



socio-economic rights institute  
of south africa

**Submission on**

**The Impact of the COVID-19 Crisis on Housing**

**Rights**

Socio-Economic Rights Institute of South Africa  
(SERI)

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## 1. Introduction

The UN Special Rapporteur (UNSR) on the right to adequate housing has called for contributions and views from States, regional and national human rights institutions, non-governmental organisations and other relevant stakeholders to inform a report on the impact of COVID-19 on the right to adequate housing, which will be presented to the General Assembly in 2020. The report will reflect on the saliency of adequate housing for protection against COVID-19 and on the transformation of the home during the pandemic into, for example, medical facilities and shelters for the homeless. It also seeks to analyse measures to prevent evictions during and after the crisis, in addition to measures taken to protect groups at higher risk of marginalisation, such as the homeless, women, children and those living in informal settlements and safety in their respective places of habitation.

Using stakeholders' contributions, the UNSR will analyse whether emergency measures implemented have had discriminatory outcomes and draw out emerging good practices to counter them. Finally, the report will analyse medium- and long-term interventions needed to protect the right to adequate housing, both during and after the pandemic.<sup>1</sup>

Several Special Procedure mandate holders will focus their forthcoming thematic reports to the United Nations Human Rights Council or the General Assembly on the impact of the COVID-19 pandemic on the enjoyment of human rights. In order to facilitate responding to questions by Special Procedures, a joint questionnaire has been developed including a list of common questions and specific thematic questions responding to information required by participating mandates.

In this submission, SERI responds in detail to the questions posed by the UNSR on housing rights, and to a selection of the common questions. The submission begins with a background to the organisation and its work; proceeds to respond to questions about housing rights; and finally answers a selection of the common questions which are pertinent to SERI's work. The submission ends with a brief conclusion which highlights key concerns raised in the body of the report on the impact of the pandemic and of the State's response to the pandemic.

## 2. The Socio-Economic Rights Institute (SERI)

SERI is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities, community-based organisations (CBOs) and social movements in South Africa. SERI conducts applied legal research, litigates in the public interest, facilitates civil society mobilisation and coordination, and conducts popular education and training. SERI's core work

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<sup>1</sup> For more information, see: OCHR 'Call for input: COVID-19 and the right to housing', accessible at: <https://www.ohchr.org/EN/Issues/Housing/Pages/callCovid19.aspx> (June 2020)

relates to the advancement and protection of access to socio-economic rights in socio-economically marginalised communities.

One of SERI's primary thematic focus areas is 'Securing a Home', which includes protecting and fulfilling the right of access to adequate housing; challenging unlawful evictions; promoting greater tenure security for the urban poor; informal settlement upgrading; advocating for spatial justice; and defending and promoting access to basic services such as water, sanitation and electricity, particularly in informal settlements.<sup>2</sup>

We have published several resource guides, research reports and working papers, including the following:

- *The Promised Land: Ratanang Informal Settlement* (April 2019).
- *Our Place to Belong: Marikana Informal Settlement* (April 2019).
- *Left Behind: Siyanda Informal Settlement* (April 2019).
- *Here to Stay: A Synthesis of Findings and Implications from Ratanang, Marikana and Siyanda* (May 2019).
- *Women with Disabilities and Informal Settlement Sanitation: Implications for Policy and Practice* (August 2019).
- *Inner City Federation: Fighting for Decent Housing in Inner-City Johannesburg* (November 2018).
- *Relocating to Alternative Accommodation: Legal and Practical Guidelines* (July 2017).
- *Affordable Public Rental Housing* (2016).
- *Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Centres* (December 2016).
- *Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the Jurisprudence and Implications for Local Government* (March 2016).
- *Resisting an Eviction in South Africa: A Legal and Practical Guide* (March 2015).
- *Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government* (November 2013).
- *'Jumping the Queue', Waiting Lists and other Myths: Perceptions and Practice around Housing Demand and Allocation in South Africa* (April 2013).
- *A Resource Guide to Housing in South Africa 1994 - 2010: Legislation, Policy, Programmes and Practice* (February 2011).

SERI has also been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and informal settlement upgrading. These include:

- *Goge v Metropolitan Evangelical Services (MES) and Another*
- *Occupiers of Erven 87 & 88 Berea v De Wet and Another*
- *Fischer and City of Cape Town v Ramahlele and 46 Others*
- *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others*
- *Abahlali baseMjondolo and 30 Others v eThekweni Municipality and Others*
- *Dladla and the Further Residents of Ekuthuleni Shelter v City of Johannesburg and MES*
- *Blue Moonlight Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue and Another*

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<sup>2</sup> For more on SERI visit the SERI website: <https://www.seri-sa.org>

- *Dzai and Others v Ekurhuleni Metropolitan Municipality and Others*
- *Lytton Props and Robert Ross v Occupiers of isiQalo and City of Cape Town*
- *Melani and the Further Residents of Slovo Park Informal Settlement v City of Johannesburg and Others*
- *Mzimela and Others v eThekweni Municipality and Others*
- *Pheko and Others v Ekurhuleni Metropolitan Municipality*
- *Schubart Park Residents Association and Others v City of Tshwane Metropolitan Municipality and Others*
- *Zulu and 389 Others v eThekweni Municipality and Others*

Much of SERI's work therefore involves the right of access to adequate housing enshrined in section 26 of the Constitution. It is on this basis that SERI submits written comments in response to the questions posed by the Special Rapporteur on Adequate Housing.

Furthermore, SERI also focuses its work in two additional thematic areas namely "Expanding Political Space" and "Making a Living", which enables us to provide responses to a selection of the common questions.

The submission begins with housing rights.

### **3. The impact of COVID-19 on Housing Rights**

#### **3.1 Evictions<sup>3</sup>**

In South Africa, 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.<sup>4</sup>

Government differentiated its response to the COVID-19 pandemic through a Risk Adjusted Strategy which set out regulations relevant to each of the five (5) specified "Alert levels", ranging from full lockdown at Alert level 5 which commenced country wide on 27 March 2020, to "normal activity with precaution" at Alert level 1. Since 1 June 2020, the country has been on Alert level 3, which is characterised by "extreme precaution to limit transmission and outbreaks, with the resumption of limited economic activity".

At Alert level 5, the execution of any eviction was prohibited, whether or not it was authorised by a court.<sup>5</sup> The prohibition was the result of a call to the Presidency and relevant state officials dated 20 March 2020, from at least 20 social justice organisations led by Ndifuna Ukwazi, for a nation-wide moratorium on evictions during lockdown. Courts were also prohibited from making any eviction orders at all, even if the date of execution was stayed until after the end of the lockdown period. At Alert level 4, courts were permitted to make eviction

<sup>3</sup> In response to the questions: Has your country declared a prohibition on evictions? Have evictions continued to take place during the pandemic? If yes, when, where and who was affected and has adequate alternative accommodation been provided?

<sup>4</sup> Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), p. 10 para 15.

<sup>5</sup> Regulation 11CA of the Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002, published as GN R 318 in Government Gazette 43107 of 18 March 2020, as amended ("the Regulations pertaining to Alert Level 5").

orders, but the execution of those orders was stayed until the end of the lockdown period.<sup>6</sup> At Alert level 3, the execution of eviction orders remained prohibited, except where a court decided that it was just and equitable for the order to be executed during Alert level 3.<sup>7</sup>

In its 19 June 2020 submission to the Office of the Presidency and the Minister for Cooperative Governance and Traditional Affairs, the Centre for Applied Legal Studies (CALS) documents the trajectory of evictions and regulations, concluding that “the Regulation as it is currently drafted is accordingly both unfit for purpose, and inconsistent with the permissible purpose of the lockdown, namely the purposes contained in DMA section 27(3). It furthermore perpetuates unfairness against tenants, exacerbating their serious vulnerabilities at an already uncertain time”.<sup>8</sup> (page 10).

The submission also notes the call made by SERI, Ndifuna Ukwazi and other social justice organisations for a directive under the Disaster Management Act stating that for the duration of the National State of Disaster, no-one may demolish any structure which has been or is being constructed for the purposes of residential occupation on any land or in any building, without an order of the Court.

Despite this, evictions have continued to take place. In the absence of a routine monitoring system, systematic details of evictions and demolitions are not available. The information set out below is therefore illustrative rather than comprehensive and has been drawn from records of a “hotline” set up by public interest legal services (PILS) organisations in South Africa, and from media reports.

It is often difficult to distinguish between individual and community evictions. The section below sets out evictions ranging in scale from a few households to a community of over 200 people, in chronological order:

- In March 2020, a group of approximately 210 occupiers of a building belonging to the City of Cape Town were evicted following a Court Order [obtained pre-lockdown]. They were also denied leave to appeal the decision to evict them. The residents were left without alternative accommodation. (Source: data from PILS hotline).
- On 6 April 2020, the City of Johannesburg evicted 23 residents in a building used to accommodate City employees. The matter was challenged in court and the South Gauteng High Court ruled that the city and its law enforcement agency, the Johannesburg Metro Police Department (JMPD) acted unlawfully in evicting the

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<sup>6</sup> Regulation 19 of the Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002, published as GN R 480 in Government Gazette 43258 of 29 April 2020 (“the Regulations pertaining to Alert Level 4”).

<sup>7</sup> Amendment to the Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002, published as GN R 608 in Government Gazette 43364 of 28 May 2020 (“the Regulations pertaining to Alert Level 3”).

<sup>8</sup> The submission seeks to explore the problem of evictions in South Africa under the national lockdown to curb the spread of COVID-19. In doing so, the submission: (1) interrogates the legal and policy purpose for the lockdown, namely to encourage ‘staying at home’; (2) details the different forms of eviction currently being faced by individuals and communities throughout South Africa; and (3) makes policy and legislative proposals to assist in protecting the right of access to adequate housing for all persons residing in South Africa under the lockdown.

unlawful occupiers from the building. The City argued they were acting to prevent and stop an ongoing illegal occupation or invasion by persons taking advantage of the lockdown but in doing so the law enforcement agencies also evicted people who were already in occupation. Read more [here](#).

- On 6 April 2020, four women and their children were evicted from their rented apartments flats in Pretoria (Sunnyside). The women are all asylum seekers from various African countries. They were evicted despite being up to date on their rental payments. The women were assisted by private attorneys who obtained an agreement from the lessor to take back occupation of their flats. Another example of an individual eviction using the hotline as a source is the eviction of a couple from their apartment at the Townsend Estate in Goodwood, Cape Town on 10<sup>th</sup> April. This happened despite them having paid their rent in full for the month and a moratorium on evictions being in place under lockdown regulations. (Source: data from PILS hotline).
- On 6 April, the [City of Johannesburg](#) evicted 23 residents from a building used to accommodate City employees. On 16 April, at least 20 families were displaced after the Red Ants demolished more than 80 homes in the [Kokotel Informal Settlement](#) in Lawley, Johannesburg. On 20 May, ten families were evicted from the [Marievale Military camp](#) in Gauteng. The City of eThekweni's private security agency, the South African National Defence Force, the Durban Metro Police and the South African Police Service (SAPS) have [continuously conducted forced evictions](#) and demolitions in informal settlements in the area since early April, with an estimated total of around 900 people affected. In [Azania Settlement](#), two people were shot with live ammunition and three with tear-gas, with around 60 homes destroyed each of the 11 times evictions took place. In Ekuphumeleni Settlement, there have been five evictions since the beginning of lockdown, affecting 70 people. During the last eviction, two people were attacked with pangas by security forces.
- On 9 April 2020, the City of Cape Town's Law Enforcement unit forcibly evicted residents of Empolweni. The residents were evicted without any court order or notice. The Law Enforcement unit returned on Saturday, 11 April 2020 to carry out more evictions and demolish shacks. Over a hundred residents were evicted. In these evictions many were assaulted for refusing to leave simply because they had nowhere else to go. On 17 April 2020, the Cape High Court ruled that the Epolweni evictions were illegal. Read more [here](#).
- At least 20 families were displaced on 16 April 2020 after the Red Ants<sup>9</sup> demolished over 80 shacks in the Kokotela Informal Settlement in Lawley, Johannesburg. Hundreds of Red Ants - who arrived in buses, trucks and vans - descended on the area to execute an order obtained by the City of Johannesburg, which says it is clamping down on illegal land "invasions". The city later agreed to provide alternative accommodation to those rendered homeless by the demolitions. Read more [here](#).
- Ten families were evicted in the early morning of 20 May 202 from their bungalows in the Marievale Military camp. Seven of them are currently living in a "temporary" settlement prepared by the army and the Gauteng office for Human Settlements in Duduza, Nigel. The other three families refused to take the accommodation and went

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<sup>9</sup> Red Ant Security Relocation & Eviction Services, or the 'Red Ants', is a private security company in Johannesburg, South Africa, whose employees have become notorious for using excessive force in conducting their operations.

to their old homes in Happiness Village. Happiness Village was formed by people who were evicted from Marievale in November and December 2017. A year later the Pretoria High Court ordered the SANDF to re-accommodate them as the eviction was unlawful. The SANDF appealed the decision but lost. Read more here.

- On 10 June 2022, the City of Cape Town evicted residents who sought shelter in two large marquees put up by an Observatory resident to house homeless people ahead of the cold front which made landfall. The two structures were erected in City-owned land. Read more here.
- On 11 June 2020, the City of Cape Town's Law Enforcement and the Anti-Land Invasion Unit, as well as SAPS, carried out a demolition operation in Hangberg, Hout Bay early on Thursday, as a winter storm swept across Cape Town. The City of Cape Town disputed that their actions constituted, saying that they simply "dismantled two unoccupied illegally erected structures, one being a half-built brick and cement foundation." Read more here.
- On 1 July 2020, the City of Cape Town's Anti-Land Invasion Unit and metropolitan police forcefully evicted Empolweni residents and demolished shacks in Khayelitsha Cape Town. Footage recorded by a member of the Social Justice Coalition (SJC) on 1 July showed a completed and occupied structure torn down in addition to officers dragging a naked man, Bulelani Qholani, out of his home by officers before destroying it.
- The residents of Empolweni have been subjected to evictions without court order or notice during lockdown prior to these latest evictions. On 9 April and 11 April 2020, the Anti-Land Invasion Unit carried out demolitions and assaulted residents, leaving more than 100 residents homeless. The Cape High Court found the evictions to be illegal and ruled that 130 people in 49 households should be allowed back on to the land and should have their building materials restored to them.
- In response to queries by the Daily Maverick regarding the 1 July evictions, the City of Cape Town stated that 'the land in question belongs to the City of Cape Town and the City has conducted various operations to prevent illegal land occupation', citing the court order which the City interpreted as *only* allowing 49 households to temporarily remain on the land during the lockdown. The City claimed that these were not forced evictions, but anti-land invasion operations. Whilst the Prevention of Illegal Eviction Act prohibits evictions without a court order, the Disaster Management Act stipulates a moratorium on evictions during COVID-19 Alert levels 5, 4 and 3; court order or not. The South African Human Rights Commission (SAHRC) has subsequently indicated plans to take the City to court over the evictions for contravening the Disaster Management Act and stripping Qholani of his dignity.
- An investigation into the incident has begun and Minister Sisulu has released a statement outlining intentions to challenge the City in court. Sisulu has also instructed the Housing Development Agency to provide housing for the 49 families allowed to remain in Empolweni. While SERI has welcomed the statement, it fails to fully acknowledge the extent of evictions and demolitions of vulnerable households across South Africa during the nationwide lockdown. Since the start of lockdown, evictions have occurred around the country. SERI has been particularly concerned by the prevalence of evictions by the City of eThekweni, Johannesburg and Ekurhuleni.



In settlements where the shack dwellers movement, Abahlali Basemjondolo, organises, evictions have continued unabated.

Since the beginning of the lockdown, the Azania informal settlement has been subjected to at least 11 evictions and demolitions mostly carried the City of eThekweni's contracted security agency, Calvin Family Security Services. Over 300 people have been affected during these demolitions including two people who were shot with live ammunition, and three with tear-gas canisters on 31 March 2020.

A recent report by the Church Land Programme documents that in the course of the 11 demolitions occurring during the lockdown, approximately 60 homes, occupied by roughly three people each, were destroyed each time.

On 31 March 2020, eviction and demolition carried out by Calvin Security and Anti-Land Invasion Unit; on 5 April 2020 by Calvin Security, Anti-Land Invasion Unit and the South African National Defence Force (SANDF); on 9 April 2020 by Calvin Security, Anti-Land Invasion Unit, SANDF and the South African Police Service (SAPS); on 17 April 2020 by Calvin Security, Anti-Land Invasion Unit, SANDF and SAPS; on 22 April 2020 by Calvin Security and Anti-Land Invasion Unit; on 3 May 2020 by Calvin Security, Anti-Land Invasion Unit, and SAPS; on 8 May 2020 by Calvin Security, Anti-Land Invasion Unit and SAPS; on 12 May 2020 by Calvin Security and Anti-Land Invasion Unit; on 18 May 2020 by Calvin Security and Anti-Land Invasion Unit, and on 25 May 2020 by Calvin Security, Coastal Security and Anti-Land Invasion Unit.

On 15 April 2020, 13 occupied houses were demolished in eKhenana Informal Settlement. On 22 April 2020, the City of eThekweni and its contracted security agency, Calvin Family Security Services demolished 14 homes in the eKhenana informal settlement. These evictions were conducted without a court order and while an interdict was still in effect. SERI filed an urgent application to the High Court for an interdict, contempt and compensation for the damage to the property. The matter was settled, and an undertaking was signed on 24 April 2020 wherein the City undertook to "refrain from demolishing, burning and removing or disposing of the Applicant's informal housing structures in the informal settlement or from causing this to take place". However, minutes after the judgment was issued the eThekweni Municipality's Anti-Land Invasion Unit attacked the occupation and shot one of the occupiers who was rushed to hospital with serious injuries.

Five separate evictions and demolitions have occurred during the lockdown in the Ekuphumeleleni Informal Settlement, directly affecting 70 people. The last demolition occurred on 18 May 2020 and the security company promised to return after lockdown to destroy the remaining homes.

On 29 March 2020, evictions and demolitions were carried out by Calvin Security and the Anti-Land Invasion Unit; on 8 April 2020, carried out by Calvin Security, the Anti-Land Invasion Unit and SAPS; on 17 April 2020, carried out by Calvin Security, the Anti-Land Invasion Unit, Counsellor Sibusiso Khwela and SAPS; on 12 May 2020, carried out by Calvin Security, the Anti-Land Invasion Unit and SAPS; on 18 May 2020, carried out by Calvin Security and the Anti-Land Invasion Unit.

Evictions have been carried out in the main metropolitan municipalities throughout the lockdown. eThekweni municipality, along with its contracted security agency, Calvin Family Security Services, have demolished homes in Azania, Mathambo, eKhenana and Ekuphumeleleni, collectively affecting more than 400 people including two people who were shot with live ammunition, and three who were injured with teargas canisters. Similarly, in Johannesburg, at least 20 families were displaced in April after the Red Ants demolished over 80 shacks in the Kokotela informal settlement in Lawley.

These attacks have been ordered and carried out despite a moratorium on evictions during COVID-19 Alert levels 5, 4 and 3. Following a brutal eviction of Empolweni residents in Khayelitsha Cape Town by the Anti-Land Invasion Unit and metropolitan police, SERI issued a media release calling on the Minister of the Department of Human Settlements to fully acknowledge the widespread nature of evictions and demolitions of poor and vulnerable households across the country during the COVID-19 lockdown.

Further, in response to these violations, social justice organisations, including SERI, have made submissions to the National Command Council and Minister Sisulu calling for the moratorium on evictions to include a directive under the Disaster Management Act stipulating that no structure which has been or is being constructed for the purposes of residential occupation on any land or in any building may be demolished without a court order.

### **3.2 Disconnections**<sup>10</sup>

This sub-section refers to the disconnection of basic services by landlords and by municipalities. The disconnection of water, sanitation or electricity services presents a severe threat to the livelihoods of residents, whether they are tenants or occupiers. Landlords employ a range of unlawful strategies to “evict” or threaten tenants. These include changing locks, removing doors or windows, disconnecting utility services, intimidating tenants, or undertaking disruptive maintenance. In addition to the strain that unlawful evictions (and the threat of eviction) place on tenants, small scale landlords, who rent out anything from space in a room to a single room to a few units, are themselves vulnerable due to the impact of the pandemic on their livelihoods.

No national prohibitions have been declared in respect of utility disconnections. However, in an effort to mitigate the impact of COVID-19, some municipalities have undertaken not to disconnect water or electricity during the lockdown period. Two days before the lockdown commenced, the City of Johannesburg announced that it would not disconnect services during lockdown. It further indicated that it would reconnect water and electricity to residents who had previously had their utilities cut due to non-payment.

A submission by SERI, Ndifuna Ukwazi, Lawyers for Human Rights (LHR), Consortium for Refugees and Migrants in South Africa (CoRMSA), Legal Resources Centre (LRC) and ProBono.Org, addressed to the National Command Council, relevant Cabinet Ministers and respective Provincial Departments of Human Settlements, notes that, in April, these

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<sup>10</sup> Have any measures been taken to ensure that households are not cut-off from water, heat or other utility provision when they are unable to pay their bills?

organisations collectively received more than 80 reports and requests for assistance from people being evicted or threatened with eviction by private landlords.

These reports comprise a fraction of the likely total number of service disconnections. Illustrative examples compiled from the PILS “hotline” include:

- In April, a resident was unable to pay his rent due for the month of April 2020 as he was unable to work due to the lockdown. The landlord cut off tenant’s electricity in response.
- On 2 April, a tenant in Bloemfontein had her electricity connection cut off by the landlord when her rent was two days overdue.
- In April, a tenant in Hillbrow had her electricity cut off when she could not pay her rent for the month due to loss of income.
- In April, a tenant in Klerksdorp was threatened with an eviction when she failed to pay her weekly rental. The tenant has been unable to work due to the lockdown. Her water was cut off by her landlord when she did not pay her rental for two weeks. On 27 April, her electricity was also cut off by the landlord and she was subsequently informed to vacate the property by 01 May 2020.
- A tenant in KwaZulu Natal was forced to live without electricity for two months after the landlord cut off the connections due to the tenant’s inability to pay rent for the two months.
- In June, a resident in Pretoria reported that her electricity was cut off by his landlord for failing when he did not pay his monthly rental on time. He was without electricity for over a week.

### **3.3 Mortgages**<sup>11</sup>

Lockdown regulations do not provide mitigation measures such as a prohibition on the cancellation of leases for non-payment during the lockdown. We are aware that South Africa’s largest banks are offering payment holidays and restructuring loans for a three-month period. Although this relief measure is significant it favours people who were in good standing when lockout began, putting the access of more vulnerable homeowners at risk.

### **3.4 Informal settlements**<sup>12</sup>

The National Department of Human Settlement (NDHS) has responded to the pandemic with a de-densification programme. Although the Department has not yet published its own directions under the Disaster Management Act, we are aware that this programme entails temporary relocation of some residents of informal settlements to temporary relocation areas.

De-densification without informed consent constitutes eviction. It can also undermine people’s livelihoods and social networks, which are already being impacted upon due to the COVID-19 lockdown. People living in informal settlements need to rely on their social networks now more

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<sup>11</sup> In answer to the question: Please provide any information about other legal or financial measures aimed to ensure that households do not lose their home if they cannot pay their rent or mortgage?

<sup>12</sup> In answer to the question: What measures have been taken to protect persons living in informal settlements, refugee or IDP camps, or in situation of overcrowding from COVID-19?

than ever. Tenure arrangements in informal settlements are social in nature and neighbours play a critical verification and witnessing role. De-densification is likely to disrupt these networks and, although it is too soon to say, could well have a negative impact on how tenure is secured and maintained locally. Furthermore, the temporary nature of relocation poses potential risks to housing rights: the nature of residential rights in this context is uncertain. We know from experience that what is designed and implemented as temporary generally becomes permanent. Whether or not this will be the case with the temporary relocation areas remains to be seen.

Based on our review of draft NDHS directives and engagements, officials accept, and in some cases support, that consent is required. It is too soon to report on how the housing rights of people who will be relocated are affected. On the other hand, we are concerned about the impact of the de-densification programme on the households who remain “behind” in the original settlement. With the redirection of resources from upgrading projects already underway, the upgrading programme, which progressively secures the right to housing, is likely to be affected.

A COVID-19 Informal Settlement Sector Task Team and Engagement Platform has been established to engage with CSOs. The stakeholders agreed to partner but the compact took many weeks to sign. In the meantime, the NDHS did not revisit the de-densification programme and the Minister merely changed the terminology to “re-blocking” in order to align better with CSO discourse. The department had not, at the time of writing, provided any information regarding progress with the programme, despite repeated requests.

### **3.5 Water provision**

Regulation 6.2 of the Alert 5 regulations directed municipalities to provide water and sanitation to people living in overcrowded circumstances:

6.2.1. Municipalities are directed to:

- (a) Ensure that communities are provided with the necessary means to prevent transmission, whilst preventing disruptions in services that are rendered through both municipal programmes and customer interaction.
- (b) Provide potable water and sanitation services to high population density settlements, rural communities, informal settlements.
- (c) Provide other appropriate means, like water tankers, boreholes and storage tanks in water constrained communities that have limited access to municipal water supply.

The National Department of Human Settlements, Water and Sanitation (DWS) has responded to the need for improved water supply by procuring a planned 41,500 emergency water tanks to be dispatched to settlements identified by municipalities with inadequate water services. To date, approximately 20,000 have been delivered.

As noted in SERI’s comments to the Department of Water and Sanitation on 8 May 2020, emergency water provision is essential because water services are inadequate in informal settlements, but it has worrying limitations. One is the impact of emergency services on long term sustainable services delivery, including reducing two thirds of the budget for maintenance and refurbishment of wastewater treatment plants and bulk infrastructure, which is potentially

catastrophic to public health and the environment, and will have severe financial implications such as the need for DWS to seek expensive loan finance. Two is that that it is by no means sufficient or reliable. While many informal settlements now have access to emergency water tanks, the majority still access irregular water supply a few times a week and do not have access to adequate hand sanitiser or soap.

Concerns also exist about a lack of transparency regarding the operations of the DWS and emergency procurement contracts during the pandemic which, alongside the Health Department, retain the majority of the COVID-19 budget reallocations. Furthermore reports in the media raise concerns about influence-peddling and corruption, involving DWS chief water advisor and two former officials. A taped discussion surfaced in late May 2020 of their plan to siphon money from the department's emergency R200 billion budget. The money was allocated to provide emergency relief water for South African residents in Free State during COVID-19. The two officials have been fired, whilst the advisor has taken indefinite leave from work. However, the *Daily Maverick* has reported that the remaining 19 members of the national rapid response team continue their work, with Human Settlements, Water and Sanitation Minister Lindiwe Sisulu peddling back on a commitment to disband the team amid her drive to stamp out corruption.

### **3.6 Unhomed people**<sup>13</sup>

Section 11D of the Disaster Management Act (2002) requires the State to establish temporary shelters that meet the necessary hygiene standards for "homeless" people. Drawing from research undertaken by Ndifuna Ukwazi, we report on the measures taken in respect of homeless people by region.<sup>14</sup>

Gauteng province announced a plan in tandem with 241 NGOs to house displaced persons in facilities to provide shelter, clothing and food. In addition, 30 boarding schools with hostel facilities were identified to be utilised if the other shelters became full. However, several boarding schools pushed back and refused to house homeless people. They therefore had to be housed in camp-like tented accommodation instead. The Gauteng government originally estimated that 15,000 people would need temporary accommodation, but this had to be adjusted to 54,000 one week into lockdown.

In Tshwane, the Caledonian Stadium drew media attention. The municipality closed the stadium on 6 April, citing the need to house homeless people in spaces that enable conditions for successful social distancing measures. The sites include churches, parks, sports grounds and a facility for older people with special needs. At least 1,000 people were rounded up and housed in the stadium. Overcrowding was such that there were ten people for every tent designed to sleep two to three people and the media reported that people felt they would have been safer on the street, with some escaping by jumping over the fences. At the height of

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<sup>13</sup> In response to the question: Have any measures been taken to provide safe accommodation for persons in situation of homelessness during the pandemic and in its aftermath?

<sup>14</sup> Ndifuna Ukwazi. "Temporary Homeless Shelters Research (Draft)," 2020.

lockdown there were a reported 2,000 people housed at Caledonian Stadium, which was only intended to shelter 340.

In Johannesburg, on 31 March 2020 there were nine centres housing 2,000 homeless people, including in shelters and temporary accommodation sites. Local community organisation Mould Empower Serve opened an additional facility to accommodate specifically women and disabled people. However, it is estimated that 13,000 people still require accommodation. In the metro of Ekurhuleni, four shelters have been established, with the shelter at Coen Scholtz Recreation Centre in Birchleigh North housing 124 people. Each person receives food and drink and may leave the community hall twice per day for 30 minutes whilst staying in visible distance from security guards.

In KwaZulu-Natal, the evening before lockdown began, between 1000 and 2000 homeless people were taken to temporary accommodation in order to be screened and triaged, with those at highest risk transported to 14 shelters, camps and buildings. However, people held at the site reported that officials denied them food and adequate shelter. Facilities used in eThekweni range from small tented communities on sites such as stadiums to rooms in municipal buildings. The number of homeless people was underestimated by local government, with 1,500 people accommodated by 3 April, exceeding original estimates of 1,000. Officials have cited difficulties in dealing with substance withdrawal, including provision of adequate medical care and psychological support. Programmes have been put in place to introduce treatment and support homeless people for family reunification post-lockdown.

In Nelson Mandela Bay, Eastern Cape province, community halls have been utilised as temporary accommodation during lockdown. There have been issues in this area around a lack of communication regarding the virus and the requirement that they be placed in temporary shelters. There have also been problems in delayed opening of the sites, with some homeless people arriving to find them closed.

Detainments for non-respect of stay at home orders have varied by region. For example, in Gauteng the formal line from politicians was that nobody would be forced into temporary shelters and this was mostly adhered to due to the strength of civil society monitoring. However, an example where this was not the case is the Strandfontein Camp, which received significant media attention and pushback from civil society groups.

Located at the Strandfontein Sports Complex in Cape Town, Western Cape Province, the camp was established around 31 March 2020. It has been the source of much media attention due to allegations of overcrowding and unsanitary conditions conducive to protection from the spread of COVID-19.

On 20 April 2020, Ndifuna Ukwazi filed a case in the Western Cape High Court seeking an order to declare the camp to be in violation of the regulations of the Disaster Management Amendment Act. The Strandfontein Social and Economic Development Forum and Strandfontein Ratepayers Association also filed, asking for the camp to be shut down. After the High Court granted an interim order allowing SAHRC to monitor the camp, the City began proceedings to interdict the SAHRC, accusing its monitors of interfering without legal standing. The shelter was shut on 20 May and on 9 June, the City abandoned the court application, citing that the case was no longer required due to the closure of the camp.

The links between evictions and homelessness are clear. As noted by CALS in its 19 June 2020 submission (pages 13 and 14):

- When the State evicts occupiers, it often fails to provide alternative accommodation.<sup>15</sup> This serves to exacerbate the problems of unhomed persons and forces occupiers to seek shelter elsewhere.
- The State is furthermore failing to provide adequate shelter for unhomed persons.<sup>16</sup> These persons are left on the streets and the support which would usually be available to them (such as soup kitchens, counselling) is diminished or totally eradicated due to the lockdown. This serves to exacerbate their vulnerability.
- In some areas where temporary camps for unhomed persons were set up, this was merely a short-term plan and the camps were subsequently disbanded.<sup>17</sup> The planning and execution of this was clearly poorly thought-out, and the camps themselves were often in terrible condition. We must also consider whether the movement of unhomed persons to such camps itself constitutes an eviction,<sup>18</sup> and the plans – if any – for such persons once the lockdown is lifted and such camps are closed.
- Where temporary emergency accommodation is provided, it is well-established that it must not be a retrogressive step.

### **3.7 Housing and domestic workers** <sup>19</sup>

More than a month after the lockdown was announced on 23 March 2020, the Department of Employment and Labour had still not addressed South Africa's estimated one million domestic workers and their employers, providing no information about whether the regulations allowed them to work and if not, what form of social support was available to them. When the Department eventually addressed domestic workers and their employers, it only addressed issues pertaining to wages and the Temporary Employer Employee Scheme (TERS).

Due to gross non-compliance by employers of domestic workers, it is often the case that in the instance that domestic workers are dismissed (fairly or unfairly) the stipulations regarding

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<sup>15</sup> One such example occurred in Lawley, South Gauteng, and involved the Red Ants destroying housing structures on behalf of the City of Johannesburg. The affected occupiers brought three separate court applications against the City of Johannesburg, but through the intervention of the SAHRC the City conducted a verification process geared at assessing and offering temporary emergency accommodation to needy occupiers.

<sup>16</sup> For example, only one shelter has been created in Bloemfontein.

<sup>17</sup> A striking example of this is the Strandfontein temporary camp in the Western Cape. When the camp was disbanded, occupants were simply returned back to the street of the City of Cape Town.

<sup>18</sup> Relevant issues in this regard include the unhomed person's choice to continuously access shelter in a particular location, and the accessibility of a network of homelike structures nearby that location (such as soup kitchens, counselling services, public ablution facilities) which together constitute that person's home.

<sup>19</sup> In partial answer to the question: What measures have been taken by authorities to ensure that migrant and domestic workers continue to have access to secure housing during the pandemic and in its aftermath?

accommodation are rarely followed and domestic workers are removed from employers' properties without following the correct process. Live-in migrant domestic workers are most vulnerable in these situations as they are rendered homeless when their work is terminated.

Sectoral determination 7 of the Basic Conditions of Employment Act (1997), which regulates the domestic work sector, only addresses the issue of accommodation with respect to deductions and termination. In this case only the subject of termination is relevant. Paragraph 26 (1) states:

“If the employer of a domestic worker who resides at the workplace or in other accommodation supplied by the employer terminates the contract of employment of that domestic worker before the date on which the employer was entitled to do so in terms this clause, the employer is required to provide the domestic worker with accommodation for a period of one month or if it is a longer period, until the contract of employment could lawfully have been terminated.”

The Sectoral Determination does not provide employers with the standards of accommodation for domestic workers. As a result, many domestic workers live in poor conditions, often in what were formerly known as “servant’s quarters” during apartheid and often accompanied by unfair rules from employers or body corporates in the case of apartment buildings, complexes and estates.

In November 2018, the UN Committee on Economic, Social and Cultural Rights recommended that South Africa provide legal guidance on the standard of accommodation for domestic workers. Furthermore, due to gross non-compliance by employers of domestic workers, it is often the case that in the instance that domestic workers are dismissed (fairly or unfairly), the stipulation in paragraph 26(1) is rarely followed and domestic workers are removed from employers' properties without following the correct process. Live-in migrant domestic workers are most vulnerable in these situations as they are rendered homeless when their work is terminated.

During the lockdown Izwi Domestic Workers Alliance observed the following in terms of domestic workers' access to secure housing:

- At the beginning of what should have been envisaged as a 21-day lockdown, many employers asked their live-out workers to move into their homes to continue working during the lockdown. Many accepted this arrangement as it secured their income, even if the living arrangements were not suitable for the long term. Many domestic workers are made to share bedrooms with the children or elderly persons they look after and generally have a lack of privacy. Another drawback of this arrangement is that domestic workers are made to work longer hours without overtime pay. Many employers also impose further restrictions above the government regulations. For example, some domestic workers report not being allowed to leave the employers' home even for essentials like groceries or even going to the clinic. Overall this arrangement has taken a toll on these domestic workers' physical and mental health.
- At the beginning of the lockdown some employers asked their live-in domestic workers to leave their homes to be with their families for the duration of the lockdown (which was thought to last only 21 days). This was welcomed by workers whose monthly



income was guaranteed. These workers were, however, in the minority. When it became clear that the lockdown was unfixed, some employers asked their employees to return. Izwi reports that some workers returned to their home countries at beginning of the lockdown, however their situation has become increasingly precarious because they do not know where they stand with their employers (some continue to be paid while others have been placed on special leave without pay). For example, one worker left for Lesotho at the beginning of the lockdown and returned to South Africa a few weeks later. She is staying with friends and is on standby incase her employer calls her back to work (and her primary accommodation in the country). In Izwi's experience, many migrant domestic workers' accommodation is tied to their work, and when they are dismissed or resign, they make arrangements to stay with friends or family.

- Some Izwi members, who are live out workers, have been evicted from their rental flats and backyard dwellings because they cannot pay for rent as they are without an income during the lockdown. Some landlords allow domestic workers to stay in their homes but are charging them interest every month in addition to the rent they owe. Many domestic workers do not qualify for the Department of Employment and Labour's Temporary Employer Employee Scheme (TERS) as they are undocumented foreign nationals, others had been unable to access the scheme due to their employers failing to register them for the Unemployment Insurance Fund, through which workers access the scheme.

## **4. The impact on other rights**

In this section of the submission, SERI responds to five thematic issues in the common questions, selected because of their relevance to our work. We begin with a presentation and description of statistical information. Then we move into a consideration of the impact of COVID-19 measures on human rights. We then consider social protection, participation and consultation and, finally, accountability and justice.

### **4.1 Statistical information**

#### ***Epidemiological data***

In this section we provide epidemiological data on COVID-19 infections, recovery and mortality rates in South Africa as of 2 July 2020. We disaggregate the data age and sex, as well as by province.<sup>20</sup>

On 2 July 2020 1,666,939 tests had been conducted, 159,333 positive cases had been identified. A total of 76,025 people had recovered, and the recorded number of deaths stood at 2,749.

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<sup>20</sup> In response to the questions: Please provide epidemiological data on COVID-19 infections, recovery and mortality rates in your country, region or locality, disaggregated by nationality, race, ethnicity, religion, membership of indigenous peoples, age, gender, sexual orientation and gender identity, income/poverty levels, disability, immigration status or housing situation. Which groups in your country have been disproportionately affected by COVID-19 and how can this be explained?

The following table contains data on the number of cases disaggregated by age and sex as at 10 June 2020.

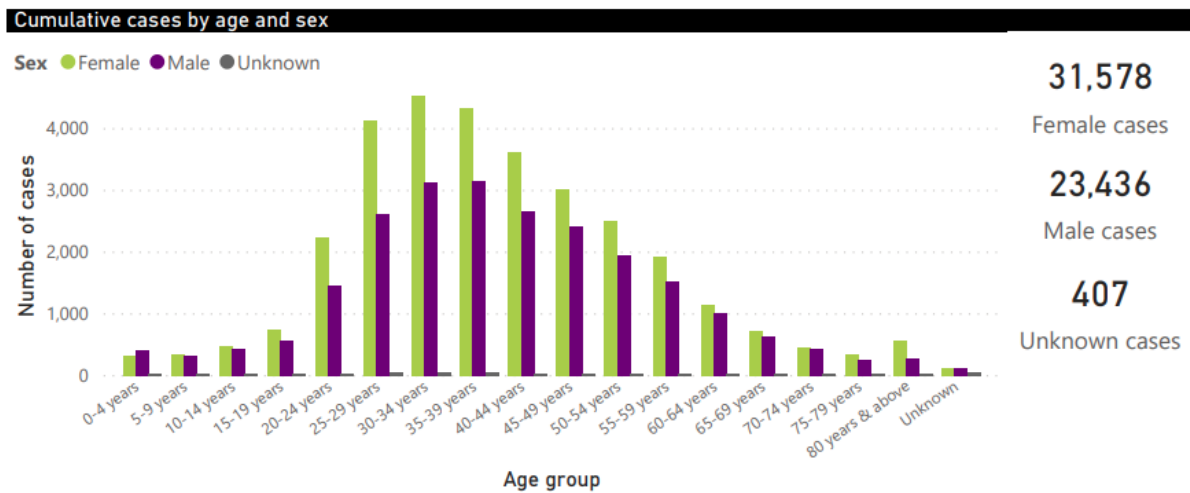


Figure 1: the number of cumulative COVID-19 cases disaggregated by age and sex

Figure 2 shows that many cases are of people between the ages of 20 and 59. It also indicates that as of 10 June, women constituted higher numbers of cases than men in South Africa.

The next table disaggregates the data by region, as at 26 April 2020. It shows that the Western Cape province had the greatest share of cases, followed by Gauteng.

Province	Reported Cases 25 April 2020	Updated Cases Post Harmonisation 25 April 2020	New Cases 26 April 2020	Total Cases 26 April 2020	% Total Cases	Deaths 25 April 2020	Case Fatality Rate
Eastern Cape	488	489	46	535	11,8%	11	2,1%
Free State	111	110	0	110	2,4%	5	4,5%
Gauteng	1304	1303	28	1331	29,3%	8	0,6%
KwaZulu-Natal	847	847	16	863	19,0%	29	3,4%
Limpopo	30	31	0	31	0,7%	2	6,5%
Mpumalanga	23	23	0	23	0,5%	0	0,0%
North West	28	28	0	28	0,6%	0	0,0%
Northern Cape	16	16	1	17	0,4%	0	0,0%
Western Cape	1514	1514	94	1608	35,4%	32	2,0%
Unknown	0	0	0	0	0,0%	0	0,0%
<b>Total</b>	<b>4361</b>	<b>4361</b>	<b>185</b>	<b>4546</b>	<b>100%</b>	<b>87</b>	<b>1,9%</b>

On 10 June 2020:

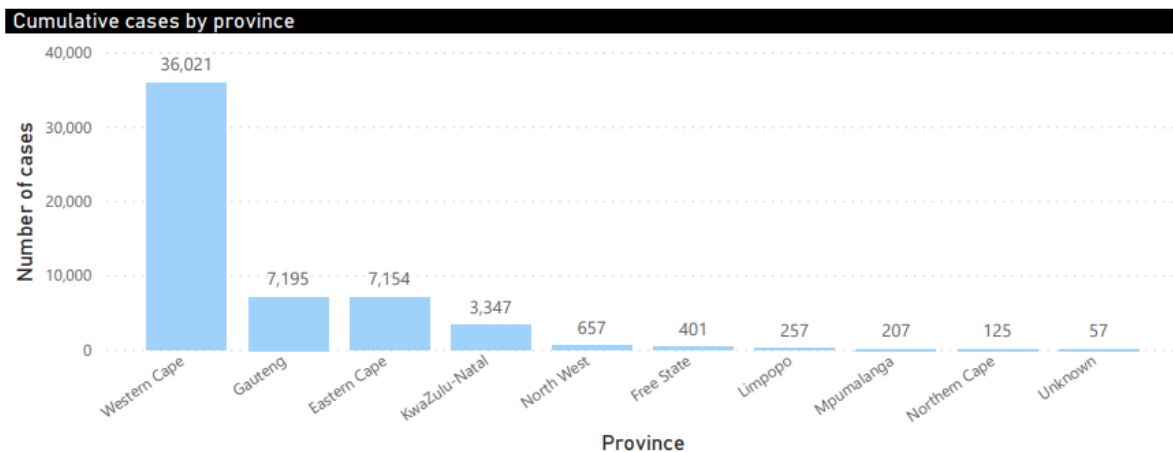


Figure 3: the number of cumulative COVID-19 cases in South Africa by province.

Figure 4 shows that Western Cape has by far the highest number of cases, with around five times more cases than in Gauteng or Eastern Cape at the time. This picture is currently shifting dramatically as the pandemic spreads at pace in the country’s economic powerhouse, Gauteng province.

It should be noted that disaggregated data availability is limited. The number of infections and deaths released by government only reflects those with a positive identification of COVID-19; there are likely to be more that have not been tested.

#### 4.2 COVID-19 measures and human rights

In this section, we outline measures put in place in South Africa during the pandemic and discuss whether they have had a limiting effect on human rights.<sup>21</sup>

The national government declared a National State of Disaster in terms of Section 27 of the Disaster Management Act 57 of 2002. Section 27 permits the Minister of Co-operative Government and Traditional Affairs to make regulations necessary to control, among other things, the movement of people and goods across the country. A declared state of disaster lasts for an initial period of 3 months, which may then be extended month to month by notice in the Government Gazette.

The Minister acted in terms of section 27 to institute a national lockdown, effective from midnight on 26 March 2020. In terms of regulations issued under section 27 of the Act, the Minister confined the population to their homes, and prohibited the sale of all goods, with the exception of all goods deemed to be “essential” and all persons deemed to be involved with the provision of an essential service.

<sup>21</sup> In response to the following questions: Are there any measures put in place in your country following the pandemic which have had a limiting effect on human rights? If so, please list them, provide an explanation for their adoption and indicate the timeframe by which they will be lifted.

At their strictest, the regulations prohibited most forms of economic activity and almost all forms of social activity. Individuals were permitted to leave their homes to provide or procure an essential good or service, but for no other reason. Exercise in public was banned. A system of permits was introduced for those involved in the provision of essential good or service. Essential goods and services were limited, in the main, to law enforcement, private security, the sale of food and essential clothing, the performance of emergency repairs, the provision of healthcare services, the provision of essential government services, the provision of essential legal, media and financial services, and the import and export of key economic goods. Inter-provincial travel was banned. All gatherings, with the exception of small funerals of fewer than 50 people, were also banned. All schools, colleges and universities were closed. All sporting events were cancelled. South Africa's borders were closed.

After 5 weeks of strict enforcement, these restrictions were replaced with a five-level Alert system, each with its own set of regulations under the Disaster Management Act. The strictest regulations were imposed at "Alert level 5".

Simultaneously with the introduction of the five-level Alert system, the national government implemented what it called "Alert level 4". This Alert level lasted for just over four weeks. It allowed a slightly wider range of goods to be sold, including books and clothing. Public exercise was also permitted between the hours of 6 and 9 every morning. Restrictions on the legal and other professions were lifted, but inter-provincial travel remained prohibited. All of the other restrictions associated with Alert level 5 remained in place.

On 1 June 2020, the government introduced what it called "Alert level 3". This significantly eased the restrictions implemented at Alert levels 4 and 5. All economic activity was permitted, subject to specific prohibitions – mostly justified on health grounds. Restaurants, cinemas, mass sporting events, bars and other economic activities entailing the clustering or gathering of people were prohibited. All public buildings were subject to strict social distancing rules. Face masks were made compulsory in public. The sale of alcohol was permitted for four days a week, but could only be consumed at home. The sale of tobacco remained prohibited. Limited religious gatherings were permitted. The phased re-opening of schools and universities was implemented.

Alert level 3 remains in force at the time of writing. The government's position is that, depending on the rate of spread of COVID-19, the national state of disaster may be eased further to Alert levels 2 and 1. It may also be escalated back to Alert levels 4 or 5. These changes will be achieved by action taken in terms of section 27 of the Disaster Management Act.

The government justified the declaration of the national state of disaster by reference to the need to prevent the spread of COVID-19 before it became endemic. At the time the disaster was declared, the number of confirmed cases of COVID-19 was well below 5,000. The purpose of the restrictions was to keep COVID-19 cases to a minimum by reducing the number and range of opportunities for the disease to be transmitted. The South African population is unusually immuno-compromised, as a result of high rates of HIV and tuberculosis infections. The potential mortality rate of COVID-19 in such a uniquely vulnerable population was unknown. Particularly extensive restrictions were thought to be necessary to contain the spread of the virus.

Whether the measures were proportionate in the circumstances entails a value judgement. Reasonable people may differ about whether the suspension of all economic activity was a proportionate response to the virus. South Africa's response was certainly very risk averse. On the whole, the response was likely proportionate given the unique features of the South African population, including the weakness of the public health system, and the high number of immuno-compromised individuals in the population. There were individual measures taken that were perhaps beyond the bounds of rational justification. The absolute bans on alcohol consumption and public exercise were probably disproportionate. The consumption of alcohol was only a risk in public groups – not in private homes. A small number of people died from alcohol poisoning as a result of trying to brew alcohol at home. Similarly, public exercise was only a risk where undertaken in groups, not individually. Likewise, the restrictions on the operation of legal professionals strained the bounds of reasonableness.

In addition, the regulations introduced were often vague and internally inconsistent. Multiple amendments were necessary to iron out irrational distinctions. For example, at Alert level 4 only the sale of “educational” books was permitted. Those seeking to comply with the regulations were left to wonder what counted as an “educational book”, or, more to the point, when it could reasonably be said that a book lacked any educational content. The net result is that all bookshops tended to take the robust view that books were inherently educational, and the distinction sought to be drawn in the regulations was ignored.

Again, whether the measures had a “discriminatory” impact entails a value judgement. In South African law, discrimination may be fair or unfair. Fair discrimination is legally justified. It is not clear from the question whether the intent is to get at unfair discrimination, or mere differentiation, or something in between. Nor is it clear whether the intent is to identify laws or other measures that discriminate on their face, or merely have a discriminatory impact.

Certainly, the adverse impact of the measures varied widely across the population. Fundamentally, the regulation requiring that everyone stay at home meant that South Africa's high population of homeless people was unable to obey the central directive of the lockdown. Many homeless people were moved to temporary shelters, but most were left to fend for themselves, subject, occasionally, to sporadic acts of police and military brutality.

Similarly, those whose livelihoods depended on catering, retail, entertainment, market trading, and a whole range of informal activities, such as waste-picking, were denied an income for the duration of the lockdown. Generally speaking, only those in formal employment were given any kind of unemployment insurance, although a benefit scheme providing a temporary basic income of R300 per month was introduced. The order to stay at home was also, at least anecdotally, associated with an increase in domestic violence.

### ***Socio-economic impact***

Here, we provide data indicating the socio-economic impact of COVID-19, including changes to household income, increasing unemployment, access to food and traditional livelihoods, poverty and homelessness.<sup>22</sup>

South Africa was already experiencing an economic downturn before the pandemic; the economy is now estimated to contract by 10% in 2020. The pandemic and subsequent lockdown placed new financial pressures on South Africans, particularly on those running small businesses and migrants without papers who are excluded from governmental aid. Regulations to limit the spread of the virus required that non-essential businesses and organisations temporarily closed during the lockdown. As a result, regulations have impacted on people's ability to access income and food. A stimulus package provided for the unemployed but the monthly payments of R350 are too little to cover food payments; South Africa's food poverty line is R561 per month. In addition, those working in the informal sector who have lost their jobs are not entitled to UIF payments. South Africa is also a water-scarce country. Access to running water is unequal, with those living in informal settlements particularly vulnerable to lack of running water, making hand-washing impossible for those communities.

Nearly 13% of the population (1 million people) are expected to lose their jobs as a result of the crisis. Of those whose salaries came mostly from salaries, wages decreased from 76% before the lockdown to 66.7% by the sixth week of lockdown. Similarly, those whose income was generated by their own business have reported a decrease in income from 8.3% to 2.5%.

Research conducted by Statistics South Africa found that the percentage of people who reported no income increased from 5.2% before lockdown to 15.4% by the sixth week of lockdown. Of those who owned small businesses before the pandemic, only 5.4% benefited from the financial relief provided by government to assist such businesses. However, it should be noted that the survey was completed online and the majority who completed the survey were in secure employment. Therefore, the number is likely to be higher as people in the informal sector and without access to the internet may have been unable to participate, skewing the sample.

### ***Vulnerable groups***<sup>23</sup>

Groups identified as particularly vulnerable to socio-economic hardship in the context of the COVID-19 crisis include those working in the informal economy such as waste pickers and informal traders, those in precarious or insecure employment such as domestic workers and gardeners, those in part time employment, people who live in informal settlements and who occupy inner city buildings, tenants and small scale landlords. Conservatively, between 1.1 and 1.4 million households (between 2.9 and 3.6 million people) lived in informal settlements

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<sup>22</sup> In response to the questions: please provide us with data indicating the social-economic impact of the economic downturn triggered by COVID-19 such as changes to household income, increase of unemployment, access to food and traditional livelihoods, poverty or homelessness in your country, region or locality, disaggregated by nationality, race, ethnicity, age, gender, sexual orientation and gender identity, disability, religion or immigration status.

<sup>23</sup> This section responds to the question: Which groups have been identified as particularly vulnerable to socio-economic hardship in the context of the COVID-19 crisis?

in South Africa in 2011.<sup>24</sup> In 2016, approximately 1 in 5 households in South Africa's metropolitan areas lived in informal dwellings. Data from Statistics South Africa (StatsSA)'s General Household Survey indicate that 79.3% of households in South Africa live in formal dwellings, while 13.9% of households live in informal dwellings and 5.9% of households live in traditional dwellings.<sup>25</sup> While the proportion of households living in formal dwellings has increased by 5.6% between 2002 and 2016, the percentage of households living in informal dwellings has also increased during the same period. The South African government has further reported in 2014 that "over two million children live in backyard dwellings or shacks in informal settlements; over 40% of these children are within the particularly vulnerable under 5 year age group."<sup>26</sup>

People with comorbidities such as HIV and TB are particularly at risk. South Africa has a high rate of HIV infections with 8 million people living with HIV and 2 million not on treatment.

### ***Domestic violence***<sup>27</sup>

Gender based violence (GBV) is under reported. It is estimated for example that only 1 in every 20 rapes are reported to the police. According to South African Police Service (SAPS) data, recorded domestic violence decreased in all 9 provinces during lockdown, which was largely attributed to the alcohol ban. In the first week of lockdown, police received 2,300 complaints regarding GBV. Nationally, there was a decrease by 69.4% from 9 990 cases between 29 March and 22 April last year to 3,061 since the lockdown until 20 April 2020; a difference of 6,929.

In Gauteng, there were a recorded 1,426 cases linked to GBV and domestic abuse since level 5 lockdown was enacted. Most cases were registered in Johannesburg, followed by Tshwane, Sedibeng, the West Rand and Ekurhuleni.

- Johannesburg: 295
- Tshwane: 365
- Sedibeng: 326
- East Rand: 70

However, statistics by the National Education, Health and Allied Workers' Union (NEHAWU) have noted that there has been a 500% rise in GBV cases since the start of lockdown. It

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<sup>24</sup> These figures are based on the 2011 census.

<sup>25</sup> The General Household Survey (GHS) describes a formal dwelling as any structure built according to approved plans i.e. a house, an apartment or a room within a formal dwelling. An informal dwelling is defined as a makeshift structure that is not erected in terms of approved architectural plans such as corrugated iron shacks or shanties in informal settlements, serviced stands or proclaimed townships, as well as backyard shacks and other dwelling types. Traditional structures are referred to as all dwellings constructed from clay, mud, reeds or other locally available materials such as huts. See 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](http://www.spii.org.za/wp-content/uploads/2018/02/Right-to-Housing_2017.pdf).

<sup>26</sup> African Committee of Experts on the Rights and Welfare of the Child, *South Africa's Initial Country Report on the African Charter on the Rights and Welfare of the Child - Reporting period: January 2000 – April 2013* (2014), para. 244.

<sup>27</sup> The relevant question here is: Please provide data on incidents of domestic violence, including femicides disaggregated by a) intimate partner femicide b) family related femicide based on the relationship between the perpetrator and the victim/s and c) all other femicides based on the country context.

should therefore be noted that there is a difference between police recorded statistics and NGO reports. Concerns have also been raised that gender-based violence had not been prioritised by police due to the competing demands of enforcing the lockdown. It has been difficult to co-ordinate GBV cases because officers have been unable to travel to courts during lockdown. In Pretoria, shelters implemented a Safety Plan that provided emergency and gender-based violence support contacts and advice for being safer in domestically violent situations during lockdown. The plan included step-by-step information on strategies for leaving safely, how to record abuse for legal redress and covering one's tracks when seeking help through the telephone.

### **4.3 Social Protection**

In this section we outline adjustments to the social safety net, income related relief, social security assistance and finally, the state's approach to workers in the informal economy, including domestic workers and street traders.

#### ***The social safety net***

This section outlines adjustments to the social safety net in response to the pandemic, including for those who suffered a loss of income because of the crisis. It also addresses issues of equitable access to relief measures for systemically vulnerable groups, such as foreign nationals and domestic workers in South Africa.<sup>28</sup>

#### ***Income related relief***<sup>29</sup>

In response to the health crisis, the State has introduced or extended several social safety net measures to support individuals who would lose income, wholly or partially, as a consequence of the pandemic, access sufficient nutrition, housing, water and sanitation, health care, energy and other essential goods and services.

#### **Workmen's Compensation**

On 23 March 2020, the Compensation Commissioner published a notice in terms of section 6A of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA), stating that an employee contracting the coronavirus in the course of their employment is entitled to claim compensation, thus establishing COVID-19 as an occupational disease under COIDA. This however excludes individuals working in the informal sector who are not included in the ambit of COIDA. South Africa has adopted the International Labour Organization's Recommendation No. 204 on the transition from the informal to the formal economy, and

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<sup>28</sup> In response to: Please provide information on implemented and planned adjustments to the social safety net in response to the crisis, to ensure that individuals who lost all or part of their income as a consequence of the pandemic have access to sufficient nutrition, housing, water and sanitation, health care, energy and other essential goods and services? How has the State ensured fair and equitable access to social safety net measures across lines of race, gender, sexual orientation and gender identity, membership of indigenous peoples, and others?

<sup>29</sup> Here we are responding the following questions: How has the State approached social protection of small entrepreneurs and for people whose livelihoods are based in informal economies, in particular persons working often informally, in agriculture and other traditional livelihoods, child and health care, domestic work, construction, restaurants, street vending, tourism or as sex-workers? What specific efforts have been made to assess and mitigate the relevant health and social-economic risks to these populations?



should therefore “progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions...”

Furthermore, the UN Committee on Economic, Social and Cultural Rights in its Concluding Observations recommended that the State extend the coverage of the labour and social security legislation to informal workers. The directive also excludes domestic workers, despite the Committee’s recommendation that COIDA be extended to include domestic workers. The inclusion of domestic workers in COIDA is the subject of Mahlangu v Minister of Labour, a case recently heard at the Constitutional Court and awaiting judgment.

#### Temporary Employer Employee Relief Scheme (TERS)

In March 2020, the Department of Employment and Labour set up the COVID-19 Temporary Employer Employee Relief Scheme (TERS) to support businesses and employers temporarily closed due to the lockdown and unable to pay workers’ salaries. Initially, the benefit was only available to employers who are registered with the Unemployment Insurance Fund (UIF) and made monthly contributions as required by the Unemployment Insurance Contributions Act 4 of 2002.

Due to pressure from civil society organisations the Department made two significant amendments to the TERS directive: on 30 April the directive was amended to allow individual employees to apply for themselves if their employer failed to do so and; on 25 May the Department extended TERS to non-registered workers who had previously been excluded from the scheme because their employers had unlawfully failed to register them. These two victories, however, have not yet been felt on the ground as at 12 June, because the Department has thus far failed to provide clear information and create the channels needed for workers, registered and unregistered, to apply for the scheme individually, leaving many people without an income.

After several reports from foreign nationals that their TERS claims had not come through, the Department issued a statement clarifying that foreign nationals get payment later than some of the South African workers because the applications of foreign nationals need to go through a verification process with the Department of Home Affairs and at times the South African Revenue Service (SARS). TERS is not open to foreign nationals without a valid work permit.

#### ***Social security assistance***

The State has introduced a special grant for unemployed persons (who are not receiving any other government grants). The COVID-19 Social Relief for Distress Grant is a “temporary provision of assistance intended for persons in such a dire material need that they are unable to meet their families’ most basic needs.” The grant is R350 per month and will only be paid for a period from May until October. The grant is only applicable to South African citizens, permanent residents and refugees registered with Home Affairs. On 2 June the South African Social Security Agency (SASSA) announced it had paid out the grant to only 116,000 people.

Other grant beneficiaries also receive increased amounts to combat the crisis: child support grant beneficiaries will receive an extra R300 in May and an extra R500 from June to October each month. All other grant beneficiaries will receive an extra R250 per month until October. SASSA also provides food parcels and vouchers: the government reported that between 58,000 to 100,000 households have received food parcels since the beginning of lockdown,

and that SASSA has also allocated R400 million for food parcels and vouchers. Further, on 21 April, government announced that it allocated R20 billion to provide emergency water supply, food and shelter for the homeless.

For the most part the social assistance measures implemented by the State exclude asylum seekers and other undocumented migrants, particularly vulnerable populations. Furthermore, it has been reported that even when migrants are documented and eligible for social relief, they are often discriminated against and preference is given to South African citizens. Foreign migrants therefore rely heavily on relief efforts by civil society.

### ***Workers in the informal economy***

This section analyses the State's approach to social protection of small businesses and those working in the informal economy, including domestic workers and street traders.<sup>30</sup>

According to Statistics South Africa (Stats SA)'s October to December 2019 Quarterly Labour Force Survey (QLFS), approximately 3 million South Africans reported working in the informal sector. Most of this work is taken up by women. The informal economy plays a critical role in addressing some of South Africa's most pervasive development challenges, including high levels of unemployment and poverty.

The COVID-19 pandemic and resultant lockdown in SA have had a devastating effect on the abilities of vulnerable groups to make an income. South African households employ approximately one million domestic workers, the vast majority of whom are black women.<sup>31</sup> Domestic workers account for more than 8% of the total workforce in South Africa. In a survey conducted by Izwi Domestic Workers Alliance, a domestic workers' union based in Johannesburg, only 37% of domestic workers were able to confirm that they were getting full wages during the COVID-19 lockdown. Less than 10% of domestic workers were on paid leave, while 27% were on unpaid leave, and another 27% on leave but had not been told whether they will be paid for April. 4% lost their jobs altogether because of COVID-19.<sup>32</sup>

Since the implementation of the lockdown, many domestic workers have been put on unpaid leave, or dismissed unfairly by their employers. Government responded to the call from domestic worker unions and organisations for the inclusion of those domestic workers (and other workers) whose employers had not registered them for UIF and were therefore excluded from TERS. The TERS directive was amended to allow individual employees to apply for themselves if their employer failed to do so and to include non-UIF registered workers who had previously been excluded from the scheme. However, individual domestic workers are

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<sup>30</sup> This section is a response to: How has the State approached social protection of small entrepreneurs and for people whose livelihoods are based in informal economies, in particular persons working often informally, in agriculture and other traditional livelihoods, child and health care, domestic work, construction, restaurants, street vending, tourism or as sex-workers? What specific efforts have been made to assess and mitigate the relevant health and social-economic risks to these populations?

<sup>31</sup> Statistics South Africa, Quarterly Labour Force Survey (QLFS), 1st Quarter 2020 available at <http://www.statssa.gov.za/publications/P0211/P02111stQuarter2020.pdf>

<sup>32</sup> Izwi Domestic Workers Alliance (29 April 2020) "Domestic workers pay a heavy price for employers' non-compliance with labour law" available here <https://www.izwi.org.za/post/domestic-workers-pay-a-heavy-price-for-employers-noncompliance-with-labour-law>

yet to receive any money as the Department has not yet made it clear how they can go about that process. Under level 3, Izwi Domestic Workers Alliance reports that a significant number of domestic workers have not been called back to work by their employers, even though they are allowed to work according to the regulations. Many domestic workers are currently without an income.

Informal street trade has always been a part of South Africa's economy, 30% of which occurs in Gauteng with more than 9.5 million informal businesses in 2013<sup>33</sup> and contributing to the livelihoods of nearly three million workers and business owners in 2020.<sup>34</sup> When the lockdown was enforced, street traders were summarily stopped from trading which led to complete loss of income for some and significant losses of stock, especially fresh produce that could not be stored. On 2 April 2020, amendments were made to the regulations which allowed spaza shops and informal food traders (excluding those selling cooked food) to go back to business. On April 6, the Department of Small Business Development (DSBD) issued further directions, which stated that all spaza shop owners and informal food traders must hold permits issued by their respective local municipalities allowing them to trade, in line with the provisions of the Business Act, 71 of 1991 as amended. These regulations specified that non-South African citizens are required to have business or asylum seekers permit. Later, the Department of Small Business Development changed its gazetted regulations on 12 May, to exclude non-South Africans from assistance aimed at spaza shop owners contradicting its previous statement. This is seen as an attempt by the Minister of Small Business Development (DSBD) to use COVID-19 to introduce exclusionary (and xenophobic) measures. By and large however, where informal traders are organised, they have been able to engage municipalities on implementation of the non-exclusionary process for permitting in the Cooperative Governance and Traditional Affairs (CoGTA) directive which overrides the directive from the Minister of DSBD.

Municipalities have had varied approaches to regulating informal trade during lockdown. The permitting process in Johannesburg was relatively simple compared with that of Cape Town, which involved more stringent requirements. During level 5 and 4 informal traders not dealing with fresh food or winter clothes, were without an income for several weeks and did not have access to government schemes which covered formal businesses. Furthermore, the lack of communication between Metro Police and Departments of Local Economic Development led to police unfairly (and often violently) confiscating wares from winter clothes traders when they initially returned to work under level 4. Challenges experienced by informal traders under level 3 include: constant changes in permit requirements, unfair confiscation of goods, exclusion of informal traders in the e-voucher system and an overall knock on traders' income.

#### **4.4 Participation and consultation**

Whilst historically social movements in South Africa have used protest as a tool to enact change, lockdown regulations have prohibited public gatherings. Police brutality in lockdown enforcement has been well documented. See for example the Khosa case.

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<sup>33</sup> Statistics South Africa (Informal Business Sector) 2013

<sup>34</sup> Statistics South Africa, Quarterly Labour Force Survey (QLFS), 1st Quarter 2020 available at <http://www.statssa.gov.za/publications/P0211/P02111stQuarter2020.pdf>

In normal circumstances, public participation takes place when new legislation and regulations are issued. During lockdown there has been limited opportunity for public engagement, except for once at Level 5. In many cases, elected local councils have ceded power to the mayor.

#### **4.5 Accountability and justice**

This final section on responses to common questions includes complaints received by accountability and justice institutions, how the operation of the justice system has been responding to affected and what protections against violations exist. We also consider how access to justice, and freedom of expression and assembly have been affected. We consider the question of public or parliamentary investigations and measures taken to address allegations violations and complaints. We end with a description of legal challenges to lockdown regulations.

##### **Complaints**

This section addresses key concerns in complaints received by national human rights institutions, ombudspersons, anti-discrimination bodies in relation to the COVID-19 crises.<sup>35</sup>

The Independent Police Investigative Directorate (IPID), tasked with investigating complaints against police officers, reported to a Joint Meeting held by the Portfolio Committee on Police and the Select Committee on Security and Justice that between 26 March 2020 and 5 May 2020, they had received a total of 828 complaints of which 376 are specifically related to the enforcement of the national lockdown. These complaints include 10 deaths as a result of police action, 79 complaints relating to a discharge of an official firearm, 280 complaints of assault by police officers, 7 complaints of corruption. As of 20 May 2020, the Military Ombud has reportedly received 52 complaints from members of the public since the commencement of the lockdown. According the office of Military Ombud, 32 of these complaints are incidents are related to “heavy-handedness, undignified treatment and unlawful confiscation of property by officers while enforcing lockdown rules.”

The South African Human Rights Commission (SAHRC) has reported that between 26 March and 8 May 2020, it had received and is investigating over 200 complaints specifically related to COVID-19. Through engagement with the Anti-Repression Working Group of the C-19 People’s Coalition, the SAHRC established a COVID-19 committee through which it has extended accreditation to over 400 monitors from civil society organisations across South Africa. This process was born out of a need to monitor the enforcement of the lockdown, to intervene in instances where human rights abuses occur and to help prevent abuses. After numerous reports of violations during the first four weeks of the lockdown, the SAHRC also issued a statement reminding security forces to uphold human rights.

##### **The operation of the justice system**

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<sup>35</sup> The question here is: Could you kindly highlight key concerns in complaints received by national human rights institutions, ombudspersons, anti-discrimination bodies in relation to the COVID-19 crises and how they have been addressed?

This section outlines the impact of the COVID-19 pandemic on the operation of the justice system, including law enforcement, the provision of legal assistance and the operation of courts.<sup>36</sup>

Although the UNSR requested statistics, no statistics are yet available. At Alert level 5, all courts were closed, and all legal professionals were prohibited from working, except to bring emergency court applications, bail applications, issue interim and final protection orders in domestic violence cases, cases involving the custody, adoption or safety of a child, or to provide advisory or drafting support to essential services. Legal drafting work generally could continue, as it could be done from home. Some remote hearings of ordinary cases were also permitted. At Alert level 4, these restrictions were eased, and at Alert level 3, they were almost completely abolished. The national lockdown has, however, accelerated a pre-existing trend towards video-linked court hearings and electronic filing of documents. Even at Alert level three, video linked hearings remain the norm, where possible, and documents are exchanged by e-mail or through online, court-controlled databases.

### ***Protections against violations***

Here we describe measures taken by the justice system to protect individuals from human rights violations during the COVID-19 pandemic, focusing on illegal evictions and demolitions.<sup>37</sup>

In South Africa, 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. At Alert level 5, the execution of any eviction was prohibited, whether or not it was authorised by a court. Courts were also prohibited from making any eviction orders at all, even if the date of execution was stayed until after the end of the lockdown period. At Alert level 4, courts were permitted to make eviction orders, but the execution of those orders was stayed until the end of the lockdown period. At Alert level 3, the execution of eviction orders remained prohibited, except where a court decided that it was just and equitable for the order to be executed during Alert level 3.

Under section 202 (1) (a) of the South African Constitution, the military was deployed in co-operation with national and municipal police forces to enforce lockdown rules. The President and most national government ministers and officials strongly discouraged arrests for infractions of lockdown rules, although many thousands of arrests were made. The Minister of Justice has announced that he intends to initiate legislation to purge any criminal convictions arising from breaches of lockdown rules.

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<sup>36</sup> In response to: Could you provide any account and statistics on the impact of the COVID-19 pandemic on the operation of the justice system, including law enforcement, the provision of legal assistance and the operation of courts? Which activities were temporarily suspended?

<sup>37</sup> In response to: Please describe measures taken by the justice system in your country in protecting individuals from human rights violations and abuse during or after the COVID-19 pandemic. What measures have been taken to prevent, investigate or prosecute a) arbitrary arrest and detention, b) gender-based violence, c) sale and sexual exploitation of children, d) contemporary forms of slavery, e) racial discrimination, or f) illegal evictions?

There were, however, several unfortunate statements made by the Minister of Police, Bheki Cele, and the Minister of Defence, Nosiviwe Mapisa-Nqakula, which appeared to encourage or excuse police or military violence. The Minister of Police openly encouraged the destruction of the homes and businesses of anyone caught selling alcohol – although he euphemistically referred to this as the preventative destruction of “infrastructure” used to brew or sell alcohol illegally. The Minister of Defence warned the population against “provoking” military violence.

Anecdotal evidence suggests that predominantly black residential areas were policed more heavily than white residential areas. As is the case in ordinary times in South Africa, black people bore the highest risk of police brutality and arbitrary arrest, if only because they were more heavily policed.

### ***Access to justice***

In this section we consider the measures taken to ensure access to justice and provide accountability and redress for victims.<sup>38</sup> We also consider the impact on women's access to justice.<sup>39</sup>

South Africa has an extensive institutional framework dedicated to the prevention, detection and the provision of redress for hate speech and discrimination. Most of these institutions were forced to close, or run at a skeleton staff, during the lockdown. The South African Human Rights Commission was a notable exception, but initially did little to devise or implement a strategy for the protection of human rights during the lockdown. After some criticism of its apparent dormancy, the Commission did institute a system of community-based monitors charged with reporting human rights violations. It is unclear, however, how effective this system has been.

Under Alert level 3, most if not all of the institutional apparatus for the preventing and detecting hate speech and discrimination has once again begun to function.

In theory, these services have remained available and accessible to women during the lockdown period. However, the practical barriers of access to these services created by the pandemic or the lockdown remain largely unexplored at this time.

### ***Freedom of expression and assembly***

Here, we consider how restrictions on public or private meetings have affected freedom of expression and assembly.<sup>40</sup>

Under the regulations and directions issued in terms of the Disaster Management Act (2002), related to “Alert levels” 5, 4 and 3, all gatherings have been prohibited except for the purposes of attending a funeral with a limit of up to 50 people, going to an authorised workplace or when

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<sup>38</sup> We found it difficult to address the question on the level of generality at which it is asked: What measures have been taken to ensure access to justice, and provide accountability and redress for victims of hate-speech, racism, racial discrimination, xenophobia, and related intolerance during the pandemic?

<sup>39</sup> In response to: What has been the impact of this situation on women's access to justice? Are courts open and providing protection and decisions in cases of domestic violence, and are protection orders accessible?

<sup>40</sup> Here the question asked was: In which way have restrictions for public or private meetings impacted on the freedom of expression and assembly? Have persons taking part in peaceful protest been fined, detained, or prosecuted for breaking national restrictions imposed for public or private meetings?

obtaining authorised goods and services. Under these regulations, enforcing officers are empowered to order that gathering persons disperse and in the event that those gathered refuse to, then law enforcement are further empowered to arrest and detain people for contravention of the regulations. Persons found to have acted as conveners of gatherings or anyone found to hinder, interfere or obstruct “an enforcement officer in the exercise of his or her powers, or the performance of his or her duties” in terms of the regulations may be liable to a fine or imprisonment “not exceeding six months or both such fine and imprisonment”.

Since the commencement of the nationwide national lockdown, some of the first protests witnessed were around issues of food insecurity largely due to the sudden loss of income experienced by poor and working-class communities, many of whom rely on informal and precarious work. Other reasons behind the protests around food have related to the non-delivery of food parcels with allegations that they are being distributed along lines of political party affiliations. Examples of these protests include a protest in Mitchells Plain, Cape Town in April 2020, a protest in Booyens, Johannesburg in April 2020, and a protest in Chatsworth, Durban in May 2020.

Many of these protests around food insecurity have been disruptive and have sometimes spilled over into violence. Peaceful protests have also been held in solidarity with the #BlackLivesMatter protests in the United States. Small demonstrations were held in Cape Town, Pretoria and Johannesburg during which demonstrators practiced physical distancing and wore face masks. The Minister of Police Bheki Cele has reported that approximately 230,000 people have been arrested for contravention of the lockdown regulations and directions, however, it is unclear what proportion of those arrests have been for gatherings that are related to protest activity.

### ***Public or parliamentary investigations<sup>41</sup>***

There are no parliamentary investigations currently under way on how public authorities are responding to the spread of COVID-19. South Africa’s lockdown measures are promulgated under the Disaster Management Act, and not under the State of Emergency clause, found in section 37 of the Constitution. By declaring a State of Disaster, the Executive is given excessive leeway to exercise its powers in exceptional circumstances without parliamentary approval whereas in States of Emergency, Parliament – not the Executive – has the final decision over the emergency regime 21 days after the declaration of an emergency. The pandemic has resulted in a high concentration of power for the Executive without being bounded to mechanisms of Parliamentary oversight and other restraints for emergencies outlined in the Constitution. This is because a State of Disaster affords the government the best of both worlds: “all of the powers of a state of emergency, without any of the parliamentary oversight”, explains Xander Ehler in his Daily Maverick op-ed. In addition, Ehler notes that extensions to the state of disaster can simply be achieved by the Minister of Cooperative Governance and Traditional Affairs publishing a notice in the Government Gazette.

Parliament is currently not active in supervising or facilitating the implementation of the government’s lockdown measures. In public statements made on the Parliamentary Monitoring Group website, the role of Parliament during this lockdown period has been

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<sup>41</sup> The question under consideration in this section is: Are there public or parliamentary investigations under way in relation to the response of public authorities to contain the spread of the pandemic?

described as “reduced” as a result of National Disaster decision-making processes solely headed by the Executive. The legislature continues to issue statements supporting the government’s COVID-19 interventions despite ongoing submissions and complaints about “the economic impact, heavy-handed approach of law enforcement authorities, price gouging, job losses, state of the health system, privacy concerns and the flouting of regulations.” In addition, Parliament has rejected a call by the Democratic Alliance to set up an ad hoc oversight committee related to mitigating the spread and impact of COVID-19. Instead, the public are encouraged to utilise existing and online channels of communication (submission of letters via email) to contact parliamentary committees and Members of Parliament about government actions in response to the pandemic as well as any personal challenges experienced, with feedback and advice on what measures should be taken to assist. While the role of Parliament should be vital at a time where extreme decisions about public safety and the country’s economy are being made during lockdown, Parliament has made it clear that its committees do not intend to interfere with the Executive measures taken in these extraordinary circumstances.

There are however investigations into allegations of corruption around the use of public funds meant for water and sanitation provision to mitigate the spread of the pandemic. On 26 May 2020, the Standing Committee on Public Accounts (SCOPA) had a hearing on the Department of Water and Sanitation (DWS) investigations on irregular expenditure in the Department and Water Boards. In one of their responses to the allegations, the DWS noted its distribution of “numerous water tanks to vulnerable communities in response to the COVID-19 pandemic”, which was done in consultation with CoGTA, Municipal Infrastructure Support Agent (MISA) and affected municipalities. The investigation into unauthorised and irregular expenditure by the DWS continues, and SCOPA intends to follow the case as it unfolds.

A parliamentary discussion about the role of local government in implementing the COVID-19 disaster management directives has taken place. It is largely focused on challenges around supporting households through the provision of services in light of the pandemic’s devastating economic impact. On 28 April 2020, the South African Local Government Association (SALGA) briefed Committee members on the economic impact of COVID-19 and the concerns and challenges municipalities face in terms of revenue collection due to increased job losses and reduced household incomes. SALGA referred to its efforts to ensure continued provision of electricity and water to households as essential services, despite residents not keeping up with bill payments. SALGA’s presentation to the Committee drew attention to “the possibility that these services could be discontinued post COVID-19 due to the financial situation of the country”, and that national and provincial government should shift their focus towards long-term and sustainable essential service solutions.

### ***Measures taken to address allegations***

In this section we consider a court case initiated to hold the police and military accountable.<sup>42</sup>

In *Khosa v Minister of Defence*, the Pretoria High Court found that the legal framework for holding the police and the military accountable for their conduct during the military deployment

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<sup>42</sup> The question posed was: What measures have been taken by public and judicial authorities to address such allegations and to establish accountability, if applicable? Have any disciplinary, public inquiries or court cases been initiated, including against managers of the institutions concerned?



in support of the lockdown was insufficient. The court made several orders requiring the revision of the rules and codes of conduct applicable to the police and the military. It ordered independent investigations of the death of Collins Khosa, whose family brought the case. The documents produced in the course of that investigation highlighted the level of impunity with which the military acted in that incident, and the complicity of the civilian police force in that conduct.

On the information currently available, it appears that Collins Khosa was beaten by two soldiers who had found alcohol in his front yard. He later died of blunt force trauma to the head sustained during the assault. The municipal police on the scene stood by and watched the assault take place, but did nothing to intervene. The national police force, and the Independent Police Investigative Directorate likewise failed to adequately investigate the incident, until ordered to by a court.

### ***Legal challenges to lockdown regulations***<sup>43</sup>

The judiciary and other independent investigatory and accountability bodies have been largely supportive of the lockdown regulations themselves and have tended to accord the state a margin of appreciation in the formulation and implementation of those measures.

Many legal challenges to the lockdown regulations have been dismissed. However, in early June, in the Pretoria High Court, a general challenge to the Alert level 3 and 4 lockdown regulations, which impugn those regulations as having no rational basis, was successful. That decision, De Beer and Others v Minister of Cooperative Governance and Traditional Affairs, has been widely criticised for its misapplication of the rationality test and its failure to justify the breadth of the order made. It will likely be overturned on appeal.

## **5. Conclusion**

This submission has responded in detail to the questions posed by the UNSR on the right to adequate housing and to a selection of common questions that are pertinent to SERI's work.

On 15 March 2020, national government declared a state of disaster in terms of the Disaster Management Act, 2002, in order to enable an integrated and coordinated disaster management mechanism focused on preventing and reducing the outbreak of COVID-19.

Section 27 of the Act permits the Minister of CoGTA to make regulations necessary to control, among other things, the movement of people and goods across the country. The Minister acted in terms of section 27 to institute a national lockdown, effective from midnight on 26 March 2020. In terms of regulations issued under section 27 of the Act, the Minister confined the population to their homes, and prohibited the sale of all goods, with the exception of all goods deemed to be "essential" and all persons deemed to be involved with the provision of an essential service.

At their strictest, the regulations prohibited most forms of economic activity and almost all forms of social activity. After 5 weeks of strict enforcement, these restrictions were replaced

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<sup>43</sup> In response to: Could you kindly share information on emergency regulations and COVID-19 response measures that may have been reviewed or suspended by national or constitutional courts in your country?

with a five-level alert system, each with its own set of regulations under the Disaster Management Act.

Whether the measures were proportionate in the circumstances entails a value judgement. Reasonable people may differ about whether the suspension of all economic activity was a proportionate response to the virus. South Africa's response was certainly very risk averse. Overall, the response was likely proportionate given the unique features of the South African population, including the weakness of the public health system, and the high number of immuno-compromised individuals in the population. There were individual measures taken that were perhaps beyond the bounds of rational justification, including the absolute bans on alcohol consumption and public exercise.

The regulations introduced were often vague and internally inconsistent. Multiple amendments were necessary to iron out irrational distinctions. Whether the measures had a "discriminatory" impact entails a value judgement. In South African law, discrimination may be fair or unfair. Fair discrimination is legally justified. It is not clear from the question whether the intent is to get at unfair discrimination, or mere differentiation, or something in between. Nor is it clear whether the intent is to identify laws or other measures that discriminate on their face, or merely have a discriminatory impact.

The adverse impact of the measures varied widely across the population. Fundamentally, the regulation requiring that everyone stay at home meant that South Africa's high population of homeless people was unable to obey the central directive of the lockdown. Many homeless people were moved to temporary shelters, but most were left to fend for themselves, subject, occasionally, to sporadic acts of police and military brutality.

Similarly, those whose livelihoods depended on catering, retail, entertainment, market trading, and a whole range of informal activities, such as waste-picking, were denied an income for the duration of the lockdown. Generally speaking, only those in formal employment were given any kind of unemployment insurance, although a benefit scheme providing a temporary basic income of R300 per month was introduced. The order to stay at home was also, at least anecdotally, associated with an increase in domestic violence.

Despite a national moratorium on evictions in the midst of a public health crisis, municipalities have continued to evict people and demolish their homes, unreprimanded by national or provincial government. In response to these violations, social justice organisations, including SERI, have undertaken concerted policy, media and community advocacy, including submissions calling for example for the moratorium on evictions to include a directive stipulating that no structure which has been or is being constructed for the purposes of residential occupation on any land or in any building may be demolished without a court order.

No national prohibitions have been declared in respect of utility disconnections. However, in an effort to mitigate the impact of COVID-19, some municipalities have undertaken not to disconnect water or electricity during the lockdown period. There is however widespread evidence of disconnections as a means of constructive eviction of tenants.

Emergency water provision, while essential, will impact negatively on long term sustainable services delivery, including reducing two thirds of the budget for maintenance and

refurbishment of wastewater treatment plants and bulk infrastructure, which is potentially catastrophic to public health and the environment, and will have severe financial implications.

The national Department of Human Settlements has adopted a “de-densification” strategy. Civil society organisations have noted that de-densification without informed consent constitutes eviction and undermines livelihoods and social networks already severely impacted by the COVID-19 lockdown. People living in informal settlements need to rely on their social networks now more than ever.

We hope that SERI’s input contributes to the body of knowledge generated through this call and provides the UNSR with material to draw upon in an analysis of the medium and long-term interventions needed to protect the right to adequate housing, both during and after the pandemic.