

c/o: Mandisa Shandu, Director
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23 July 2020

To: **African Union & Open Society Foundation Africa Regional Office**
Per email: adam@osfsa.org.za

To whom it may concern,

**RE:NDIFUNA UKWAZI'S SUBMISSION TO THE AFRICAN UNION
COMPREHENSIVE SOCIO-ECONOMIC RESPONSE TO THE COVID-19
HEALTH PANDEMIC**

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town, South Africa. Our primary mission is to expand and protect access to affordable housing towards building a more just and equal city.
2. Over the last six years Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised houses, and the promotion of social, transitional and inclusionary housing. We have published several resource guides and research reports on these issues. Ndifuna Ukwazi has also been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access to affordable housing.
3. This submission is made pursuant to an invitation from Open Society Foundation South Africa ("OSF-SA"), in conjunction with Open Society Foundation's Africa Regional Office ("OSF AfRO"), to provide input to the African Union Comprehensive Socio-Economic Response to the COVID-19 Health Pandemic (April 2020) ("the response").

Ndifuna Ukwazi is a not-for-profit trust (IT 540 - 2001)(NPO 094 - 737).

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4. Ndifuna Ukwazi has read the response and hereby makes this submission in accordance with the invitation to submit written comments.

Yours faithfully,

Ndifuna Ukwazi

Per: Mandisa Shandu, Director and Michael Clark, Researcher

NDIFUNA UKWAZI'S SUBMISSION TO THE AFRICAN UNION COMPREHENSIVE SOCIO-ECONOMIC RESPONSE TO THE COVID-19 HEALTH PANDEMIC

INTRODUCTION

1. Ndifuna Ukwazi has considered the African Union Comprehensive Socio-Economic Response to the COVID-19 Health Pandemic (April 2020) (“the response”), and makes the following submission.
2. Our submission details the socio-economic consequences of the COVID-19 outbreak in South Africa, and the resultant impact on the right of access to adequate housing, diminished tenure security and access to basic services of poor and working class households. In particular, the submission aims to address pillar 4 of the AU response, namely universal access to basic societal services / utilities (water, sanitation, energy, housing, transport).
3. In doing so, our submission raises concerns about the disregard of international and domestic legal protections against forced evictions and ongoing forced evictions at the hand of private and State actors by AU Member States during the COVID-19 crisis. Forced evictions and the demolition of informal shelters could leave many homeless and vulnerable to contracting and spreading COVID-19. As our work is primarily focused in Cape Town, South Africa, our responses will stem largely from that country.
4. This submission is structured as follows:
 - 4.1. First, we seek to highlight the socio-economic impact that the COVID-19 health crisis, the resultant economic recession and national lockdown has had in South Africa. In this context, we briefly describe the economic impact, the impact on those with insecure tenure and the impact on access to basic services;
 - 4.2. Second, we make a number of recommendations that we believe would strengthen the African Union’s socio-economic response to the crisis; and
 - 4.3. Thereafter, we provide some concluding remarks.

I. SOCIO-ECONOMIC CONSEQUENCES OF COVID-19

5. In this section, we seek to highlight the serious and long-standing socio-economic ramifications that COVID-19 will have on the African continent

and AU Member States. As our work is primarily focused in Cape Town in South Africa, most of the data included in this submission relates to South Africa.

Economic impact

6. The COVID-19 outbreak and its immediate aftermath represents one of the largest economic shocks of our lifetimes.¹ In particular, the pandemic poses dire economic challenges for many poor and working-class communities living on the African continent. According to initial projections, the World Bank believes that the South African economy will shrink by 7.1% - the worst economic contraction in over a century.² While other States might be less detrimentally affected, there are already concerning indicators that the pandemic is likely to lead to negative economic impacts for many African States in the medium- to long-term.³
7. The economic fall out as a result of the COVID-19 outbreak will undoubtedly also exacerbate existing social challenges including poverty, inequality and unemployment. In many respects, the economic burden of the virus has, and will continue to be, disproportionately borne by the poor and working class. Many have lost their jobs or livelihoods, face income and/or food insecurity and, despite moratoriums imposed by some States, face eviction and removal from their homes as a result of insecure tenure.⁴
8. Data shows that the economic impact of the COVID-19 pandemic, the consequent economic recession and curfews or lockdowns imposed by State governments, has already led to significantly higher rates of unemployment, diminished incomes and higher rates of hunger. The South African National Income Dynamics Study – Coronavirus Rapid Mobile Survey (“NIDS-CRAM”), a survey of a representative sample of 7 000 South Africans and the largest survey

¹ See N Spaul, “The jobs reckoning is here: 3 million jobs lost”, *Financial Mail* (15 July 2020), available:

<https://www.businesslive.co.za/fm/features/cover-story/2020-07-15-the-jobs-reckoning-is-here/>.

² See L Donnelly, “SA faces worst economic contraction in a century, says World Bank”, *Business Day* (9 June 2020), available:

<https://www.businesslive.co.za/bd/economy/2020-06-09-sa-faces-the-worst-economic-contraction-in-a-century-says-world-bank/>.

³ See Organisation for Economic Co-operation and Development (“OECD”), “COVID-19 and Africa: Socio-Economic Policy Implications and Policy Responses”, *OECD Policy Responses to Coronavirus (COVID 19) Series* (2020), available:

<https://www.oecd.org/coronavirus/policy-responses/covid-19-and-africa-socio-economic-implications-and-policy-responses-96e1b282/>.

⁴ In South Africa, National Treasury Director General Dondo Mogajane has warned that South Africa’s unemployment rate could rise above 40%, while the Chamber of Commerce projects unemployment figures as high as 50%. See S Zulu, “SA’s unemployment rate could reach 40% due to COVID-19 - Mogajane”, *Eye Witness News (EWN)* (12 May 2020); and Associated Press, “COVID-19: South Africa’s unemployment rate expected to reach 50% as economy keeps plummeting”, *IOL News* (24 May 2020).

of this nature to emerge from the Global South, paints a grim picture of job losses and hunger in South Africa.⁵ According to the study, between February and April 2020, 3 million South Africans lost their jobs, and a further 1.5 million lost their income (through being furloughed).⁶ This represents a 18% decline in employment, with the number of employed persons dropping from 17 million in February to only 14 million in April.⁷ The vast majority of these job losses were concentrated among already disadvantaged groups, including those in the informal economy, women, the youth and less educated. Women were particularly hard hit, accounting for up to 2 million of the 3 million job losses.⁸ The study found half of all the respondents (47%) reported losing their main source of income.⁹ This indicates that 1-in-3 (33%) income earners in February did not earn an income in April, representing a massive decline in employment and other income generating activities.¹⁰

9. Given the extent of job and income losses recorded in the NIDS-CRAM study, it was perhaps inevitable that there would be a dramatic increase in hunger levels in South Africa. According to the study, 1-in-5 (21%) respondents indicated that someone in their household had gone hungry in the past week. 1-in-8 (13%) reported frequent hunger (3+ days / week) and 1-in-14 (7%) reported perpetual hunger (every day or almost every day in the week).¹¹ More worrying is the rise in child hunger with 1-in-7 (15%) households with children indicated that a child had gone hungry in the last week because there wasn't enough food, 1-in-13 (8%) reporting frequent child hunger (at least every other day), and 1-in-25 (4%) reporting perpetual child hunger (child hunger every day or almost every day).¹²
10. While these figures relate to the economic impact in South Africa it is clear that the COVID-19 crisis will have serious and long-standing economic ramifications for other States on the African continent that will require AU Member States to

⁵ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1" (2020), which can be found, alongside all the NIDS-CRAM working papers at the NIDS-CRAM website, available: <https://cramsurvey.org>. See also, for a summary of the results, Spaul, "The jobs reckoning is here: 3 million jobs lost".

⁶ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", p. 3; Spaul, "The jobs reckoning is here: 3 million jobs lost".

⁷ NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", pp. 3-5.

⁸ NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", p. 5; Spaul, "The jobs reckoning is here: 3 million jobs lost".

⁹ Spaul, "The jobs reckoning is here: 3 million jobs lost".

¹⁰ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", p. 4. The NIDS-CRAM data confirms preliminary data from Statistics South Africa ("StatsSA"). See StatsSA, "Results from Wave 2 Survey on the Impact of the COVID-19 Pandemic on Employment and Income in South Africa" (May 2020), available:

<http://www.statssa.gov.za/publications/Report-00-80-03/Report-00-80-03May2020.pdf>.

¹¹ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", pp. 6-7; Spaul, "The jobs reckoning is here: 3 million jobs lost".

¹² See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", pp. 6-7; Spaul, "The jobs reckoning is here: 3 million jobs lost".

provide substantive economic and social relief packages to mitigate the economic fall out.

Access to a home, evictions and COVID-19

11. Following the World Health Organisation (“WHO”)’s declaration of COVID-19 as a global pandemic in March 2020, many States on the African continent implemented measures to encourage social distancing, imposed border and travel restrictions, school closures, and bans on large gatherings. Some States imposed full lockdowns (such as South Africa and Zimbabwe), while other countries (such as Senegal and Côte d’Ivoire) instituted curfews and partial lockdowns or are discussing full lockdowns. Despite these seemingly proactive measures, many of these measures struggled to take account of the importance of housing as a “front line defence” against the pandemic,¹³ and particularly the needs of groups experiencing heightened vulnerability including people living in informal settlements with limited (if any) access to basic services such as water and sanitation,¹⁴ people living in occupied buildings, people living on commercial farms, homeless people and those facing homelessness and displacements as a result of evictions (both legal and illegal).

12. The preservation of life and the prioritisation of a preventative response to the COVID-19 outbreak necessitates that States recognise the home to be the primary defence against the virus. This is so particularly at a time when the rate of infection has increased in many countries and is projected to continue increasing. Access to a home has proven to be a significant part of remaining or getting healthy as in instances of self-quarantine or self-isolation. Where one loses access to their home, one cannot sufficiently protect themselves or their community from the risk of contracting and transmitting COVID-19 and other

¹³ See UN Special Rapporteur, L Farha, “Housing: The front-line defence against the COVID-19 outbreak” (18 March 2020), available: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E&fbclid=IwAR3tXO7gwDIq6Zl1wl0T_BLxrR_EiEr-4DEg0eRt2BTpZWCfw7Ej5wTLfdY.

¹⁴ According to conservative estimates in 2016, approximately 1-in-7 households in South Africa lived in informal dwellings (this figure is higher in metropolitan areas, where 1-in-5 households lived in an informal dwelling). See 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. 31, available at: http://www.spii.org.za/wp-content/uploads/2018/02/Right-to-Housing_2017.pdf.

communicable illnesses including respiratory illnesses and illnesses leading to immunodeficiency.¹⁵ Housing, at this critical point, *is* healthcare.¹⁶

13. Given the importance of housing as a critical component of the healthcare response to COVID-19 and in line with international best practice, many States and cities across the world have imposed a prohibition on evictions.¹⁷ These measures are necessary to *inter alia* support the need for persons to remain in their dwellings to combat the spread of COVID-19. However, the measures adopted by many States have failed to stem the tide of illegal evictions and demolitions of informal structures by both private landlords and State actors.
14. In South Africa, the National Government instituted a prohibition on evictions under section 5(f) of the Directions issued by the Minister of Justice and Correctional Services on 26 March 2020 by providing that “all evictions and execution of attachment orders ... and sales in execution are suspended with immediate effect”. Subsequent Directions issued by the Minister on 31 March 2020 further provided that “the service and execution of other process by Sheriffs, including evictions, are not essential, and are suspended for the duration of the lockdown.” The effect of these directions, read with regulation 11B (1)(a)(i) wherein every person is confined to his or her place of residence, was a broad moratorium on evictions for the duration of the national lockdown period.
15. However, despite these legislative measures, many people have been subjected to extra-judicial evictions and illegal demolitions of their homes by both State and private actors. Although no comprehensive study has been done of the number of evictions in South Africa during the COVID-19 pandemic, extra-judicial evictions and illegal demolitions have continued to take place without proper legal safeguards and, particularly, without the provision of adequate alternative accommodation to those rendered homeless as a result of evictions.

¹⁵ Lack of housing and the overcrowding found in temporary housing for the homeless also contribute to morbidity from respiratory infections and activation of tuberculosis. See, for instance, DL Wood, RB Valdez, T Hayashi, and A Shen, “Health of homeless children and housed, poor children”, *Pediatrics*, 86 (1990), pp. 858–866; AR Zolopa, JA Hahn, R Gorter et al, “HIV and tuberculosis infection in San Francisco's homeless adults: Prevalence and risk factors in a representative sample”, *JAMA*, 227 (1994), pp. 455–461; M Kermodé, N Crofts, B Speed, P Miller, and J Streeton, “Tuberculosis infection and homelessness in Melbourne, Australia, 1995–1996”, *Int J Tuberc Lung Dis*, 3 (1999), pp. 901–907.

¹⁶ See WHO, “Health Principles of Housing” (1989) for more on the principles underlying housing as a component of healthcare.

¹⁷ See UN Special Rapporteur L Farha, “Housing, the front-line defence against the COVID-19 outbreak” (18 March 2020), available:

https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E&fbclid=IwAR3tXO7gWdlq6Zl1wi0T_BLxrR_EiEr-4DEg0eRt2BTpZWCfw7Ej5wTLfdY.

16. In lieu of accurate data on the full number of eviction applications before the courts since the start of lockdown or the number of extra-judicial evictions, the numbers of people accessing support services for evictions is the next best proxy for understanding the scale of the issue. The sheer volume of requests for legal assistance as a result of evictions made to public interest law organisations and law clinics during the pandemic is cause of concern. For instance, since the imposition of the national lockdown the Access to Justice Legal Support Hotline, a telephonic hotline set up by various South African public interest law organisations to provide legal assistance and advice during the national lockdown, has received 227 requests for legal assistance in relation to evictions.¹⁸ These requests represent over 952 people that are currently facing eviction or the threat of eviction and the possibility of homelessness.¹⁹ The Ndifuna Ukwazi Law Centre in addition to responding to hotline queries has also received 151 requests for assistance from people facing eviction during the lockdown period.²⁰
17. The number of visitors to www.evictions.org.za, an online portal offering legal advice to tenants and unlawful occupiers facing eviction developed by Ndifuna Ukwazi and Open Up, also highlights a dramatic increase in the number of South Africans seeking legal advice on how to oppose or prevent illegal evictions.²¹ For example, according to Google Analytics data the portal was visited by, on average, around 300 unique visitors per month prior to the national lockdown. However, the number of unique visitors has surged during the national lockdown, with approximately 2 900 people visiting the website during the month of May alone and approximately 1 200 people visiting the website in the first week of June. These figures indicate an exponential increase in people seeking advice about evictions online.

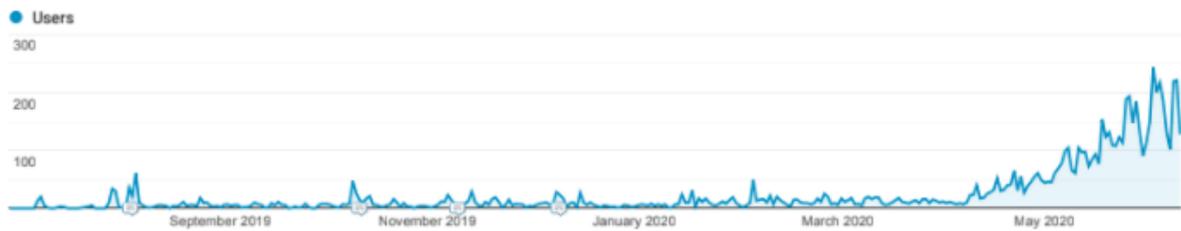
¹⁸ See the Lawyers for Human Rights (“LHR”)’s website for more information on the Access to Justice Legal Support Hotline, available:

<https://www.lhr.org.za/lhr-news/legal-support-hotline-during-lockdownsa/>. The hotline is run by the Centre for Applied Legal Studies (“CALs”), the Centre for Child Law (“CCL”), the Centre for Environmental Rights (“CER”), Corruption Watch, the Equal Education Law Centre (“EELC”), LHR, the Legal Resources Centre (“LRC”), Ndifuna Ukwazi, ProBono.Org, the Socio-Economic Rights Institute of South Africa (“SERI”) and the Women’s Law Centre (“WLC”).

¹⁹ These figures are based on the personal information collected by attorneys while offering legal advice, including household size or the size of the community affected. Records on file with Ndifuna Ukwazi (15 June 2020).

²⁰ Records on file with Ndifuna Ukwazi (as at 19 June 2020).

²¹ The website is available here: <https://evictions.org.za>.



The graph above indicates a significant increase in the number of visitors to the evictions.org.za website during the national lockdown in South Africa (Google Analytics data provided by Open Up and www.evictions.org.za, June 2020).

18. These figures are by no means representative of the scale of evictions in the country. It is likely that there are many more instances of evictions or threatened evictions across the country and that the actual numbers of people affected are likely very high as these figures only represent reports from a small segment of the South African population who have the resources to be able to call public interest legal organisations or access the internet. Nonetheless, these figures do seem to indicate that many poor and low-income groups are experiencing heightened tenure insecurity, vulnerability to evictions and the risk of homelessness.
19. Evictions are also not going away any time soon. A recent nationwide survey of 80 000 tenants in South Africa, entitled “How COVID-19 has affected South African Tenants”, has highlighted how the pandemic has negatively affected the tenure security of many poor and working class households.²² The survey looked into questions relating to relocation plans, affordability, landlord behaviour and payment assistance connected to the COVID-19 pandemic. It found that a large majority of tenants have, and will continue to, struggle to make payment of their monthly rental amounts as a result of the COVID-19 pandemic and the national lockdown. Importantly, the survey concluded that the “responses from tenants painted an even more severe picture than expected, with the most staggering statistic being that the large majority of tenants’ rental affordability has been impaired as a result of this catastrophic event.” Further key findings of the survey report are that:

19.1. 78.8% of tenants’ income has been affected by Covid-19;

²² The survey and report were compiled in May 2020 by a residential rental proptech platform - Flow. See Flow, “How COVID-19 has affected South African tenants”, *Flow Findings Research Report* (May 2020), available: <https://flow.rent/tenants>.

- 19.2. both the high end (rentals of R12,000+ per month) as well as the low end (rentals R2,000 – R3,999 per month) of the market are affected; and
 - 19.3. the financial effects of the lockdown have naturally affected tenants' ability to pay their rent. Only 37% can afford to pay their rent in full and a significant 22% cannot pay their rent at all.
20. These findings indicate that the COVID-19 outbreak will have a devastating impact on the right of access to adequate housing to many poor and working class households throughout Africa and, consequently, negatively impact people's ability to protect themselves or their communities from the risk of contracting and transmitting COVID-19.
 21. Moreover, these figures indicate that the legislative measures (such as those put in place by the South African Government) are insufficient to curb illegal evictions during the pandemic and its aftermath, as these measures have not been effectively enforced in practice. Monitoring and enforcement of legislative protections are therefore essential to any workable socio-economic response to the COVID-19 pandemic.

Access to basic services and COVID-19

22. Access to basic services such as water and sanitation are central to efforts to successfully combat COVID-19, and to aid the practice of heightened standards of hygiene. In South Africa, the Department of Water and Sanitation has committed to providing water to rural communities and informal settlements.²³ Further, the Minister of Human Settlements, Water and Sanitation, Lindiwe Sisulu, has issued a call for municipalities to suspend cutting water supply for the duration of the national lockdown as government has called on citizens to practice hygiene by washing their hands several times a day to prevent the spread of COVID-19 infections.²⁴
23. Yet, as with the legislated prohibition on evictions, there has been a demonstrated failure to enforce these directives. In addition to the cases of

²³ See L Sisulu, "Press Statement by Minister of Human Settlements, Water and Sanitation, Minister Lindiwe Sisulu on government's response to Coronavirus COVID-19 pandemic" (29 April 2020), available: <https://www.gov.za/speeches/minister-lindiwe-sisulu-government%E2%80%99s-response-coronavirus-covid-19-pandemic-29-apr-2020>.

²⁴ L Sisulu, "Statement by Minister of Human Settlements, Water and Sanitation, Minister Lindiwe Sisulu on evictions and water cuts during COVID-19 Coronavirus lockdown" (13 April 2020), available: <https://www.gov.za/speeches/minister-sisulu-calls-municipalities-suspend-cutting-water-residents-repeats-call>.

extra-judicial evictions that have occurred during the national lockdown period, we have received increasing reports of individual landlords disconnecting electricity and water.

24. The disconnection of electricity and water deprives occupiers of essential services which are needed to combat COVID-19 and significantly denudes the underlying reasons why a person's home is considered their first line of defence. Similarly, lack of access to electricity has practical implications that can increase risk to infection. For example, lack of access to electricity impacts a person's ability to cook food and stay nourished and stay warm.
25. In most instances, the reason provided for the threatened and actual electricity and water disconnection is the failure to pay the full rental amount. However, in almost all the reported instances, the individual tenant's inability to pay rent has been as a direct result of unemployment or loss of income due to the inability to work during COVID-19 crisis or the national lockdown.
26. Targeted intervention is needed to address this issue. To this end, some municipalities in the Western Cape have undertaken to provide relief to rate payers through lifting suspensions on utilities accounts, suspending credit control processes and offering to enter into deferred payment agreements.²⁵ Other provinces have committed to similar actions, with the City of Johannesburg undertaking to reconnect water and electricity services for residents who had experienced disconnections due to non-payment.²⁶
27. The right to adequate housing is not subject to derogation in times of emergency. According to the Committee on Economic, Social and Cultural Rights, this right includes the availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition.²⁷ Any limitation of the right must therefore be necessary, proportionate and evidence-based. It is concerning to note that during this time, where services such as water and electricity are key to the preservation of health, many tenants and ratepayers have experienced unlawful disconnections of these utilities and these deprivations are becoming

²⁵ See Western Cape Provincial Government, "Statement on COVID-19: Municipalities implement wide-ranging interventions to assist communities" (1 April 2020), available:

<https://coronavirus.westerncape.gov.za/news/covid-19-municipalities-implement-wide-ranging-interventions-assist-communities>.

²⁶ City of Johannesburg, "Water and electricity suspensions temporarily lifted" (25 March 2020), available:

<https://www.joburg.org.za/media/Newsroom/Pages/2020%20News%20Articles/March%202020/Water-and-electricity-suspensions-temporarily-lifted.aspx>.

²⁷ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23).

more prevalent. This is in violation of the rights to water and the constitutionally recognised duty on municipalities to provide basic services including electricity, and in some instances, constitutes unlawful constructive evictions.

28. The honest acknowledgment that this public health crisis creates an undue burden on society is critical, yet what is of more importance is the recognition that the poor and tenure insecure cannot be made to bear the cost at the expense of their lives. This is a societal imperative, moreover in a society premised on substantive equality and the advancement of human rights and freedoms.

II. RECOMMENDATIONS

29. In this section, we make various recommendations of possible inclusions to the socio-economic for the African Union to consider. We believe these recommendations will strengthen the response and address some of the challenges we have identified above.
30. Our recommendations includes measures that AU Member States can adopt immediately to mitigate the socio-economic impact of the pandemic, and measures that are aimed at strengthening the medium- to long-terms responses of Member States.

Recommendation 1: Prohibition of eviction and demolition of a person's home

31. We recommend that the African Union encourage AU Member States to impose a full moratorium or prohibition evictions with immediate effect for the duration of the pandemic period and a reasonable period thereafter. This should include a prohibition on the institution, hearing, and execution of evictions.
32. Any execution of an eviction order or the demolition of a person's home while a country is still experiencing increasing infection rates, continued restrictions on *inter alia* movement and transport, and subject to regulations requiring citizens to stay at home, would be manifestly unjust and contrary to international and regional human rights protections.
33. We accordingly recommend that the African Union advise Member States to enact legislative measures that prohibit evictions, along the wording below:

"Prohibition on evictions and demolitions of homes

(1) For the duration pandemic period and a reasonable period thereafter:

- (a) *No person may have their home demolished or be evicted or otherwise removed from their place of residence, including in terms existing eviction legislation, or whether by way of an extra-judicial process, regardless of whether it is a formal or informal residence or a farm dwelling; and*
- (b) *No person may demolish any structure which has been or is being constructed for the purposes of residential occupation on any land or in any building.*

Recommendation 2: Directions to give effect to eviction moratorium

34. We further recommend that the African Union response encourage Member State to issue clear directions on how State actors should give effect to any legislative measures prohibiting evictions and demolitions of informal dwellings in their countries. These should, at a minimum, include measures suspending the service and execution of evictions, attachment orders, and sales in execution with immediate effect for the duration of pandemic and for a reasonable period thereafter.

Recommendation 3: Enforcement and monitoring mechanisms in relation to eviction moratoriums

35. Many States across the African continent have implemented legislative protections in response to COVID-19 pandemic. However, few have adopted measures to ensure that these legislative protections are implemented or enforced in practice. In particular, law enforcement agencies or national defence force personnel have primarily been tasked with ensuring compliance with the regulations.
36. As mentioned above, monitoring and enforcement of legislative protections are essential to any workable socio-economic response to the COVID-19 pandemic as a failure to effectively implement protective measures will increase the vulnerability of marginalised groups.
37. We therefore make three specific recommendations in relation to the monitoring and enforcement of evictions moratoriums this regard:
- 37.1. AU Member States should establish, and ensure compliance with, clear criteria that sets out the procedural steps that must be taken by law enforcement officials (as supported by police or private security, as the case may be) or private security *before* a structure may be lawfully demolished, including objectively determining whether such structure is

occupied for residential purposes so as to avoid contraventions of international law protections against forced evictions;

- 37.2. AU Member States should establish and support local human rights monitors that are associated with the Human Rights Commissions, Ombudspersons or independent housing, tenant and consumer protection bodies which could refer cases of non-compliance to other enforcement bodies or to the justice system; and
- 37.3. AU Member States should implement awareness initiatives to inform police and law enforcement officers of their duties in responding to evictions or threatened evictions during the pandemic, with particular regard to law enforcement officials' role in assisting and intervening to stop and prevent illegal evictions as a measure to ensure that the regulations prohibiting evictions are adhered to.

Recommendation 4: Protecting renters and mortgage payers / landlords

38. On 8 April 2020, the UN Special Rapporteur on the Right to Adequate Housing issued a COVID-19 Guidance Note that outlines practical steps to be taken by States to alleviate both rental and rental income shortfalls due to the effect of the pandemic. Importantly, the Guidance Note directs States to adopt the following principles to inform their responses:
 - 38.1. the burden of the response to the pandemic must be shared across society in a fair and equitable manner;
 - 38.2. renters and homeowners – whether in informal or formal markets – must not emerge from the pandemic overburdened with housing related debt as a result of financial and economic circumstances created by the pandemic; and
 - 38.3. the financial burden shouldered by banks, financial institutions, corporate landlords and other financial actors must be proportionate to their resources.
39. States are further advised to implement specific measures to ensure that tenants and mortgage payers can comply with stay at home directives and not face displacement and financial ruin. This includes measures to:
 - “1. Prohibit evictions and the threat of eviction (e.g. legal notice to evict) due to arrears of rental, mortgage or utility payments during the pandemic period and for a reasonable period thereafter. Evictions or

foreclosures scheduled before the pandemic commenced must be suspended. Adequate monitoring mechanisms to ensure these prohibitions are adhered to must be established, including to prevent private actors from carrying out extrajudicial evictions.

2. *Implement an immediate rent freeze, prohibiting any increases in rental costs including any adjustments for inflation, during the pandemic and for a reasonable period thereafter.*
 3. *Prohibit the cancelling of rental contracts during the pandemic and for a reasonable period thereafter, except in the context of criminal behaviour, particularly where the behaviour will harm other tenants.*
 4. *States must ensure housing affordability for tenants whose incomes decline as a result of COVID19. In this regard, for the duration of the pandemic and a reasonable period thereafter, States should legislate a mandatory rent re-calculation by housing providers that caps the rent obligation of tenants to 30 per cent of their monthly income, including any social benefits received ...*
 5. *A government compensation scheme for landlords could also be established to offset the difference between the pandemic rental cap rates and the rental rates that were in place prior to the pandemic. Compensation may be variable depending on the circumstances of the landlord. In this regard, as part of a larger stimulus package, States could establish a social solidarity fund – funded through taxation schemes and levies on revenues from corporate landlords – to provide compensation or assistance particularly to smaller landlords, conditional on their offering of reduced rental payments to tenants.*
 6. *Policies must be established that provide rent and mortgage forgiveness for particularly vulnerable households whose situations are made worse by COVID-19, at least for the duration of the pandemic and a reasonable time thereafter. In this regard, some States have initiated time delimited mortgage payment moratoriums and individual landlords have offered rent forgiveness.”*
40. We encourage the African Union to consider and include the measures set out in the Guidance Note into the socio-economic response to protect both tenants and mortgage payers / landlords during immediate aftermath of the COVID-19 pandemic, particularly those measures where emphasis has been added.

Recommendation 5: Continued access to basic services

41. We further recommend that the African Union encourage Member States to implement targeted interventions to address the issue of basic services being suspended or denied because of a lack of payment, late payment, or

underpayment of rent or of a mortgage due to the virus and the pandemic response across their countries. This may follow some of the following measures, including:

- 41.1. providing relief to rate payers through lifting suspensions on utilities accounts;
- 41.2. suspending credit control processes;
- 41.3. offering to enter into deferred payment agreements; and
- 41.4. reconnecting water and electricity services for residents who had experienced disconnections due to non-payment.

Recommendation 6: Providing social and financial relief through budgeting

42. We recommend that Member States, where they have the financial and fiscal resources, implement expansionary fiscal packages (i.e. stimulus budgets) that provide social and financial relief to those most affected by the pandemic. We believe that austerity measures (i.e. contractor budgets) during a time of economic and social crisis is deeply inappropriate and encourage Member States to find ways to offer lasting economic relief to poor and working class communities.²⁸
43. Martin Luther King Jr, the revered civil rights activist, argued that how a government spends its resources has ethical consequences, which makes a budget a moral document.²⁹ In this context, we urge Member States to adopt a moral budgets that ensures that citizens in their counties are protected from the worst socio-economic consequences flowing from the COVID-19 crisis and its aftermath.

III. CONCLUSION

44. The COVID-19 public health crisis has created an undue burden on society, in terms of which poor and working class households have been disproportionately

²⁸ Austerity measures would be out of place with international budgetary trends. See P Coy, "Even Deficit Hawks Support Big Spending to Fight the Virus Slump", *Bloomberg Businessweek* (13 March 2020), available:

<https://www.bloomberg.com/news/articles/2020-03-13/even-deficit-hawks-support-big-spending-to-fight-the-virus-slump>. See also L Siaz, "Time for a Rights-Based Global Economic Stimulus to Tackle COVID-19", *Center for Economic and Social Rights* (27 March 2020), available:

<https://www.cesr.org/time-rights-based-global-economic-stimulus-tackle-covid-19> .

²⁹ See FR Steiner, *Making Plans: How to Engage with Landscape, Design and Urban Environment* (2018), p. 155.

affected by the pandemic. Yet what is of more importance is the recognition that the poor and tenure insecure cannot be made to bear the cost at the expense of their lives. This is a societal imperative.

45. We appreciate the opportunity to have participated in this constructive engagement process, and hope that our submission assists the African Union in formulating solutions that will advance human rights and freedoms across the continent.
46. Please do not hesitate to contact us should you require clarification or further information.

END