



HOUSING AND LAND RIGHTS NETWORK

Habitat International Coalition

SERI

socio-economic rights institute
of south africa

Urgent Action Appeal ZA-DN 31082023

City Neglect Leads to 77 Dead in Shelter Fire Johannesburg, South Africa

On the morning of 31 August 2023, Johannesburg residents woke up to the news of a fire in an inner city building owned by the City of Johannesburg, which led to the death of 77 people. With deep condolences to the victims and surviving families and friends of the deceased residents, we wish a speedy recovery to those remaining in hospital and in recovery. We also ask for your solidarity in demanding justice for the victims and remedy for the many thousand vulnerable to a similar fate.

Situated at 80 Albert Street, Johannesburg the building, known as Usindiso (which loosely translates to the “saving” or “salvation” place) Shelter for Women and Children, was previously operating as a refuge for abused women and children until its neglect by the City of Johannesburg, resulting in the building falling into disrepair and take-over by slum lords in what the City refers to as its “hijacking.” Prior to its use as a shelter, the building used to be the infamous Non-European Affairs Department’s Central Pass Office checkpoint of the influx control system under the apartheid regime. It was the office from which the “Dompas,” which controlled the movement of black people in South Africa, was issued and that was responsible for authorising the expulsion of “unworthy black people” from Johannesburg, denying them a place in the inner city.¹

As tragic as it is, the Usindiso shelter fire is just one example of how the City deals with its shelters, which are occupied by many of Johannesburg’s poorest and most vulnerable residents. The conditions of the shelters, transitional housing and temporary emergency accommodation (TEAs) need to be urgently improved and people living in them need basic services and security of tenure and of person.

¹ Nkosinathi Sithole, “Fire proves the apartheid ethos of the Central Pass Office hasn’t died”, *Sunday Times* (10 September 2023).

In the Usindiso fire aftermath, City authorities tried to shift the blame to NGOs and migrants. This gaslighting of civic housing-rights organizations and the general public speaks to the municipality's unwillingness to take responsibility for the housing crisis within its inner city jurisdiction. Despite these tactics of dissimulation and the City's ongoing recalcitrance, we call upon your solidarity in defending the rights of vulnerable people who face various hazards in the City of Johannesburg, including forced evictions and other violence at the hands of either state organs, private owners or criminal gangs with no alternative accommodation and in direct contravention of the rights enshrined in the South African Constitution.



Figure 1: Medics stand by the covered bodies of victims of the deadly blaze in downtown Johannesburg. Source: Jerome Delay/AP.

Affected People/Population

Usindiso Shelter residents were those impoverished persons living in a provincial government shelter for women and children at 80 Albert Street before “some challenges were encountered with the occupants,”² and the municipality abandoned the property when the lease expired.

The victims were thought to be residents who had unlawfully occupied the building that belongs to the City of Johannesburg. However, some had actually purchased rooms in the Shelter,

² Johannesburg City Manager Floyd Brink, said: “At the conclusion of the [Department of Social Development’s] lease, some challenges were encountered with the occupants and, as a result of the hostilities and stalemate, the building was invaded and hijacked.” Nonkululeko Njilo, “City of Johannesburg points finger at NGOs and foreign nationals after deadly fire,” *Daily Maverick* (31 August 2023), <https://www.dailymaverick.co.za/article/2023-08-31-city-of-johannesburg-points-finger-at-ngos-and-foreign-nationals-after-deadly-fire/>.

believing they had freehold tenure.³ Others were renters, paying monthly to slumlords for their stay.⁴

The number of residents grew to more than 200 families, many of whom unlawfully occupied the five-storey building. Nearly five years ago, a bogus landlord was jailed for illegally collecting rent from tenants at the City of Johannesburg's building.⁵ At the time of drafting, the police's Victim Identification Centre is still processing DNA samples drawn from 62 unidentifiable bodies and has already taken 36 antemortem swabs from immediate family members. The samples taken from the deceased and family members will be cross-referenced to link families with their deceased loved ones.⁶ Only 12 bodies had been released to the families for burial.

A total of 77 residents are known to have died in the Usindiso fire, including 12 children. Meanwhile, 31 people remained in hospital after 88 patients were seen at the Chris Hani Baragwanath Academic Hospital, Charlotte Maxeke Johannesburg Academic Hospital, South Rand Hospital, Helen Joseph Hospital, Rahima Moosa Mother and Child Hospital and Tembisa Hospital.⁷

Background and context

Nearly three decades after the transformation of apartheid South Africa into a constitutional democracy, the country remains one of extreme wealth persisting alongside widespread poverty. Race and gender remain factors in this inequality, where the Black African population endures the worst living conditions in the “most unequal country in the world” in the world's most-unequal region.⁸

And although South Africa has reduced the percentage of people in informal settlements by 7% since 2000, 1.4 million have been added in the same period.⁹ At 2020, more than 5 million South Africans live in informal settlements.¹⁰ These sprawling, crowded communities frequently lack even the most basic of public services, such as clean toilets, running water and refuse removal.

³ “Joburg CBD Fire: 'I bought my Usindiso Shelter room for R10,000,' says mom of four who survived the killer blaze,” *Independent online* (1 September 2023), <https://www.iol.co.za/news/south-africa/gauteng/joburg-cbd-fire-i-bought-my-usindiso-shelter-room-for-r10000-says-mom-of-four-who-survived-the-killer-blaze-4d216cc4-8d96-4580-8215-febba42e5ce6>.

⁴ Orrin Singh, “We Paid Rent to Live in Fire-Hit Albert Street Building, Says Illegal Occupant,” *Eye Witness News* (1 September 2023), <https://ewn.co.za/2023/09/01/we-paid-rent-to-live-in-fire-hit-albert-street-building-says-illegal-occupant>.

⁵ Njilo, *op. cit.*

⁶ Ntwaagae Seleka, “Joburg fire: 20 Malawians among 77 dead, teen looks for missing parents, sister,” *News 24* (9 September 2023), <https://www.news24.com/news24/southafrica/news/joburg-fire-20-malawians-among-77-dead-teen-looks-for-missing-parents-sister-20230909>.

⁷ Seleka, *op. cit.*

⁸ World Bank, *Inequality in Southern Africa: An Assessment of the Southern African Customs Union* (Washington: World Bank, 2022), <http://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf>.

⁹ Alize Le Roux and Mark Napier, “Southern Africa must embrace informality in its towns and cities,” *Institute for Security Studies* (13 April 2022), <https://issafrica.org/iss-today/southern-africa-must-embrace-informality-in-its-towns-and-cities>.

¹⁰ UN-Habitat, “Population living in slums (% of urban population) - South Africa,” <https://data.worldbank.org/indicator/EN.POP.SLUM.UR.ZS?locations=ZA>.

By 2016, one in five South African households in metropolitan areas lived in informal settlements. Although inner city data are difficult to find, Johannesburg's 181 informal settlements house at least 500,000 inhabitants, comprising some 180,000 households.¹¹ And for those evicted from these informal dwellings, it is generally the case that the state assumes responsibility for the provision of alternative accommodation only when compelled to do.¹²

People living in dense informal settlements and occupied inner city buildings are among the most susceptible to daily hazards, and even more vulnerable in crises such as the HIV and COVID-19 global pandemics. Inequalities come into sharp focus as their poor living conditions: tenure insecurity, population density, inadequate household water and sanitation, little or no waste management and their invisibility in official data systems.

As much as a crisis exposes inequalities, also visible are the opportunities to remedy the living conditions of people living in informal settlements and derelict inner city buildings, provided that emergency interventions have a long-term and durable impact. Where *in situ* options are impossible, alternative accommodation provision is an appropriate emergency response in times of crisis.

However, apart from global public health crises, informal settlement dwellers in South Africa face daily hazards of violence on the part of the state and criminal elements, as well as the all-too-frequent fires that often ravage entire communities. The City of Johannesburg has seen a series of shack fires during June–September 2023, with two incidents also reported in Fleurhof¹³ and five at Zandspruit,¹⁴ which claimed the lives of at least five people. An ample indicator of such fire hazards was also an August 2023 shack fire in the Itireleng settlement in Pretoria, which killed five children.¹⁵ Barely 24 hours after a shack fire in Kya Sand, gutting at least 30 shacks,¹⁶ another blaze has destroyed multiple shacks at an informal settlement in

¹¹ City of Johannesburg, "More informal settlements in Joburg get electricity," undated, <https://www.joburg.org.za/media/Newsroom/Pages/2016%20&%202015%20Articles/More-informal-settlements-in-Joburg-get-electricity.aspx#:~:text=There%20are%20at%20present%20181,combined%20population%20exceeding%20500%20000.>

¹² Social and Economic Rights Institute, (SERI), "Adequate Temporary Alternative Accommodation," Policy Brief 2, July 2020, https://www.seri-sa.org/images/Policy_brief_2_AA_Final.pdf.

¹³ Jacques Nelles, "WATCH: Fleurhof Fires Leaves More Than 80 Homeless," *Eye Witness News* (31 July 2023), <https://ewn.co.za/2023/07/31/watch-fleurhof-fires-leaves-more-than-80-homeless>; Thabiso Goba, "Two Children Die in Fleurhof Informal Settlement Fire," *Eye Witness News* (3 September 2023), <https://ewn.co.za/2023/09/03/two-children-die-in-fleurhof-informal-settlement-fire>.

¹⁴ Gareth Cotrell, "Two dead in Zandspruit shack fire," *The Citizen* (4 June 2023), <https://www.citizen.co.za/news/south-africa/two-dead-zandspruit-shack-fire-june-2023/>; Mthulisi Lwazi Khuboni, "Fire incidents destroyed 41 homes in Zandspruit," *Randburg Sun* (8 July), <https://randburgsun.co.za/467700/zandspruit-residents-urged-to-be-cautious/>.

¹⁵ Faizel Patel, "Five children die in fire at informal settlement near Laudium in Tshwane," *The Citizen* (27 August 2023), <https://www.citizen.co.za/news/five-children-perish-blaze-informal-settlement-laudium-tshwane/>.

¹⁶ Faizel Patel, "WATCH: 30 shacks gutted in Kya Sands fire, many left homeless," *The Citizen* (24 August 2023), <https://www.citizen.co.za/news/kya-sands-fire-shacks-gutted-homeless/>.

Denver claiming the life of a 30-year-old man.¹⁷ Subsequently, a fire at Cemetery View in Pretoria left three dead and thousands homeless.¹⁸

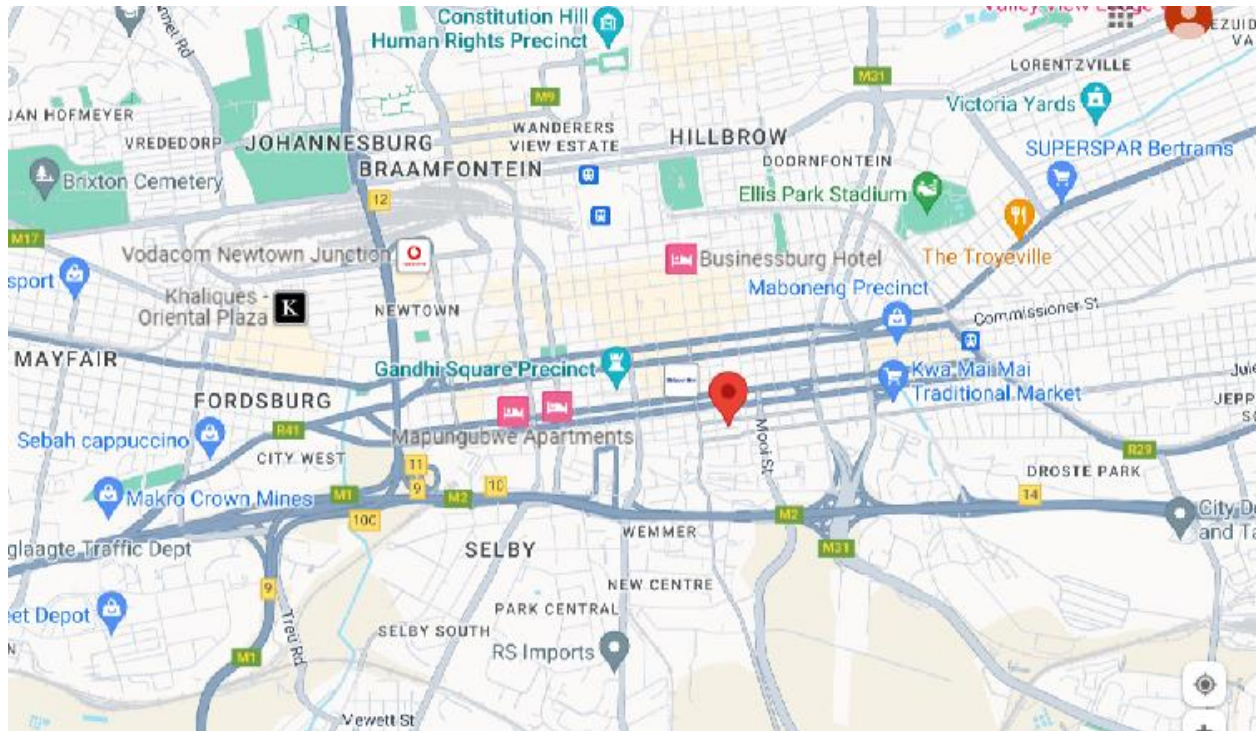


Figure 2: Location of Usindiso Shelter (red indicator) in central Johannesburg. Source: Google Maps.

Just like the shack fires that rage through informal settlement communities year after year, the Usindiso Shelter fire is traceable to the contempt for the lives of the poor by politicians and state institutions, both local and central. In a statement, Abahlali baseMjondolo reacted to the Usindiso Shelter tragedy: “Shack fires are relentless. We are left to burn year after year. In South Africa to be poor is to live with the constant risk of fire.”¹⁹

During the apartheid era, the Usindiso residential building was used to administer the dreaded Pass System. So infamous was the building that it was the subject of a harrowing short story by South African writer Mtutuzeli Matshoba.²⁰

After apartheid, the central government leased the building to the provincial Gauteng Department of Social Development, which turned into the Usindiso Shelter for Women and Children. However, by 2017 it had become derelict. The Johannesburg Property Owners’ and

¹⁷ Faizel Patel, “WATCH: Shack fire in Denver informal settlement claims one life,” *The Citizen* (25 August 2023), <https://www.citizen.co.za/news/shack-fire-denver-informal-settlement-one-life/>.

¹⁸ Lisalee Solomons, “Pretoria Fire: Three dead and thousands left homeless,” *News 24* (24 September 2023), <https://www.news24.com/news24/southafrica/news/pretoria-fire-three-people-dead-thousands-left-homeless-after-cemetery-view-fire-20230924>.

¹⁹ Abahlali baseMjondolo, “Our deepest solidarity with the victims of the fire in Johannesburg,” press statement, 31 August 2023,

²⁰ Mtutuzeli Matshoba, “To kill a man’s pride,” 1980, <https://journals.sagepub.com/doi/pdf/10.1080/03064228108533155>.

Managers' Association has identified and repeatedly lobbied the city to act, with calls for it to be converted into a heritage site.²¹

Official Reasons and Duty Holders

Although South Africa's housing programme delivers a range of subsidized housing options, municipalities have not devised and implemented proactive, programmatic and coherent responses to the housing crisis in the occupied building context, including enabling provision of alternative accommodation to the inadequately housed and often evicted within their jurisdictions. An *in situ* upgrading approach does not exist for this context, although two existing national programmes could be applied. Indicative of this neglect, municipalities have often responded in a largely uncoordinated *ad hoc* manner by providing alternative accommodation only after being ordered (sometimes several times) by courts to do so. In cases where municipalities have provided alternative accommodation, the responses do not adequately internalize the substantial protections already provided in jurisprudence and human rights law, including treaty obligations of the state and its constituent organs. 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. The crisis in metropolitan areas requires a national response, as municipalities cannot shoulder the responsibility alone, especially in the current state of local governance crisis across the country.

In the face of such challenges, municipalities claim a lack of resources, or inability to recover costs of basic services and housing solutions.²² Moreover, the housing crisis is pressing amid migration, the country's economic decline and a political evolution in which the ruling party, the African National Congress (ANC), is steadily losing its credibility. The ANC's shortcomings have led to local coalition governments whose infighting and fast turn-over of leaders, including Johannesburg's six mayors over the past 22 months, have complicated and stalled any attempts to remedy the City's biggest problems.

In response to the Usindiso fire, Minister in the Presidency Khumbudzo Ntshavheni deflected with the shocking statement that "it's not the government's task to provide homes for undocumented immigrants." Southern African Bishops responded to this dismissal, calling it disingenuous in its attempt to shift blame and scapegoat foreign nationals, "as if some lives are less important than others. Such a cold, uncompassionate response from a senior leader in government is profoundly disturbing."²³

²¹ Njilo, *op. cit.*; John Eligon, Lynsey Chutel and Jeffrey Gettleman, "Officials in South Africa Knew About Problems at a 'Bad Building,' but Did Nothing," *The New York Times* (2 September 2023),

<https://www.nytimes.com/2023/09/02/world/africa/south-africa-fire-cause.html>.

²² Gillian Parker, "Revamp of South Africa's largest city leaves poor battling for housing," *Reuters* (3 January 2017),

<https://www.reuters.com/article/safrica-cities-housing-idINL8N1DT3RB>.

²³ Stephen Brislin, "Southern African Catholic Bishops' Conference Statement on the Tragic Fire at Albert Street, Johannesburg, 1 September 2023," in Sheila Pires, "SACBC decries exploitation of "homeless and the poor" following tragic fire in Johannesburg," *Southern African Catholic Bishops' Conference* (1 September 2023), <https://sacbc.org.za/sacbc-decries-exploitation-of-homeless-and-the-poor-following-tragic-fire-in-johannesburg/>; Russell Pollitt, S.J., "South African Catholic bishops on building fire that killed 77: Blame the government, not immigrants," *America: The Jesuit Review* (6 September 2023), <https://www.americamagazine.org/politics-society/2023/09/06/johannesburg-fire-catholic-bishops-246009>.

Rather, the bishops cast blame on “The real culprits of this tragedy...those slumlords who capture such buildings and who unscrupulously exploit the homeless and the poor, forcing them to live in inhumane and dangerous situations, while charging them rent for the ‘privilege’ to live in such death traps.” More broadly, the bishops noted that “It is symptomatic of the widespread sense of lawlessness that prevails in our country that such illegality is allowed to happen and goes unpunished.”²⁴

City of Joburg Speaker Colleen Makhubele, MMCs Mgcini Tshwaku and Kenny Kunene and former mayor, Herman Mashaba, said that the catastrophe could have been averted had it not been for civil society organizations that had often dragged the metro to court over illegal evictions.²⁵

South African President Cyril Ramaphosa canceled a national address to visit the scene of the fire and tried to reassure people there. “We are a caring government,” he said. “It may fall short, but the determination to care for the people of South Africa is a priority.”²⁶ Ramaphosa said it was important for the government to address the root cause of the blaze.²⁷ A commission of inquiry is set to investigate the circumstances surrounding the fire, the prevalence of abandoned buildings which have been taken over by criminal syndicates, and with whom responsibility should lie.²⁸ The terms of reference have since been published.²⁹ It was subsequently postponed, at first without reasons provided to the public. Later the Gauteng Province Premier, Panyaza Lesufi, cited financial costs as teething problems in getting started.³⁰

Actions Taken and Remedies Attempted

Alternative accommodation in Johannesburg is supplied haphazardly in relation to evictions in the inner city and in informal settlements, indicating an absence to plan. In both situations, residents are generally relocated into buildings or shacks that are poorly structured.

Inner city residents, such as the Olivia Road and Main Street occupiers relocated to Old Perm and MBV 15 years ago, are frequently faced with buildings that have not been refurbished properly and are confronted by the daily challenges of derelict management, broken security systems and

²⁴ *Ibid.*

²⁵ Veronica Mokhoali, “There needs To Be Law And Order in the Inner City’ - Ramaphosa on Jhb CBD Fire,” *Eye Witness News* (1 September 2023), <https://ewn.co.za/2023/09/01/there-needs-to-be-law-and-order-in-the-inner-city-ramaphosa-on-jhb-cbd-fire>.

²⁶ “Victims of deadly building fire in Johannesburg, S. A., died behind locked gates,” *Green County Democrat* (6 September 2023), <https://greencodemocrat.com/tag/general-manager-of-the-johannesburg-property-owners-and-managers-association/>.

²⁷ Mokhoali, *op. cit.*

²⁸ Unathi Nkanjeni, “Under pressure Lesufi establishes commission of inquiry into Joburg Fire,” *The Citizen* (5 September 2023), <https://www.citizen.co.za/news/under-pressure-lesufi-establishes-a-commission-of-inquiry-into-joburg-fire/>.

²⁹ The Province of Gauteng, “Proclamation: Commission of Inquiry into circumstances surrounding the death of at least 77 people and dozens more others injured and homeless at the Usindiso building, situated at the corner of Albert and Delvers streets, Marshalltown, Johannesburg Central Business District (Region F),” *Provincial Gazette extraordinary*, [324_13-09-2023_GautSeparate-ToR-Commission of Inquiry.pdf](https://www.gauteng.gov.za/324_13-09-2023_GautSeparate-ToR-Commission-of-Inquiry.pdf).

³⁰ Kamogelo Moichela, “Lesufi mentions costs as a ‘teething’ delay in start of Marshalltown fire Commission of Inquiry,” *IOL* (4 October 2023) <https://www.iol.co.za/news/politics/lesufi-mentions-costs-as-a-teething-delay-in-start-of-marshalltown-fire-commission-of-inquiry-8dfdf4c1-ac16-4041-adc4-26cbab5dfa79>.

failing water and sewage supply. Occupiers in Carr Street were relocated to the Moth building where a fire further displaced an entire floor of tenants to Linatex House.

Others face a life post-relocation in incomplete newbuilds, such as Wembley, where the City allocated occupiers to unfinished facilities due to the pressure of emergencies or contempt of court proceedings. Generally, access to communal space that is child-friendly is limited. Shacks in informal settlements are experienced as small one-room dwellings with limited living space, that leak when it rains, and destabilize in the wind, such as “Rugby Club” and Ruimsig.³¹

In the case of displacing informal settlements, residents are generally relocated to land that is situated further from work opportunities. Lack of privacy has eroded people’s dignity and gender-based violence has had a perilous impact on safety and security.³² “Temporary” alternative accommodation in the inner city and in “temporary” relocation areas is, in practice, for a longer term than expected by residents, with some having lived in alternative accommodation in excess of ten years with limited services. These experiences, and others like them, are critical indicators of municipal planning and management.

SERI has never litigated against the City of Johannesburg in relation to this building, its only involvement in the building related to the temporary placement of two clients by the City of Johannesburg following their displacement by a fire in September 2014.

However, SERI has consistently tried to engage the City to improve conditions in its shelters, but to no avail.

Legal Aspects

Domestic Laws

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 several essential procedural protections to unlawful occupiers who face evictions. Most importantly, section 26(3) prohibits arbitrary evictions by requiring that

³¹ SERI, “From Marie Louise to ‘Rugby Club’,” SERI Community Practice Notes: Informal Settlement Relocation Series (2016); and SERI, “From Taylor Road to Ruimsig and Fleurhof,” SERI Community Practice Notes: Informal Settlement Relocation Series (2016).

³² For more detail on the lived experiences of relocated occupiers See SERI’s Community Practice Notes on Johannesburg Inner City Alternative Accommodation and Informal Settlement Relocations. In an inner city context, see SERI, “From San Jose to MBV 1”, SERI Community Practice Notes: Johannesburg Inner City Alternative Accommodation Series (2016); SERI, “From Carr Street to MOTH”, SERI Community Practice Notes: Johannesburg Inner City Alternative Accommodation Series (2016); SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”, SERI Community Practice Notes: Johannesburg Inner City Alternative Accommodation Series (2016). In an informal settlement context, see SERI, “From Marie Louise to ‘Rugby Club’,” SERI Community Practice Notes: Informal Settlement Relocation Series (2016); and SERI, “From Taylor Road to Ruimsig and Fleurhof,” SERI Community Practice Notes: Informal Settlement Relocation Series (2016), <https://www.seri-sa.org/index.php/research/all-publications>.

evictions be authorized by a court order made after having regard to “all the relevant circumstances.”³³

Eviction law has been developing over the past 20 years through litigation.³⁴ The essence of this litigation is that when eviction leads to homelessness, from public or private land,³⁵ in the inner city or in informal settlements,³⁶ the Municipality has a duty to provide adequate temporary alternative accommodation. The case which crystalized this duty is *Blue Moonlight*³⁷ in which the Constitutional Court held that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) limited the rights of owners to undisturbed use and enjoyment of their property³⁸



Figure 2: Among those searching for survivors, Omar Arafat was unable to find his sister Joyce Arafat after the Usindiso fire. Her whereabouts were unknown at the time the photograph was taken. Source: Kimberly Mutandiro / GroundUp (CC BY-ND 4.0).

If homelessness would otherwise result, section 26 of the Constitution and the PIE Act require that an owner patiently wait to vindicate her property until the state has been given a reasonable opportunity to discharge its obligations to provide alternative accommodation.³⁹ Eviction law has

³³ 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.”

³⁴ For a review of the evictions case law and its implications for municipalities see SERI, “Evictions and Alternative Accommodation in South Africa 2000–2016,” https://www.seri-sa.org/images/Jurisprudence_Revised_2016_Final_to_print.pdf.

³⁵ *City of Johannesburg v Blue Moonlight Properties* 2012 (2) SA 104 (CC).

³⁶ *Occupiers of Skurweplaas v PPC Aggregate Quarries* 2012 (4) BCLR 382 (CC).

³⁷ *Blue Moonlight Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue and Another* 2010 ZAGPJHC 3 (4 February 2010).

³⁸ *Ibid.*, paras. 37 and 40.

³⁹ *Ibid.*, para. 40.

also established that failure to comply with a court order providing for adequate alternative accommodation may lead to a finding of contempt of court of municipal officials.⁴⁰ The case law also establishes that municipalities must be party to any litigation that might trigger their constitutional obligations to provide emergency accommodation. Further, they are sometimes the only entities that can provide the necessary information for the court to make a just and equitable ruling.⁴¹ Regarding occupiers agreeing to an eviction order, the courts have found that consent is legally invalid if occupiers are not informed that they are waiving their constitutional and statutory rights.⁴² It may never be possible for occupiers, who risk facing homelessness, to consent to their own eviction without a fully fledged judicial inquiry into their specific circumstances.⁴³

Human Rights, International Law, and Treaty Violations

Regardless of the official reasons for the neglect of South Africa's neediest population, their treatment before and after the Usindiso fire knows no justification. At the international level, the state likely has violated articles 8, 12, 21 and 25 of the Universal Declaration of Human Rights, Part II, articles 2, 4 and Part III, article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by South Africa on 3 October 1994, and General Comments nos. 4⁴⁴ and 26,⁴⁵ and other legal instruments. Specifically, Article 11 of the ICESCR states that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."⁴⁶

In addition to the ICESCR, South Africa also has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDaW) on 14 January 1996 and acceded to the Optional Protocol to CEDaW on 18 January 2006. The Convention on Rights of the Child, which South Africa ratified on 16 July 1995, specifically requires States to protect the right of children to adequate housing (Article 27.3).

During the initial review of South Africa's performance of ICESCR, the treaty committee, while noting the continuous efforts made by the state party to provide social housing to low-income families, observed "the large number of people living in inadequate housing, including those in

⁴⁰ *City of Johannesburg v Hlophe* [2015] All SA 251 (SCA).

⁴¹ *Sailing Queen Investments v Occupants La Colleen Court* (4480 / 07) [2008] ZAGPHC 15; 2008 (6) BCLR 666 (W) (25 January 2008) para 19.

⁴² *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* 2017 SA 346 (CC) paras 33 and 53–55. The constitutional and statutory rights in question are the rights to (a) to an eviction only after a court has considered all the relevant circumstances; (b) to the joinder of the local authority and production by it of a report on the need and availability of alternative accommodation; (c) to a just and equitable order in terms of PIE; and (d) to temporary alternative accommodation in the event that eviction would result in homelessness.

⁴³ Nkosinathi Sithole, "What does the Kiribilly judgment tell us about unlawful evictions and the rights of occupiers?" *The Daily Vox*. 21 (June 2017).

⁴⁴ General Comment No. 4: the right to adequate housing (article 11, para. 1 of the Covenant), E/1992/23, 13 December 1991, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FGEC%2F4759&Lang=en.

⁴⁵ General Comment No. 26 (4 January 2023) on land and economic, social and cultural rights, E/C.12/GC/26, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F26&Lang=en.

⁴⁶ ICESCR, *op. cit.*, Article 11.

informal settlements, without access to basic services; the growing number of informal settlements in urban areas due to rapid urbanization; and the decrease in the number of social housing units provided.”⁴⁷

Relevant to the present case, the Committee called on the state to “intensify its efforts to improve housing conditions and to meet increasing demand, including by continuing to provide adequate social housing in urban areas and to upgrade housing conditions in informal settlements.” The Committee also reminded⁴⁸ the South African delegation of the need for the state to apply its general comments Nos. 4 (1991) on the right to adequate housing⁴⁹ and 7 (1997) on forced evictions.⁵⁰

Conclusions:

We support the President’s call for an investigation into the root causes. However, the outrage we feel is not confined to the immense tragedy of this particular loss of life but extends to the fact that so many tens of thousands of poor, homeless people are still forced to live in such dangerous situations where basic safety laws are not observed, and accountability is absent.

We have also been deeply disturbed by some political statements that attempt to diminish the depth of the tragedy because undocumented migrants are among those killed. Whatever their nationality, those who died and suffered are human beings. Dismissing them as “illegal immigrants” perpetuates the dangerous anti-immigrant rhetoric that is being normalized. The decay of inner city buildings in the context of such lawlessness amid exploitation of the poor is the undeniable wrongdoing that must be corrected through all three spheres of government.

The law requires a reasonable response. A municipal response that is reasonable should anticipate and plan to prevent homelessness resulting from a variety of different situations. A proactive approach would mean that municipalities honor their constitutional obligation as a matter of integrity, without being compelled by the courts to do so, and without people needing representation at all times. A reasonable municipal response must engage meaningfully with the resident occupiers. It includes, but is not limited to, categorizing currently occupied buildings, in a manner akin to the approach in informal settlements; providing basic services across the buildings to address the long-standing health and safety circumstances; consensual or court ordered relocation to alternative accommodation where buildings can no longer be refurbished; and incremental upgrading where they can.

⁴⁷ Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the initial report of South Africa, E/C.12/ZAF/CO/1, 29 November 2018, para. 58,

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW4b1%2F0yvDxdY793DPZphW1eQyWAQHUGxGUSewW5PpFu5gemJWNSQSD8fGzepU%2BbhFg3jQA%2Bt0mhFvzImZTnRcsmfXmX6at5jn6KBwUD%2FrB0B>.

⁴⁸ *Ibid.*, paras. 59–60.

⁴⁹ CESCR, General Comment No. 4: “the right to housing,” 13 December 1991, contained in document E/1992/23, <http://www.hlrn.org/img/documents/GC4.pdf>.

⁵⁰ CESCR General Comment No. 7: “forced eviction,” 20 May 1997, contained in document E/1998/22, Annex IV, <http://www.hlrn.org/img/documents/GC7.pdf>.

The content of the right to adequate housing has largely been shaped by section 26(2) of the Constitution, which requires the state to take “reasonable” steps to realize the right to housing. This sets a seemingly objective standard by which state action to widen access to adequate housing is to be assessed. The Constitutional Court has done little to say what “housing” a rights-bearer is entitled to, and how we will know when, constitutionally speaking, the housing provided is “adequate.” Although the Constitutional Court has stated that housing requires land, services, financing and is more than mere “bricks and mortar.”⁵¹

Budgeting for and funding of alternative accommodation

The construction of alternative accommodation should be financed using Emergency Housing Programme funding and municipal own resources. Following the categorization process, municipalities will be well placed to program and budget alternative accommodation provision and building upgrades and make the necessary applications for funding.

Regarding budgeting operational expenses, affordable rental should be between 25 and 30% of income. As an occupier’s income approaches zero, means tests become less meaningful and rental subsidies will be required. To minimize the demands on the fiscus, co-management arrangements should be instituted as resident own contributions.

Permanent housing assistance and incremental upgrading

Informal occupation of land and buildings for housing is a response to market exclusion and insufficient state delivery. If poor urban residents were not excluded from a market to which they cannot afford entry and if the state overcame the backlog, then the chain of events from occupation to relocation would no longer exist. In this context the state’s role in making truly affordable housing available cannot be overstated, whether that accommodation constitutes affordable public or social rental, ownership housing or *in situ* building upgrading. However, given the scale of the backlog and growing inequality in South Africa, the impetus for occupation is unlikely to recede in the foreseeable future. Consequently, the need for alternative accommodation and *in situ* building and informal settlement upgrading must be a government priority.

“Temporary” alternative accommodation becomes *de facto* permanent due to the unavailability of affordable permanent options. If accommodation designed and managed as temporary becomes permanent, then maintenance and regulatory problems can arise.

Equitable and sustainable access to, use of, and democratic management of adequate permanent accommodation with secure tenure are, therefore, vital. A range of options exist already including “BNG” or “RDP” ownership housing and social housing. However, a significant supply and need mismatch exists. An *in-situ* building upgrading programme constitutes a significant gap. The National Department of Human Settlements should consider allocating the Emergency Housing grant directly to municipalities for this purpose. Furthermore, Human Settlements

⁵¹ Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46, para. 35.

should extend the application of the Upgrading of Informal Settlements Programme to the inner city occupation context.

What we demand

We urge the City of Johannesburg to take this tragic Usindiso Shelter fire as a wake-up call to proactively improve the conditions in the buildings it owns and manages, as well as other abandoned buildings, in order to prevent future loss of life.

We demand that the politicians, the state and its constituent organs accept responsibility for this disaster and commit themselves to ensuring decent and safe living conditions for all. It is the responsibility of the respective spheres of government to ensure that all people in the country have access to safe and decent homes and to support the self-organized initiatives from the community base to secure housing.

Your Action!

Join this call for responsible development and respect for the right to adequate housing by immediately sending your letter of solidarity to the addresses below by filling in the [Support form](#) on the [HLRN website](#).

Alternatively, you can see all HIC-HLRN Urgent Action cases at: <http://www.hlrn.org/english/cases.asp>, then click on [Support](#) for this case.

Each letter will be forwarded to the authorities listed below, also with a copy to: urgentactions@hlrn.org; lauren@seri-sa.org

Letters will be automatically directed to:

The Honourable Cyril Ramaphosa
President of the Republic of South Africa
Union Buildings
Government Avenue
Pretoria 0002
Presidentrsa@presidency.gov.za
PortiaM@presidency.gov.za
Malebo@presidency.gov.za
NokukhanyaJ@presidency.gov.za

Mmamoloko Nkhensani Kubayi
Minister of Human Settlements
ministry@dhs.gov.za

Member of Executive Committee for Human Settlements and Infrastructure
Developments: MEC L Maile
Karabo.mohapi@gauteng.gov.za

GDHuSInfo@gauteng.gov.za

Mayor of Johannesburg: Mayor Kabelo Gwamanda

executivemayor@joburg.org.za

AccesstoInfo@joburg.org.za

National Department of Human Settlements

Mr. Siyabonga Charles Zama (acting)

Govan Mbeki House

240 Justice Mahomed Street

Sunnyside

Pretoria

siyabonga.charles.zama@dhs.gov.za; info@dhs.gov.za

The Office of Human Settlements Ombudsman

ombudsman@dhs.gov.za

Mr. Panyaza Lesufi

Premier of Gauteng Province

Gauteng Provincial Government Building

Office of the Premier, Floor 03

Turbine Hall

65 Ntemi Piliso Street

Johannesburg, Gauteng 2000

Asanda.Makhubalo@gauteng.gov.za

Prince.Hamnca@gauteng.gov.za

Mr. Kabelo Gwamanda

Mayor of the City of Johannesburg

Metropolitan Centre, 1st Floor

Council Chamber Wing

158 Civic Boulevard

Braamfontein

Johannesburg

executivemayor@joburg.org.za

Mr. Mgcini Tshwaku

MMC for Public Safety in the City of Johannesburg

Safety Headquarters

195 Main Road

Martindale

Johannesburg

complaintsple@joburg.org.za

...

[sample letter]

Mr./Ms./Your Excellency ...:

We are gravely concerned over the deadly fire at Usindiso Shelter in Johannesburg on 31 August.

We support President Ramaphosa's call for an investigation into the root causes. We also support the Commission of Inquiry announced by the Gauteng Premier.

Moreover, we support the position of SERI and Habitat International Coalition, the over-350 Member organizations in over 80 countries and its Housing and Land Rights Network in opposing the exclusion of impoverished populations and the creation of their needless deprivation and dismal housing conditions. Instead, we promote the many civil alternatives to such conduct, as developed in the norms of international law upholding human rights, in particular the human right to adequate housing and the corresponding obligations of the state.

Therefore, we urge the City of Johannesburg and other duty-bearing organs of the Republic of South Africa to take this tragic Usindiso Shelter fire as a wake-up call to proactively improve the conditions in the buildings it owns and manages, as well as other abandoned buildings, in order to prevent future loss of life.

A range of options already exist, including "BNG" or "RDP" ownership housing and social housing. However, the significant supply gap and need mismatch exists must be resolved. An in-situ building upgrading programme is urgently needed. The national department of Human Settlements should consider allocating Emergency Housing Grants directly to municipalities for this purpose. Furthermore, human settlements should extend the application of the Upgrading of Informal Settlements Programme to the inner city occupation context.

We demand that the politicians, the state and its constituent organs accept responsibility for this disaster and commit themselves to ensuring decent and safe living conditions for all. It is the responsibility of the respective spheres of government to ensure that all people in the country have access to safe and decent homes and to support the self-organized initiatives from the community base to secure housing.

We urge you and your offices to apply these and other needed remedies to the gravely precarious situation of impoverished inner city residents throughout South Africa, and we look forward to hearing of your efforts to apply them, and to the reparation of harm done to the Usindiso fire victims and their survivors.

Sincerely,

[Your name]

[Your organization]