

c/o: Michael Clark, Researcher and
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19 June 2020

**To: United Nations Special Rapporteur on Adequate Housing
Associate Prof Balakrishnan Rajagopal
Per email: srhousing@ohchr.org and registry@ohchr.org**

Dear Associate Professor Balakrishnan Rajagopal,

**RE: NDIFUNA UKWAZI'S SUBMISSION TO THE UNITED NATIONS SPECIAL
RAPPORTEUR ON COVID-19 AND THE RIGHT TO HOUSING IN SOUTH AFRICA**

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. In June 2020, the United Nations ("UN") Special Rapporteur on adequate housing as a component of the right to an adequate standard of living ("the Special Rapporteur") announced his intention to devote his forthcoming report to the UN General Assembly to the importance of adequate housing to ensure protection against the COVID-19 pandemic. In particular, the Special Rapporteur's report will consider measures to prevent and stop evictions during and in the aftermath of the COVID-19 crisis, and how to protect various marginalised groups, including persons living in informal settlements and homeless persons. He published an invitation for interested parties to furnish him



with relevant information on the housing-related responses to the COVID-19 outbreak in their countries.

3. Ndifuna Ukwazi has read the UN Special Rapporteur's invitation for input and the questionnaire, and hereby makes this submission in accordance with the invitation to submit written comments.

Yours faithfully,

Ndifuna Ukwazi

Per: Michael Clark, Researcher and Mpho Raboeane, Attorney

NDIFUNA UKWAZI'S SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON COVID-19 AND THE RIGHT TO HOUSING IN SOUTH AFRICA

INTRODUCTION

1. Ndifuna Ukwazi has considered the UN Special Rapporteur's request for contributions in relation to States' housing-related responses to the COVID-19 pandemic, and makes the following submission.
2. Our submission details the measures taken by the South African Government in response to the COVID-19 outbreak, the failed implementation of these measures, and the resultant impact on the right of access to adequate housing. In particular, the submission aims to address questions 1 and 2 of the Special Rapporteur's questionnaire on COVID-19 and the right to housing.
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 during the COVID-19 crisis, that have left many homeless and vulnerable to contracting and spreading COVID-19. As our work is primarily focused in the Western Cape province of South Africa, our responses will stem largely from that province.
4. This submission is structured as follows:
 - 4.1. First, we deal with the UN Special Rapporteur's questions about evictions in South Africa. This section includes:
 - 4.1.1. A brief outline of the national laws giving effect to the right of access to adequate housing and governing eviction in South Africa;
 - 4.1.2. A brief description of the specific measures adopted by the South African government to give effect to the right to adequate housing and guard against forced eviction during the COVID-19 outbreak;

- 4.1.3. We raise concerns about the failure of the South African government to ensure the effective implementation of these measures by referring to some preliminary data hinting at the scale of evictions and providing brief descriptions of specific evictions in informal settlements that have taken place in Cape Town and Durban during the national lockdown in response to COVID-19;
- 4.2. Second, we provide brief inputs on the lack of concrete mechanisms to prevent electricity, water or service cut-offs as a result of non-payment of utility bills in response to the COVID-19 crisis; and
- 4.3. Thereafter, we provide some concluding remarks.

EVICTIONS AND COVID-19

5. In this section, we seek to respond to the UN Special Rapporteur's question about evictions in South Africa. As our work is primarily focused in Cape Town in South Africa's Western Cape province, most of the data included in this submission relates to this area.

Legal framework governing evictions in South Africa

6. The history of South Africa is characterised by large-scale land dispossession spanning the colonial era until the end of apartheid.¹ The apartheid government systematically established and maintained a complex race-based legal framework that drove black people off their land, destroyed the various means through which black people accessed land, steadily diminished the status of black people in relation to the land they occupied and used, and prohibited black people from legally owning land. The combined result of these apartheid laws was that the degree of tenure security that black people were entitled to was more precarious than the tenure security to which white people were entitled.²

¹ Nkuzi Development Association, *Still Searching for Security: The Reality of Farm Dweller Evictions in South Africa* (2005), p. vi.

² AJ van der Walt, "Property Rights and Hierarchies of Power: A Critical Evaluation of Land Reform Policy in South Africa", *Koers*, 64 (1999), pp. 262-263.

7. After the collapse of apartheid, the adoption of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) significantly altered the apartheid legal framework. By enshrining a variety of human rights in the Bill of Rights, the Constitution sought to actively reshape the power structures and social relationships that characterised the apartheid era and address systemic social vulnerability and disadvantage.³

8. In this context, the South African legal framework provides various substantive and procedural protections against forced evictions. Section 26 of the Constitution entrenches the right of access to adequate housing. This provision 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,⁴ and 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”.⁵

9. During the mid-1990s, the first democratic Parliament passed a series of national laws that sought to strengthen the tenure security of the majority black population and afford legal protection against unlawful and arbitrary evictions. These include the Land Reform (Labour Tenants) Act 3 of 1996 (“the LTA”), the Interim Protection of Informal Land Rights Act 31 of 1996 (“IPIIRA”), the Extension of Security of Tenure Act 62 of 1997 (“ESTA”), and the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (“the PIE Act”).

10. The PIE Act is undoubtedly the most important of these laws. The PIE Act gives effect to section 26(3) of the Constitution’s requirement that a court consider all the relevant

³ On the transformative nature of the South African Constitution, see D Moseneke, “The Fourth Bram Fischer Memorial Lecture: Transformative Adjudication”, *South African Journal on Human Rights*, 18 (2002), pp. 318-319; and M Pieterse, “What do we mean when we talk about Transformative Constitutionalism?”, *South African Public Law*, 20 (2005), p. 159.

⁴ Section 26(2) of the Constitution reads:

“The state must take reasonable measures, within available resources, to achieve the progressive realisation of this right”.

⁵ 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.”

circumstances before making an eviction order. The Act requires that the eviction of an unlawful occupier 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.⁶ The PIE Act offered protection to millions of South Africans who had no legal entitlement to the land that they lived on as a result of the racially discriminatory laws – at least until the state could ensure that state-subsidised housing could be rolled out at scale. The PIE Act thus inverted the legal order in relation to evictions: from a legal framework that targeted unlawful occupation, to one that sought to prevent illegal evictions.⁷ The PIE Act also criminalises evictions without a court order. A person who illegally evicts any occupier is guilty of a criminal offence in terms of section 8 of the PIE Act.

11. In addition to these legislative measures the South African Constitutional Court, through a series of high profile court cases, confirmed that the right of access to adequate housing obliges the South African Government to provide temporary alternative accommodation to evictees who are rendered homeless as a result of an eviction until such evictees are able to access permanent accommodation.⁸ The courts have determined that the State has this responsibility towards evictees who could be rendered homeless as a result of an eviction regardless of whether such evictees were evicted from state land or by private parties.⁹ Moreover, the duty to provide alternative

⁶ See sections 4(6) and (7) of the PIE Act.

⁷ See S Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (2010), p. 274.

⁸ For an analysis of the development of eviction and housing rights cases in South Africa, see the Socio-Economic Rights Institute of South Africa (SERI), *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”).

⁹ See *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Pty) Ltd* 2012 (2) SA 104 (CC), para 95.

accommodation applies even in cases where the occupation had only begun a relatively short period before eviction proceedings were instituted.¹⁰

Measures adopted in response to COVID-19

12. On 15 March 2020, South African President Cyril Ramaphosa announced the initial measures to be taken to combat the COVID-19 epidemic following the World Health Organisation (“WHO”)’s declaration of COVID-19 as a global pandemic. The President declared a national state of disaster in terms of the Disaster Management Act 57 of 2002 (“the DMA”), enabling the Government to take the necessary measures to mitigate the severity of the impact of the COVID-19 outbreak.¹¹ In particular, the declaration of a national disaster empowered the President to establish a National Command Council to coordinate the country’s “extraordinary emergency response”.¹² Despite these seemingly proactive measures, the Government’s initial response was inappropriate to address 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,¹³ people living in occupied inner-city buildings, people living on commercial farms, homeless people and those facing homelessness and displacements as a result of evictions (both legal and illegal).
13. Three days after Ndifuna Ukwazi and 26 other social justice movements and organisations petitioned the Presidency and the National Command Council to institute

¹⁰ See *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries* 2012 (4) BCLR 382 (CC), para 16; and *Occupiers of Portion R25 of the Farm Mooiplaats v Golden Thread* 2012 (2) SA 337 (CC), para 14.

¹¹ See President C Ramaphosa, “Statement by President Cyril Ramaphosa on measures to combat COVID-19 epidemic” (15 March 2020), available: <https://www.gov.za/speeches/statement-president-cyril-ramaphosa-measures-combat-covid-19-epidemic-15-mar-2020-0000>.

¹² Ramaphosa, “Statement by President Cyril Ramaphosa on measures to combat COVID-19 epidemic”.

¹³ 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. 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). By 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). 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.

an immediate moratorium on the issuing and execution of all eviction orders in response to the COVID-19 outbreak,¹⁴ the President announced the imposition of a 21-day national lockdown.¹⁵ The lockdown, enacted in terms of the DMA, was enforced through regulations which required all South Africans to remain in their homes for the duration of the lockdown. Individuals were not allowed to leave their homes unless under strictly controlled conditions for limited purposes, temporary shelters were to be identified for homeless people, and sites were identified for quarantine and self-isolation for people who cannot self-isolate at home.¹⁶

14. As part of the regulations imposing the national lockdown, the Government instituted a prohibition on evictions under the Directions issued by the Minister of Justice and Correctional Services, thereby responding to calls from civil society and following international good practice.¹⁷ Importantly, section 5(f) of the Directions issued on 26 March 2020 confirmed the importance of the home as the frontline defence against COVID-19 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 lockdown period. This was necessary to

¹⁴ See “Social Justice Movements and Organisations call for Moratorium on Evictions in Light of COVID-19” (20 March 2020), available:

https://drive.google.com/file/d/1SgRhTYRNhak1mTql6id2AWRR_cQWsCf/view?usp=sharing.

The calls for the imposition of an eviction moratorium underscored the importance that housing plays in preventing the spread of COVID-19 and the acute vulnerability of those facing eviction or removal from their homes during the pandemic. It also drew attention to the disproportionate risk of exposure faced by those facing evictions, living in informal settlements and those placed in inadequate housing in transitional relocation areas or camps. Moreover, civil society called on municipal law enforcement agencies, Anti-Land Invasion Units, and authorities contracting the use of private security to issue clear directives halting the execution of any and all evictions, forced removals and demolitions in the interests of preserving life and preventing a public health crisis.

¹⁵ President Cyril Ramaphosa, “Escalation of measures to combat Coronavirus COVID-19 pandemic” (23 March 2020), available:

<https://www.gov.za/speeches/president-cyril-ramaphosa-escalation-measures-combat-coronavirus-covid-19-pandemic-23-mar>.

¹⁶ Ramaphosa, “Escalation of measures to combat Coronavirus COVID-19 pandemic”.

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=IwAR3tXO7qwDIq6Zl1wI0T_BLxrR_EiEr-4DEq0eRt2BTpZWCfw7Ej5wTLfdY.

inter alia support the need for persons to remain in their dwellings to combat the spread of COVID-19.

15. These measures were lauded by the international community for the Government's decisive policy towards containing the spread of the COVID-19.¹⁸ Many described the measures as "ruthlessly efficient", declaring the South African Government to have taken "formidable" action and praising our "composed but compassionate" leadership.¹⁹
16. However, the measures adopted by the Government have failed to stem the tide of illegal evictions and demolitions by both private landlords and the State.²⁰ Evictions during the COVID-19 pandemic and the national lockdown have displayed a marked lack of compassion, particularly in the context of illegal demolitions of homes in informal settlements that have been executed by State organs at the municipal level.
17. South Africa has since adopted a "risk adjusted strategy" thereby taking a "deliberate and cautious" lifting of the national lockdown and phased reopening of economic activity.²¹ This risk-adjusted approach is guided by several criteria, including the level of infections and rate of transmission, the capacity of health facilities, the extent of the implementation of public health interventions and the economic and social impact of continued restrictions.²² It provides for various phases or levels, each with their own set of regulations. The regulations in terms of Levels 3 and 4 of the Risk Adjusted Strategy ease the blanket ban on evictions. While regulation 19 (in terms of Level 4 of the Risk Adjusted Strategy) and regulation 36 (in terms of Level 3 of the Risk Adjusted Strategy) still prohibit evictions, these regulations also make provision for courts to grant an

¹⁸ See for instance remarks by the WHO Health Emergencies Programme Executive Director, Michael Ryan during a WHO press conference held on 22 April 2020, available at: https://www.who.int/docs/default-source/coronaviruse/transcripts/who-audio-emergencies-coronavirus-press-conference-22apr2020.pdf?sfvrsn=4f8821b6_2.

¹⁹ Harding, A. (3 April 2020) "South Africa's ruthlessly efficient fight against coronavirus", BBC News available at <https://www.bbc.com/news/world-africa-52125713>.

²⁰ See below for more on evictions that have occurred during the COVID-19 outbreak.

²¹ Statement by President Cyril Ramaphosa on South Africa's response to Coronavirus COVID-19 pandemic, 23 April 2020. Available at <https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-23-apr-2020>.

²² Statement by President Cyril Ramaphosa on Developments in South Africa's risk-adjusted strategy to manage the spread of Coronavirus COVID-19, 24 May 2020. Available at <https://www.gov.za/speeches/president-cyril-ramaphosa-developments-south-africa%E2%80%99s-risk-adjusted-strategy-manage-spread>.

eviction order in terms of existing legislation on condition that such an eviction order will be suspended until the last day of Level 4 or 3, respectively. Most concerning, the regulations also provide for a court to order that an eviction can be executed during Levels 4 or 3 if the court deems it “just and equitable” having due regard to all the relevant circumstances. The easing of the moratorium on evictions is particularly inappropriate in light of rising infections, especially in “Hotspot Areas” which currently include many informal settlements in the Western Cape province. It is therefore unlikely that the execution of an eviction order during this period could ever be deemed “just and equitable”.

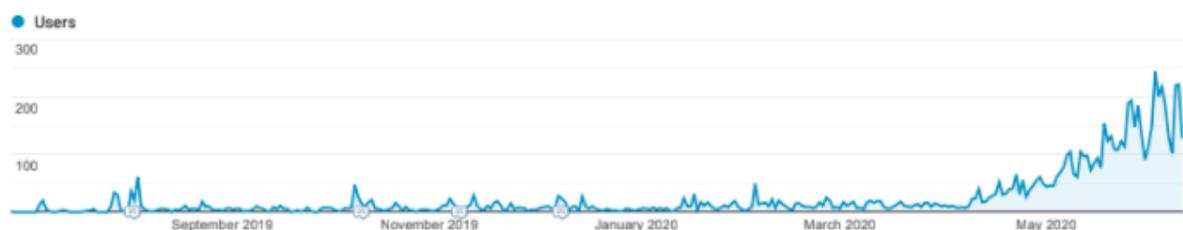
18. Nonetheless, Ndifuna Ukwazi and various other social movements and civil society organisations have raised concerns about the impact that the new regulations are likely to have on the right to housing and evictions and demolitions throughout the country.

Evictions and demolitions during the COVID-19 pandemic and national lockdown

19. Since the institution of the prohibition of evictions on 26 March 2020, many people have been subjected to extra-judicial evictions and illegal demolitions of their homes by both State and private actors despite the Government’s legislative interventions. It is particularly concerning to witness State actors nullifying the National State of Disaster Regulations with impunity, leaving the defence of the vulnerable to non-State groupings and individuals.
20. 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.
21. This is evident from 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. 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.²³ These requests represent over 952 people that are currently facing eviction or the threat of eviction and the possibility of homelessness.²⁴ 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.²⁵

22. 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.²⁶ 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.



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 Ground Up and Evictions.org.za, June 2020).

²³ 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”).

²⁴ 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).

²⁵ Records on file with Ndifuna Ukwazi (as at 19 June 2020).

²⁶ The website is available here: <https://evictions.org.za>.

23. 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 vulnerability to evictions and the risk of homelessness.
24. These figures indicate that the legislative measures put in place by the South African Government are insufficient to curb illegal evictions during the period of national lockdown, as these measures have not been effectively enforced in practice. Enforcement of the regulations was largely left to law enforcement agencies, the South African Police Services (“SAPS”) and the South African National Defence Force (“SANDF”) to perform. In terms of s 205(3) of the Constitution, SAPS has a duty to maintain public order, protect and secure the inhabitants of South Africa, uphold and enforce the law, and to prevent and investigate crimes. However, in practice, law enforcement agencies, SAPS and the SANDF have failed to perform their duties as it pertains to people at risk of eviction during the various stages of lockdown. Through advising people seeking legal advice about evictions, Ndifuna Ukwazi has become aware of instances where SAPS members have claimed to be unaware of the moratorium on evictions, unaware that an eviction without a court order is a criminal offence punishable by fine or imprisonment or both, and that SAPS members are aware of the law they refuse to intervene in landlord-tenant disputes, yield towards landlords' property/ownership rights and advise the parties to resolve the dispute themselves.

Specific instances of evictions

25. There have been multiple forced evictions and unlawful demolitions that have occurred in contravention of the eviction moratorium across the country – many of these at the hand of State actors. Most of these evictions have taken place without proper legal safeguards and, particularly, without the provision of adequate alternative accommodation to those rendered homeless as a result of evictions.

26. It should also be noted that these evictions occurred in a context where informal settlements in the Western Cape province are suffering particularly high rates of COVID-19 infections.²⁷ The Western Cape itself is the epicentre of the pandemic in the country having recorded more infections than countries such as Ghana, Israel, Denmark and Poland.²⁸ Khayelitsha, for instance, constitutes one of the province's "hot spots"²⁹ with nearly 12% of all infections in the Western Cape being in the informal settlement, in spite of Khayelitsha making up only 6% of the province's population.³⁰
27. Below we briefly detail some of the illegal evictions that have occurred during the national lockdown and their impact on the human rights of evictees. These are likely only a few of the evictions that have occurred, as many others have gone undocumented due to the lack of monitoring mechanisms and limited legal and other assistance during the initial stages of the national lockdown.

eMpolweni informal settlement, Cape Town

28. Ndifuna Ukwazi, along with the Legal Resources Centre ("LRC"), assisted a community of informal settlement residents in eMpolweni, Cape Town when the City of Cape Town ("the City"), supported by the South African Police Service ("SAPS"), acted in contravention of the direction suspending evictions and demolished people's homes, causing injury and loss of property while placing people at an increased risk of

²⁷ The Western Cape province is currently recording more than half of the total number of COVID-19 infections and deaths as a result of COVID-19. See R Davis, "Unravelling the riddle of the Western Cape's high COVID-19 numbers", *Daily Maverick* (21 May 2020), available: <https://www.dailymaverick.co.za/article/2020-05-21-unravelling-the-riddle-of-the-western-cape-high-covid-19-numbers/>.

²⁸ Kiewit, L. Smit, S. (4 June 2020). "Virus spreads like fire in the Cape". Available at <https://mg.co.za/news/2020-06-04-virus-spreads-like-fire-in-the-cape/>.

²⁹ According to the South African government's risk adjusted strategy approach, a hotspot is a term used to identify a geographic area with many reported cases of Covid-19.

³⁰ Staff reporter, "Coronavirus pandemic exposes South Africa's 'brutal inequality'", *Al Jazeera* (12 June 2020), available: <https://www.aljazeera.com/news/2020/06/coronavirus-pandemic-exposes-south-africa-brutal-inequality-200612161408571.html>.

contracting COVID-19. The City repeatedly evicted the community over the course of several days. In particular:³¹

- 28.1. On 9 April 2020 the City's Anti-Land Invasion Unit ("ALIU"), a municipal law enforcement unit charged with preventing unlawful occupation of vacant land, carried out the demolition of around 70 homes in the eMpolweni informal settlement, built on City owned land in Khayelitsha.
 - 28.2. These demolitions were violently carried out, with the residents being afforded no prior engagement nor explanation as to the reasons for the razing of their homes and destruction of property. Further demolitions of more than 100 homes, including those which had been rebuilt, took place on 11 April 2020, with incidents of teargas, pepper spray and rubber bullets being used on the residents. The building materials of some of the demolished homes were confiscated, damaged, or destroyed by the ALIU, law enforcement officials and the SAPS.
 - 28.3. At no stage were the residents engaged as to the grounds for the demolitions and confiscation of their building materials. The ALIU, law enforcement agencies and SAPS failed to produce a court order authorising the demolition of the residents' homes. The ALIU officers concealed any means of identification and would not be engaged on the grounds for their actions, save to threaten the arrest of any person found on the property.
29. In the informal settlement context, a demolition amounts to an eviction, particularly because people are left with little to no options after the demolition of their homes, especially when their building materials have been confiscated, damaged or destroyed. In this case, the above demolitions have rendered many families homeless, facing the elements including the winter rains and leaving them at a heightened risk of contracting respiratory diseases and especially COVID-19. The City's approach displays an

³¹ See, for more on the eviction, B Christianson, "Lockdown means 'eviction' for many back-yard dwellers", *New Frame* (23 April 2020), available: <https://www.newframe.com/lockdown-means-eviction-for-many-backyard-dwellers/>.

alarming ruthless treatment of the poor and sites of informality as undeserving of dignity and protection.

30. In this matter, the City averred that the structures were either incomplete or unoccupied and that it was merely enforcing an interdict against further occupation of the property granted by the court in 2018. However, in terms of South African law, interdicts prohibiting further occupation cannot be used as eviction orders.³² The City's conduct is morally reprehensible in the context of a global pandemic, where the global preventative measure has been to require people to remain in their home. The City has instead opted to raze people's homes which were clearly completed and occupied, some having occupied the property since 2019. In some cases, residents have reported being assaulted, forcefully moved out of their homes or their homes being demolished around them. The City also did not provide residents with any immediate alternative accommodation or shelter for themselves, their children, and their belongings.
31. The residents challenged the eviction on an urgent basis in the Western Cape High Court, where Judge Bryan Hack ruled that the City was required to allow the 130 occupiers to return to eMpolweni and give the residents back their building materials. Where material has been damaged, the City was ordered to ensure that there is sufficient material for their homes to be rebuilt.³³ However, the City has failed to comply with the order as it has still not provided all the eMpolweni residents with their building materials.³⁴

Kommetjie informal settlement, Cape Town

32. On 15 May 2020, the community of Kommetjie informal settlement in Ocean View, Cape Town bore witness to the illegal demolition of their homes at the hands of the City's ALIU

³² See, for example, *Zulu and Others v eThekweni Municipality and Others* 2014 (4) SA 590 (CC); and *Mchunu and Others v Executive Mayor of eThekweni and Others* 2013 (1) SA 555 (KZD).

³³ See J Stent, "Khayelitsha residents win court victory against City of Cape Town", *News24* (17 April 2020); A Ndamane, "Evicted Empolweni residents set to rebuild after high court victory", *IOL News* (18 April 2020); and C Leggenberg-Roberts, "Cape Town High Court declares Empolweni evictions unlawful", *SABC News* (17 April 2020).

³⁴ S Mzantsi, "Still no joy for many Empolweni residents after eviction victory in court", *IOL News* (15 May 2020), available:

<https://www.iol.co.za/capetimes/news/still-no-joy-for-many-empolweni-residents-after-eviction-victory-in-court-47974071>.

and Law Enforcement officials. Five households had their homes demolished and their building materials confiscated without a court order with no alternative accommodation offered.

Ekuphumeleleni and eKhenana informal settlements, Durban

33. In Durban, illegal evictions took place from the first day of the national lockdown displaying the blatant disregard for the legislated moratorium and its underlying rationale of containing the spread of COVID-19 by eThekweni City officials. On 27 March 2020, on the instruction of the eThekweni Municipality, nine motor vehicles labelled Calvin and Family Security Services (a private security contractor) descended on the Ekuphumeleleni settlement, established in October 2019.³⁵ Eight homes were torn down and destroyed while 17 others were marked, an indication that the security company intended to return to conduct further demolitions.³⁶ These took place on 29 March 2020 where another five homes were demolished, rendering those households homeless. The private security company failed to produce a court order for the evictions carried out at Ekuphumeleleni, rendering such demolitions not only in contravention of the regulations but also the South African Constitution and the PIE Act.
34. On the 21 and 22 April 2020, Calvin and Family Security violently carried out demolitions at the eKhenana settlement in Cato Crest. It is reported that live ammunition was used against unarmed residents and community members. In addition to the regulations and PIE Act, this lawless act was carried out in contempt of an order interdicting illegal evictions by the eThekweni Municipality. The interdict was secured on behalf of 109 families in eKhenana in February 2019 from the Durban High Court. demolitions of new and unoccupied shacks. However, these shacks have been occupied since the illegal demolitions that occurred in February 2019. Despite this background, the court this time found in favour of the eThekweni Municipality which claimed the demolished structures had been unoccupied and newly built.³⁷

³⁵ Abahlali baseMjondolo, "Evictions in Durban on the First Day of the National Shutdown", Abahlali baseMjondolo Press Statement (27 March 2020), available:

<http://abahlali.org/node/17039/#more-17039>.

³⁶ Abahlali baseMjondolo, "Evictions in Durban on the First Day of the National Shutdown".

³⁷ O Sing, "Court sides with Durban council in battle with homeless", *Times Live* (8 April 2020), available:

ACCESS TO BASIC SERVICES

35. The South African government has recognised the centrality of access to water in the effort to successfully combat COVID-19, and to aid the practice of heightened standards of hygiene, the Department of Water and Sanitation has committed to providing water to rural communities and informal settlements.³⁸ 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 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.³⁹
36. Yet, as with the legislated prohibition on evictions, there has been a demonstrated failure to enforce these directives. In addition to the cases of extra-judicial evictions that have occurred during the national lockdown period, we have received increasing reports of individual landlords disconnecting electricity and water.
37. The disconnection of electricity and water deprives a tenant 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, no access to electricity has practical implications that can increase risk to infection. For example, no access to electricity impacts a person's ability to cook food and stay nourished and stay warm which is particularly concerning as we approach the winter months.
38. 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

<https://www.timeslive.co.za/news/south-africa/2020-04-08-court-sides-with-durban-council-in-battle-with-homeless/>.

³⁸ 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>.

³⁹ 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-repeals-call>.

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 the national lockdown.

39. 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.⁴⁰ 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.⁴¹

40. 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.⁴² 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 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.

41. 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

⁴⁰ 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>.

⁴¹ 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>.

⁴² 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).

societal imperative, moreover in a society premised on substantive equality and the advancement of human rights and freedoms.

CONCLUSION

42. The South African government has adopted various legislative measures in an attempt to provide additional protection against eviction by imposing an evictions moratorium during the period of the national lockdown in response to COVID-19. However, the government's intervention has largely been limited to legislative protections, with little or no measures to ensure that these measures are implemented or enforced in practice. In particular, law enforcement agencies and SAPS, that have primarily been tasked with ensuring compliance with the regulations, have either failed to provide assistance to those facing eviction or refused to provide such assistance. In the most egregious instances, these officials have assisted in executing illegal evictions rather than preventing them.
43. The failure to ensure that the regulations prohibiting evictions are implemented effectively, has increased the vulnerability of those living in informal settlements and those with insecure tenure.
44. Moreover, 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, and face income and/or food insecurity.⁴³ Preliminary data from Statistics South Africa ("StatsSA") shows that the COVID-19 pandemic has already led to higher rates of unemployment, diminished incomes and higher rates of hunger.⁴⁴ The COVID-19 crisis and the national lockdown have, and will continue to have, serious and long-standing economic ramifications which will mean that many poor and low income

⁴³ 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).

⁴⁴ 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>.



families will be at an increased risk of eviction. In this context, the effective implementation of the eviction moratorium becomes critical.

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