urban households’ needs for rental accommodation. Nearly all of the state’s efforts to develop or facilitate affordable rental housing have served households with income between R3 500 [$245] and R15 000 [$1 053] per month. As a result, households with incomes of less than R3 500 [$245] per month are hard pressed to secure rental housing that is both safe and affordable. In the Johannesburg inner city, this accounts for over 50% of the population.[[4]](#footnote-4)
3. The private sector has delivered very little to this segment of the population. As a result, most households earning less than R3 500 [$245] per month occupy accommodation informally in dilapidated inner city buildings or in shared or sub-let rooms or rent in backyards in townships, suburbs and informal settlements.[[5]](#footnote-5) Many face evictions by private developers or municipalities in processes of regeneration or gentrification that are underway in parts of our inner city areas.
4. The persistence of dilapidated inner city buildings and informal settlements in South Africa is a clear indication of the state’s failure and the market’s inability to provide poor households with affordable accommodation options in well-located areas.
5. The Constitution of the Republic of South Africa, 1996 (the Constitution) provides legal protections to unlawful occupiers in respect of evictions by entrenching the right of access to adequate housing in section 26. Section 26 of the Constitution comprises three sub-sections: section 26(1) provides that “everyone” has a right of access to adequate housing, section 26(2) obliges the state to take reasonable steps to progressively provide access to adequate housing, and section 26(3) provides a number of essential procedural protections to unlawful occupiers who face evictions. Most importantly, section 26(3) prohibits arbitrary evictions by requiring that evictions be authorised by a court order made after having regard to “all the relevant circumstances”.[[6]](#footnote-6)
6. In 1998, the first democratic Parliament passed the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The 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 whether alternative accommodation could be made available by the state.
7. Eviction law has been developing over the past 20 years through litigation. The essence of this litigation is that when eviction leads to homelessness, the municipality has a duty to provide adequate temporary alternative accommodation irrespective of whether the property is publicly or privately owned.[[7]](#footnote-7)
8. Across the country, municipalities have not devised and implemented 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.
9. In cases where the municipalities have sought to implement a more coordinated response, the strategies do not adequately internalise the substantial protections encapsulated in jurisprudence and human rights law. As such, municipalities are currently challenged to fulfil their constitutional duties and are substantially undermining the housing-related rights of evictees who cannot afford housing on the open market.
10. Most evictees rely on living in the urban core and city centres for their livelihoods and jobs and would not be able to afford the transport costs necessitated by living elsewhere. Removing them from the city would be counterproductive to spatial and social justice imperatives.

Spatial Segregation: dismantling Apartheid spatial planning and realising spatial justice

1. South Africa’s cities are exclusionary spaces where the combined influences of largely unchallenged market forces and an Apartheid past mean poor people are confined to urban peripheries. Apartheid city planning was explicitly designed to prevent urban black workers from living in well-located white areas, even though these workers may have been employed there.
2. The legacy of Apartheid city planning is still evident in South Africa’s cities 27 years since the advent of democracy in 1994. A disproportionately white elite lives in relative comfort in well-located city cores, close to economic activity and the social life which defines cities. At the same time, black South Africans are disproportionately confined to urban peripheries in dense and poorly serviced settlements, and have very low rates of home ownership.
3. Research conducted by SERI demonstrates that there is a significant relationship between physical proximity to jobs and local unemployment rates, which implies that housing located far away from job opportunities acts as a poverty trap.[[8]](#footnote-8) This suggests that housing location is an important determinant of employment prospects. Living closer to jobs seems to increase people’s chances of finding employment, but well-located areas are unaffordable for the poor. Peripheral location is therefore a type of poverty trap, as peripheral location, itself partly caused by poverty, makes poverty exit more difficult.
4. Countering spatial mismatch will be best accomplished by opening up housing opportunities for the poor in existing well-located areas, close to jobs. In this sense, the state and city governments should proactively intervene in housing markets to provide well-located and affordable housing for the poor. This will be central to dismantling the legacy of Apartheid spatial planning and moving towards urban spatial justice.
5. We believe that a proper implementation of the principle of spatial justice as outlined in the Spatial Planning and Land Use Management Act of 2013 (SPLUMA) will aid in realising spatial justice imperatives. The promulgation of SPLUMA created a legal obligation with which future spatial planning, land development and land use management must accord.
6. In conclusion, this letter has responded to a selection of the questions posed by the UN Special Rapporteur on the right to adequate housing that are pertinent to SERI’s work. We hope that SERI’s input contributes to the body of knowledge generated through this call and provides the Special Rapporteur with material to draw upon in preparing the reports to the General Assembly and the Human Rights Council.
1. Statistics South Africa “General Household Survey (GHS), 2019 P0318 (15 December 2020) p. 32. [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. Urban LandMark and Social Housing Foundation (SHF) “Small-Scale Private Rental: A Strategy for Increasing Supply in South Africa” (January 2010) p. 2. [↑](#footnote-ref-3)
4. Statistics South Africa “Census 2011” Statistical Release, 2013 P0301.4 (15 December 2020) [↑](#footnote-ref-4)
5. SERI “Policy Brief: Affordable Public Rental Housing”, SERI Policy Brief (July 2016), available at <https://www.seri-sa.org/images/Policy_brief_FINAL.pdf> [↑](#footnote-ref-5)
6. Section 26(3) of the Constitution reads: “No-one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.” [↑](#footnote-ref-6)
7. SERI, “Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the 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> [↑](#footnote-ref-7)
8. SERI, “Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Centres”, SERI Research Report (December 2016), available at <http://seri-sa.org/images/SERI_Edged_out_report_Final.pdf> [↑](#footnote-ref-8)