

ACCESS TO BASIC SERVICES IN INSECURE ENVIRONMENTS:

HUMAN RIGHTS, DIGNITY AND FINANCIAL SUSTAINABILITY

KEY CHALLENGES, GAPS AND OPPORTUNITIES FROM POLICIES AND PRACTICES IN THREE LOCAL COMMUNITIES

Policy Brief
May 2018



ABOUT THE ABS PROJECT

In order to improve accountability and to ensure that communities' democratic rights go beyond a simple vote towards active political participation and engagement, efforts need to be made to capacitate and enable citizens to do so. In 2016-2018, Afesis-Corplan, the Built Environment Support Group (BESG), the Heinrich Böll Foundation (HBF) Southern Africa Office, Isandla Institute and PlanAct have jointly implemented a project entitled "Accounting for basic services: Tackling the inadequate use of resources by municipalities and building a rights-based approach to service delivery" – referred to as the ABS Project. The ABS Project contributes to these efforts by assisting in improving the understanding of the complex framework that finances local government in the country. The project has been supported by the EU Delegation to South Africa.

The ABS Project aims to strengthen community engagement with local government to ensure equitable, just and effective use of municipal funds. While doing so, it hopes to expand the use of budget analysis and social accountability tools as key approaches to engaging communities, fostering responsive governance and strengthening accountability. By engaging in their local municipal affairs, communities and their organisations can develop an understanding of where and on what money is being spent, and to evaluate if government's priorities adequately address their needs. By doing so communities are better able to voice their concerns and needs, in order to keep government accountable.

Planned outcomes of the project include: the support of 6 rural and urban communities in strengthening political voice; holding their municipalities to account for effective and equitable spending of their finances; and, crystallising lessons for policy and practice. The communities are: KwaZenzele (Lesedi LM), Masakhane (Emalahleni LM), Chris Hani (Buffalo City Metropolitan Municipality), Glenmore (Ngqushwa LM), Mpolweni (Umgungudlovu DM) and Kwa-Nxamalala (Msunduzi LM).

In furtherance of these outcomes, the ABS Project has developed a number of policy briefs, focusing on key issues that have been identified during the course of the project. The purpose of these briefs is to highlight the issue identified (e.g. inadequate access to basic services), outline the policy and institutional context (including the legal framework, municipal policies, intergovernmental relations, roles and responsibilities), identify challenges, gaps and opportunities, and make recommendations for policy and practice/uptake of policy. Ultimately, through the policy briefs, the ABS Project seeks to raise the profile of issues identified in the project communities and connect these into broader policy debates, with the intention to develop clear recommendations towards improving local democratic policies and practices.

ABOUT THIS POLICY BRIEF

While the issues identified and the experiences of the communities with the municipalities differ significantly across the ABS Project, some common themes can be identified. One of these themes is that poor communities are not very well informed about their rights, nor how the Council is ensuring that basic rights to water and sanitation are addressed. Furthermore, the fact that the equitable share is an unconditional allocation has complicated communities' efforts to determine whether their Council is using the funds efficiently and in the interest of poor households. This policy brief focuses on the realities of free basic services and indigency, and draws on examples from three municipalities (Lesedi LM, Emalahleni LM and uMshwathi LM) where the ABS Project has been implemented.



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ACRONYMS

ABS	Accounting for Basic Services Project
BESG	Built Environment Support Group
CoGTA	Cooperative Governance and Traditional Affairs (the ministry which includes the Department of Cooperative Governance)
DM	district municipality
DPME	Department of Performance Monitoring and Evaluation
ES	equitable share (national)
FBS	free basic services
FFC	Fiscal and Financial Commission
GGLN	Good Governance Learning Network
IGR	intergovernmental relations
IDP	Integrated Development Plan
LM	local municipality
LGES	Local Government Equitable Share
LGFF	Local Government Fiscal Framework
MTREF	Medium Term Revenue and Expenditure Framework
MTSF	Medium Term Strategic Framework
NDoHS	National Department of Human Settlements
RDP	Reconstruction and Development Programme
SPLUMA	Spatial Planning and Land Use Management Act
SACN	South African Cities Network
SALGA	South African Local Government Association
SERI	Socio-Economic Rights Institute
SAHRC	South African Human Rights Commission
UISP	Upgrading Informal Settlements Programme



1. INTRODUCTION

South Africa's housing development policy stems from section 26 of the Constitution of the Republic of South Africa. The Constitution also highlights the right of all citizens to have access to basic levels of services. This principle is underpinned by the National Indigent Policy, which says that municipalities must provide free basic services (FBS) to indigent people in a sustainable manner.¹ The Constitution has, as its primary objective, the protection and the restoration of human dignity – it means simply that human beings must be treated as human beings.

Post 1994, the South African government had the challenge of realising the right to adequate housing as well as addressing the devastatingly poor living conditions related to basic services delivery (water, sanitation, electricity). Rapid urbanisation has contributed to the growth of informal housing on a large scale. The accelerated migration of people from mainly rural areas into urban areas has caused informal settlements to grow beyond the coping capacity of municipal infrastructure, which has resulted in the deterioration of living conditions and the surrounding environment.²

Residents that live in these informal settlements exist in a permanent state of legal and social insecurity, as they live on land without the consent of the owners, are subject to threats of eviction and many lack access to basic municipal services such as safe water, sanitation, solid waste collection and disposal, stormwater drainage, roads and public transport, electricity, street lighting and public spaces. This insecurity reduces the incentive for residents to invest in the area, and exacerbates social stress and exclusion.

Although there had been a decrease in the urban population living in informal settlements from 17 percent in 2002 to 11 percent in 2014, the percentage of households living in informal dwellings had barely decreased – from 13.6 to 13.1 percent during the same period.³ Although more South Africans are living in formal housing now than ever before, informal settlements are not getting any smaller. Migration patterns and the burgeoning number of backyard dwellings are major contributors to the current situation.

The release of the 2011 population census data showed that the number of households living in backyard dwellings increased by 253 400 to 713 000 during the previous decade (up 55%), while the number living in free-standing shacks decreased by 126 900, to 1 249 800.⁴ It is important to note that actual numbers of households residing in informal settlements is likely to be significantly higher than the recent estimates by Stats SA, as evidenced by the surveys of major cities themselves which often indicate that they can be up to 40% more than stated in the official figures.⁵ It can therefore be argued that the actual number of households living in informal settlements in South Africa is probably substantially more than the official Stats SA figures, and that there has probably not been a decline in numbers of households living in informal settlements in recent years.⁶

¹ National Framework for Municipal Indigent Policies (2005)

² Housing Studies Volume 31, 2016 - Issue 4

³ StatsSA General Household Survey (2002-2014) and the Census (2006-2011)

⁴ StatsSA General Household Survey (2002-2014) and the Census (2006-2011)

⁵ Mark Misselhorn, Position paper on Informal Settlements Upgrading, part of a strategy for the second economy for the office of the South African Presidency, April 2008, page 15.

⁶ Mark Misselhorn, Position paper on Informal Settlements Upgrading, part of a strategy for the second economy for the office of the South African Presidency, April 2008, page 15.



While it should be acknowledged that, given the present realities, informal housing should be promoted as a necessary component of the total housing delivery package, informal shelter is not ideal housing for anyone. Once all South Africans have access to at least basic services, then serious attention should be given to upgrading the quality of housing and infrastructure. Adequate sanitation (for example, the introduction of ventilated pit latrines) and potable water (for example, standpipes) are the most basic elements of an upgrading strategy. Street lighting, roads for emergency vehicles, effective policing and primary health care facilities are also essential.⁷

The National Department of Human Settlements (NDoHS) estimates that with the median individual housing subsidy of R160 000 and a backlog of approximately 2.3 million family households, it would cost the government a total of R368 billion to build each family a house on a serviced stand over a period of 16 years, without allowing for ongoing urbanisation, population increase, and fragmentation of extended family units for socio-economic reasons. This figure only reinforces the importance of ensuring that at the minimum, and while the right to adequate housing is incrementally realised, basic service provision and liveable, if not integrated, human settlements should be the focus.

This brief will review national policy and intent with regard to access to basic services in insecure environments. For the purpose of this brief, insecure environments are taken to mean informal settlements and not backyard dwellers, although the latter is in itself a significant and an even larger segment of the informal housing market than informal settlements. A different set of issues come into play for backyard dwellings (as it is essentially sub-letting) and therefore this brief limits itself to access to basic services in informal settlements.

The key questions are:

- How do municipalities deal with the challenges of service provision to informal settlements from a policy and budgetary perspective?
- When is upgrading informal settlements appropriate versus relocating residents and how is this budgeted and planned for?
- What is the role of provincial and national government in the challenges faced by municipalities and their communities?
- What about communities not getting any clarity on whether they are coming or going, constantly being told they will be relocated or houses will be built, as if they were a political football? What are the rights of the non-qualified?

This brief will review national policy and intent with regard to informal settlements upgrading (servicing) and housing provision, followed by how this plays out in practice, at the municipal level. The three municipalities in which free basic services (FBS) provision in informal settlements was the key issue, are Lesedi Local Municipality (LM), uMshwathi LM in uMgungundlovu District Municipality and Buffalo City.

The brief will thereby highlight key challenges and gaps between the intended FBS and informal settlement upgrading/housing policies and how they are actually implemented, drawing on some lessons from these three examples (as limited as they are). Finally, some recommendations are put forward for consideration by policymakers and practitioners about how the gap between the intended policies and practice can be bridged to ensure that informal settlements, at the very least, have access to the necessary free basic services on the road to realising the right to housing and integrated, liveable human settlements.



⁷ Phillip Harrison, *Africa Insight*, vol 22, no 1, 1992, The policies and politics of informal settlement in South Africa: A historical perspective, page 20.

2. POLICY AND INSTITUTIONAL FRAMEWORK FOR SERVICING AND UPGRADING INFORMAL SETTLEMENTS

The following makes up the South African policy, legislative framework and approach to the challenges of servicing, upgrading or relocating informal settlements; it is by no means comprehensive or exhaustive, but a snapshot of the key pieces of legislation and policies concerning informal settlement upgrading, service provision and relocation.

2.1 NATIONAL LEGAL AND POLICY FRAMEWORK

South Africa's housing development policy stems from section 26 of the Constitution of the Republic of South Africa. The Constitution also highlights the right of all citizens to have access to basic levels of services. This principle is underpinned by the National Indigent Policy, which says that municipalities must provide free basic services (FBS) to indigent people in a sustainable manner.

"The Constitution of the Republic of South Africa has as its primary objective the protection and the restoration of human dignity; it means simply that human beings must be treated as human beings. We have a duty ... to promote human dignity ... A failure to do this diminishes us all."⁸

THE NATIONAL HOUSING ACT AND CODE

*The National Housing Act*⁹ provides the enabling framework to give effect to section 26 of the Constitution. Section 1 of the National Housing Act provides the following:

- "(1) National, provincial and local spheres of government must –
- (a) Give priority to the poor in respect of housing development;
 - (b) Consult meaningfully with individuals and communities affected by housing development;
 - (c) Ensure that housing development
 - (i) Provides as wide a choice of housing and tenure as possible;
 - (ii) Is economically, socially and financially, affordable and sustainable; and
 - (iii) Is administered in a transparent, accountable, and equitable manner;
 - (d) Encourage and support individuals and communities...in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to transfer of skills and their empowerment;
 - (e) The Act further promotes 'education and consumer protection in respect of housing development; the establishment, development, and maintenance of socially and economically viable communities and of safe and healthy living conditions'".

The *National Housing Code of 2009* adopts a very broad and inclusive definition for informal settlements, but the main focus is on conventional informal settlements (often referred to as slums or squatter camps) which are located within or adjacent to urban areas and towns.

⁸ Beja et al v Premier of the Western Cape, 2010: 2.

⁹ No 107 of 1997.



POLICY SHIFT

In 2010, government moved towards accepting that the upgrading of informal settlements has to be a central part of handling the challenge, as opposed to ‘eradicating’ informal settlements. The Breaking New Ground policy, and the renaming of the ministry responsible to Human Settlements was early evidence of that shift.

It is clear from Outcome 8 of government’s outcomes-based approach adopted in 2010, that the main informal settlement upgrading priority is urban informal settlements with the goal of “upgrading 400,000 households in well located informal settlements with access to basic services and secure tenure. The key challenge is providing these households with adequate basic services and improved shelter”.¹⁰

In September 2014, government adopted the Medium Term Expenditure Framework 2014-2019 which includes the Outcome 8 target for government to assess the upgrading potential of 2 200 informal settlements, and upgrade at least 750 000 households in informal settlements to Phase 2 of the Informal Settlements Upgrading Programme by 2019.

UPGRADING INFORMAL SETTLEMENTS PROGRAMME (UISP)

The Upgrading of Informal Settlements Programme’s primary objective is to cater for the upgrading of informal settlements, in particular to facilitate the structured in-situ upgrading of informal settlements, which means upgrading that takes place on the site where the community currently resides. The UISP only provides for relocation and resettlement as a “last resort” in “exceptional circumstances”. The programme also emphasises the need for extensive and active community participation in the upgrading process and makes it clear that funding should specifically be made available to support community participation in the process.

According to the Housing Code, the UISP has three policy objectives, namely tenure security; facilitating the provision of affordable and sustainable basic services to those living in informal settlements; and empowerment through establishing participative processes and addressing the broader social needs of the community.

The grant attached to the UISP is intended to “assist municipalities in fast tracking the provision of security of tenure, basic municipal services, social and economic amenities, and the empowerment of residents in informal settlements to take control of housing development directly applicable to them”.

It is not completely clear in publicly available policy and budget documents how the UISP should be financed. Although there are specific provisions under the HSDG for the UISP and Emergency Assistance Programme, there is very little evidence that UISP is being given a realistic allocation within the Department of Human Settlements’ business plans in order to meet that target. A joint review of local government grants by the National Treasury, the national Department of Cooperative Governance and Traditional Affairs, the South African Local Government Association, the national Department of Planning, Monitoring and Evaluation, and the Financial and Fiscal Commission specifically highlights the difficulty of understanding how funding is allocated to informal settlement upgrading. The review finds “Informal settlements funding also sits awkwardly in both grants (being the HSDG and USDG) without clear policy guidelines over which grant is for which aspect of informal settlement upgrading – as evidenced by inputs from metros.”¹¹

¹⁰ Department of Human Settlements. 2010. Annexure A for Outcome 8 Delivery Agreements: Sustainable Human Settlements and Improved Quality of Household Life, 19 September. <http://www.poa.gov.za/Documents/Outcome%20Delivery%20Agreements/Outcome%208%20Human%20Settlement.pdf>

¹¹ See the Review of Local Government Infrastructure Grants – Draft Report http://mfma.treasury.gov.za/Media_Releases/ReviewOfLGInfrastructureGrants/Documents/Review%20of%20LG%20Infrastructure%20Grants%20-%20Recommendations%20Working%20Paper.pdf 16



The UISP is primarily funded by two conditional grants from the national Department of Human Settlements, while basic services that are provided as part of the upgrading process are funded by the Municipal Equitable Share. The UISP only targets basic services and secure tenure as a precursor to the construction of houses.

The UISP is funded differently in metropolitan and non-metropolitan municipalities. The Human Settlements Development Grant (HSDG) is the main source of funding for the UISP in non-metropolitan municipalities, whereas in metros, the HSDG only provides funding for top structures (houses). The Division of Revenue Act only divides the HSDG between the provinces while provincial budgets allocate funds to individual projects in specific metros and municipalities. One of the conditions for the HSDG stipulates that a “minimum of 30 percent of the HSDG must be allocated for the upgrading of informal settlements programme with targets segregated by province”.¹²

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT¹³

The Spatial Planning and Land Use Management Act (SPLUMA) aims to develop a new framework to govern planning permissions and approvals, sets parameters for new developments and provides for different lawful land uses in South Africa. SPLUMA is a framework law, which means that the law provides broad principles for a set of provincial laws that will regulate planning, but it also speaks quite clearly to municipalities in terms of the need for inclusive municipal plans, spatial plans and land use management systems and practices that cover all municipal areas, including informal settlements.

SPLUMA was developed to legislate for a single, integrated planning system for the entire country as a response to the challenges facing planning, and places greater responsibility on local government to effectively plan and implement strategies that will both address the historical apartheid spatial legacy and shape the future city. SPLUMA’s impact on transformation is dependent on the quality of mechanisms, process and systems established by the various spheres of government, and specifically the extent to which the development principles are translated into achievable, contextualised spatial outcomes in each area.

In essence, SPLUMA has been proposed as a possible tool to effect spatial transformation. According to the South African Cities Network¹⁴, SPLUMA could aid in spatial transformation, but quite a bit needs to be clarified and put in place for it to succeed. The Spatial Development Framework (SDF) is the lever which has the greatest potential as a planning tool to realise spatial transformation, as it designs a spatial future for the municipality. However, government as a whole will have to consider the capacity requirements placed on municipalities and ensure that adequate resources (human and financial) be made available if local government is to fulfil its planning role.



¹² National Treasury. 2016a. Division of Revenue Bill. http://www.treasury.gov.za/legislation/bills/2016/bills2016_bill022016.pdf

¹³ 16 of 2013.

¹⁴ SACN, SPLUMA as a tool for spatial transformation, 2015, Page 7 of 69.

2.2 MUNICIPAL POLICIES AND LEGISLATION

LOCAL GOVERNMENT WHITE PAPER (1998)

It is necessary, particularly for the analysis and recommendation sections which follow later, to remind ourselves about the essential purpose of local government and the way in which it was expected to work when the system was designed. The White Paper emphasised that developmental local government is one which is committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.

Local government "...must focus its efforts and resources on improving the quality of life of communities, especially those members and groups within communities that are most often marginalised or excluded, such as women and very poor people. Municipalities should develop strategies and mechanisms (including, but not limited to, participative planning) to continuously engage with citizens, business and community groups."

Municipalities require active participation by citizens at four levels, two of which are pertinent for the focus of this brief.¹⁵ First, as participants in the policy process, municipalities should ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation. Second, as partners in resource mobilisation, municipalities will be expected to enhance delivery within the constraints of available resources. Although becoming more efficient will be one way of achieving this, another is to mobilise off-budget resources (resources additional to those budgeted for) via partnerships with businesses and non-profit organisations.

MUNICIPAL SYSTEMS ACT

The Municipal Systems Act (Act No. 32 of 2000) defines basic services as those services "necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety of the environment". Free basic service is defined as the minimum amount of basic levels of services, provided on a day-to-day basis, sufficient to cover or cater for the basic needs of the poor households. Local government is responsible for the provision of water, electricity and sanitation services to households.

Section 73 of the Municipal Systems Act states that local municipalities should have a policy to provide free basic water and free basic electricity to people who cannot afford to pay for these services. The courts have held that section 73(1) (c) of the Municipal Systems Act requires a municipality to provide "the minimum level of basic services", which includes the provision of sanitation and toilet services.¹⁶ Municipalities must act reasonably, using the integrated development plan (IDP) and budget, to extend basic water, sanitation and electricity services to their inhabitants; this means that local government has an obligation to progressively make sure the poor, and especially the indigent, have improved access to adequate water, electricity and sanitation – much of this was covered in the ABS Project policy brief on Free Basis Services.¹⁷



¹⁵ The other two are as consumers and end-users and as participants in the policy process.

¹⁶ *Beja & Others v Premier of the Western Cape and others* 2011 (10) BCLR 1077 (WCC).

¹⁷ *The Realities of Free Basic Services and Indigency: A Matter of Human Rights, Dignity and Financial Sustainability: Key Challenges, Gaps and Opportunities from the Policies and Practices in Three Local Communities*, Policy Brief, ABS Project, 2018

3. THE REALITIES OF SERVICING AND UPGRADING INFORMAL SETTLEMENTS – THE POLICIES OF AND PRACTICAL EXPERIENCES IN KWAZENZELE (LESEDI), MPOLWENI (UMSHWATHI) AND BUFFALO CITY MUNICIPALITIES

The following sets out the policy and fiscal approach and practices of three municipalities to servicing and upgrading informal settlements where the ABS Project has been implemented.

The Buffalo City Metropolitan Municipality (BCMM) policy approach is a good example to illustrate (in the ideal scenario) how municipalities plan (or should plan) for informal settlement upgrading. As ever, significant challenges arise in the implementation and financing thereof. The BCMM example does not go into the application thereof and the experiences of those on the receiving end, rather that is done for the examples of KwaZenzele in Lesedi Local Municipality and Mpolweni in uMshwathi Local Municipality/uMgungundlovu District in KZN. Not much elaboration is provided on the policies of the latter two municipalities, but rather the challenges (and arising opportunities) with implementation and the experiences of residents living in those informal settlements are described.

3.1 BUFFALO CITY METROPOLITAN MUNICIPALITY (BCMM) POLICY APPROACH TO INSECURE ENVIRONMENTS

The BCMM defines an informal settlement as areas where groups of housing units have been constructed on land that the occupants have no legal claim to, or occupy illegally, and unplanned settlements and areas where housing is not in compliance with current planning and building regulations (unauthorised housing).¹⁸

BCMM purports to provide basic services and facilities to the informal settlement that contribute towards health and safety within the community and addresses human dignity. “The prioritisation of this infrastructure will be undertaken through the participatory planning process, but BCMM will make every effort to ensure that the following minimum levels of service are provided prior to looking at additional infrastructure:

- Priority level 1, which includes
 - a. Communal standpipes,
 - b. Communal ablutions, and
 - c. Priority stormwater drainage; and

- Priority level 2 which includes
 - a. Additional stormwater drainage, and footpaths,
 - b. Communal plug points,
 - c. Electricity per shack,
 - d. Basic access for emergency vehicles, and
 - e. Facilities for refuse removal.



¹⁸ Buffalo City Informal Settlement Study, 2010.

These services and facilities are to be funded through, amongst others, the Urban Settlement Development Grant (USDG) allocated to BCMM and the Upgrading of Informal Settlement Programme (UISP) managed by the Provincial Department of Human Settlements.”¹⁹

BCMM plans to designate informal settlements that have been classified for in-situ upgrading as Incremental Settlement Areas (ISAs) in order to give some form of security of tenure. This classification signals the start of the upgrading process where the municipality zones the land correctly, purchases the land if it is in private ownership, and provides the package of basic services to residents living in the informal settlements.

The Integrated Development Plan outlines a combination of relocation and in-situ upgrading to address these settlements. The Built Environment Performance Plan of 2013 introduces the concept of regularisation, where the municipality provides assistance in the form of basic services, access to emergency vehicles, tenure security and an address to informal settlements. The Land Management Policy (2007) of the Metro also sets out procedures to deal with evictions, and the electrification Council resolution 131 of 2012 calls for the electrification of informal settlements in Duncan Village, Mdantsane and elsewhere.

In order to implement the Upgrading of Informal Settlement Policy and Strategy approved by the municipal council in November 2015, the municipality aims to focus on the following four priority interventions:

1. Introduce Incremental Settlement Areas to put in place the legal base from which further upgrading development interventions can follow.
2. Implement a Locally Administered Land Tenure system so that households basic tenure rights are recognised and to recognise the citizenship of households, as well as to facilitate the administration of the upgrading process.
3. Implement planning and basic development so as to address households’ basic needs and their dignity as a first step towards longer term upgrading.
4. Implement a development support programme so that the broad developmental needs (e.g. education, health and safety, employment, etc.) can be met for people living in incremental settlement areas.

In relation to the upgrading options or path, the municipality considers three (or four) upgrading options depending on the local circumstances (i.e. stay/shift; 2-step; and move). In all of those options – at the start while government identifies and arranges alternative land and/or obtains the necessary environmental and town planning approvals – the municipality claims that they will ensure that all households have access to interim or emergency services, no matter into which upgrading path or option they fall.

The BCMM policy correctly observes that rigid standards and regulations in the context of in-situ upgrading often tend to have a range of adverse effects if not applied cautiously, because the standards are often too rigid in the context of *in-situ* upgrading. As *in-situ* upgrading is incremental, the gradual transition from informal to formal needs to be managed most cautiously.²⁰ One of the most important things to consider when looking at standards and regulations is to consider possible cost effective alternatives, in participation with the community. It is however important to note that financial affordability is usually not the main constraint to adopting flexible standards, but rather *institutional capacity and political will*.



¹⁹ Buffalo City Metropolitan Municipality Informal Settlement Upgrading Policy and Strategy, December 2014.

²⁰ BCMM policy, pages 32 and 33.

It is worth noting that while BCMM has an approved upgrading informal settlements policy and strategy and approved upgrading plans for 32 informal settlements, the municipality (as of April 2018) still has not included the provision of basic services as per the 32 upgrading plans into the municipality's IDP and budget. The reason for failure to implement approved upgrading plans is complex, but part of it likely relates to the lack of administrative "buy in" from certain sections within the municipality who are still focused on the development of RDP housing as part of the formal township establishment route and do not appreciate the importance of a more incremental approach, as outlined in the upgrading policy, strategy and plans. There is also no dedicated champion within the municipality to drive and coordinate upgrading of informal settlements. The position of an informal settlement manager still remains vacant in the municipality's organogram.

3.2 KWAZENZELE, LESEDI LOCAL MUNICIPALITY (PRACTICAL REALITIES AND EXPERIENCES OF COMMUNITIES)

According to the Lesedi IDP 2017/18²¹, of the over 29 000 dwellings in Lesedi, 1 875 are informal backyard dwellings and 2 020 are informal dwellings not in a backyard (shacks in informal settlements). Together these make up 12% of the total dwellings in Lesedi.

The KwaZenzele informal Settlement Phase II is an informal settlement located in Endicott, east of Johannesburg, in Lesedi Local Municipality. The settlement is located on municipal land adjacent to a railway line. The KwaZenzele community's challenges are mainly related to inadequate basic services such as water supply, sanitation, electricity and refuse collection. The community has 400 households served by only four communal taps – one tap for 100 people. The community is also characterised by poor environmental conditions due to inadequate waste collection. Existing communal ventilated improved (VIP) toilets provided by the municipality were vandalised and are in a state of disrepair, with solid waste not adequately managed. Many of the households do not have refuse bins.

Lesedi Local Municipality "strives to achieve the national target of eradicating the informal settlements by providing houses to poor communities. Lesedi work very closely with the Gauteng Department of Human Settlements by providing the land and all necessary infrastructures to ensure successful housing delivery. The housing backlog is currently estimated at 14 189 and this information is based on the number of people registered in the demand data-base".²² The IDP indicates that over the years, the Lesedi LM has managed to deliver over 11 000 houses and formalised 943 informal stands in the area. The municipality has been able to address about 60% of housing delivery backlogs, however due to continuous migration problems into the area, the housing backlog remains high.

The IDP argues that "large amounts of infrastructure investment are required over the short term (5 to 10 years) to address the basic services backlog. Critical bulk water, sanitation and electricity infrastructure are needed for key economic developments (i.e. Logistic Hub). It is evident that municipal needs are significant and current budgets cannot meet these needs. The biggest concern is that our municipality currently lacks the necessary revenue streams to co-fund its obligations".²³



²¹ Lesedi Local Municipality, Integrated Development Plan, 2017/18.

²² Lesedi Local Municipality Integrated Development Plan 2017/18, page 41.

²³ Lesedi Local Municipality Integrated Development Plan 2017/18, page 38.

The municipality's stated challenges with providing water services include:

- Aging water supply infrastructure;
- Limited capital investment to address infrastructure upgrades;
- Vandalism of the water infrastructure;
- Theft of water supply components (i.e. cast iron valve boxes, copper valves and electrical supply cables to pump stations);
- Water wastage by members of the communities; and
- Excessive irrigation and communal taps left running in informal settlements.

The IDP indicates with regard to housing development, that for the KwaZenzele Phase II Housing Project, environmental impact assessment (EIA) studies have been commissioned in the area. Concept designs showing proposed land use for the project is completed and feasibility studies have been conducted. Geo-tech and EIA studies were conducted and they are both positive, while the layout plan was revised because of the proposed Eskom servitude. It was indicated that the contractor was expected to start with the construction of 300 units in February 2017.

THE REALITIES ON THE GROUND – ELECTIONEERING, BROKEN PROMISES AND LITTLE HOPE

There are approximately 2 000 residents who live in the Kwazenzele Informal Settlement and who have reportedly been waiting for more than 11 years to receive the houses and services the Lesedi Local Municipality promised them. "We first registered for houses with the municipality in 2007. Since then, the [Gauteng] Department of Housing has come around, as well as the municipality. They say the contractors will be on site in two weeks but nothing happens after that", says resident Jabu Madela.²⁴

According to Lesedi Municipality's spokesman in 2015, Arthur Thokoane, the residents' dissatisfaction goes back to 2008, which is when the then Gauteng Department of Housing promised to build the KwaZenzele Phase Two development houses.²⁵ He claimed that the communities' request to deal with the backlogs of the roads infrastructure is a difficult matter to deal with because the municipal infrastructure grant funding received from national government was cut, resulting in cash constraints in Lesedi.

The informal settlement also does not receive any municipal services, apart from communal taps, and community members allege that they have asked for communal bins and high mast street lights but they have had no response from the municipality. The residents share four taps and say they are often sick due to their living conditions. Residents at KwaZenzele rely on wood fires for energy.

In April 2015, then Gauteng MEC of Human Settlements, Jacob Mamabolo visited KwaZenzele and indicated to the community that "A contractor has been appointed to build houses for the residents of Kwazenzele, in Vischkuil", he said. Mamabolo visited the area to give feedback to the residents of the informal settlement after dialogue with the leadership of the community after the community complained of the slow pace of delivering houses, alleging that the Lesedi Local Municipality, the municipality under which they fall, has neglected the area. Mamabolo said "We made a commitment that we will be back in two weeks' time with answers to their problems and we came back with two contractors for housing and roads, and construction will start this week";



²⁴ News article, Kwazenzele residents want bulk services from Lesedi Local Municipality, 23 March 2018 <https://springsadvertiser.co.za/188001/kwazenzele-residents-tired-of-protesting-for-municipal-services/>

²⁵ Situation in Kwazenzele is calm, March 10, 2015, Springs Advertiser (online) <https://springsadvertiser.co.za/114501/situation-in-kwazenzele-is-calm/>

he added that the contractor will start with the demarcation of stands so the construction of houses, for those who qualify, can start. Mamabolo had a meeting with the Kwazenzele local leadership, during which he made a commitment to address their grievances. He also announced job creation opportunities in the area, and warned the community against corruption.²⁶ Nothing happened subsequently.

In January 2017, a violent protest erupted in KwaZenzele Informal Settlement Phase I. The riot started when Lesedi Municipality instructed a security company to remove five illegal shacks from an open piece of land across the road. Residents took to the streets for two weeks and blocked off the road with cement blocks and burning tyres to show their dissatisfaction with the Lesedi Municipality. Lesedi Municipality spokesman Arthur Thokoane said the shacks were erected illegally on open land planned for KwaZenzele Phase Two, saying “The erection of illegal structures is not only in contravention of municipal bylaws, but also hampers future developments which will benefit the entire community”.

Madela said municipal officials told them they would start building houses in the field opposite the area in 2016. “In 2016, during the local government election, representatives from the municipality came to sell us dreams. They brought office containers claiming they belonged to construction workers who would build us houses. Two years later the containers have been stripped by criminals.”

Molefe Mkhwebane, another community member, said money was spent on a reservoir to supply the new houses with water. “Almost two years later, the reservoir is still incomplete”, said Molefe; he said they were tired of burning tyres and destroying the little they had, saying: “We want the government to start taking us seriously. We want them to commit to a deadline”.

Gauteng Department of Human Settlements spokesman Keith Khoza said the department had planned to build 345 houses this year and next year, and more houses thereafter. “A developer has been identified and we’re in the process of finalising contractual matters... The work will commence after the contract has been signed”, said Khoza²⁷.

Understandably, for the residents, as Jabu Madela noted: “Twelve years is a long time – long enough to put a kid through school. For the people of KwaZenzele squatter camp at Endicott, the past years 12 years have felt like 120 years!”. Madela indicated that people started living in the area in 2006. “Ever since then, the local authorities have been saying they’ll come back to us in two weeks...Twelve years later we still have no houses, no lights, no roads or even water and sanitation...The leaders only come to us when it’s election time...After that, they disappear and never return.”

SOME HOPE, SOME RELIEF? PLANACT PROJECTS WITH THE COMMUNITY

In the beginning of the ABS project in 2016, Planact worked in partnership with community volunteers to conduct a baseline study on the community, shack numbering and focus groups to get a better understanding of the state of the community. The community drew on the data to input into the integrated development planning meetings.



²⁶ Online African Reporter, 7 April 2015, Peaceful Kwazenzele gets issues resolved <https://africanreporter.co.za/42588/peaceful-kwazenzele-gets-issues-resolved/>

²⁷ They Came to Sell us Dreams! by Sthembiso Lebuso, Wednesday, March 14, 2018 13:33 Daily SUN (Online) - <https://www.dailysun.co.za/News/National/they-came-to-sell-us-dreams-20180313>

Key findings from baseline study on the KwaZenzele Informal Settlement Phase II included that:

- There are 400 households in the settlement;
- There is an insufficient water supply for the community;
- There is a high rate of unemployment in the community, especially amongst young people;
- There are insufficient numbers of taps supplying water, putting a particular strain on women residents;
- There is a lack of electricity in the community; and
- There is improper sanitation in the community.

WATER PROVISION

In 2015, Planact, in partnership with the community, undertook a project to install five new taps, to bring the total number of taps in the community to nine. Planact engaged the ward committee and the ward councillor on the proposal, and Rand Water who assisted with technical support. Planact bought 600m of water piping and the water points were identified by the committee and the ward councillor. Two Planact representatives monitored the project closely. This intervention had positive effects on the community, especially women, by helping to reduce time that the women spend in long queues waiting for their turn to fetch water. Importantly, community members worked on the water installation project and were provided with daily allowances.

WASTE MANAGEMENT

In addition to the improved water provision, KwaZenzele Phase II secured waste bins through Planact, in partnership with the community. On the 1st of March 2016, Planact, together with the ward councillor and the community representatives, met with the Director of Waste Management of Lesedi Local Municipality. The municipality undertook to secure and deliver 400 waste bins in the settlement, and started with an initial 64 waste bins delivered to the community, and the balance was to follow. This project assisted in keeping the local settlement clean.²⁸

WHERE TO FROM HERE?

In terms of housing, after 12 years of failed promises, the residents have lost all hope. “If the municipality cannot build the houses, they must just say so. If it is a budget issue, they must provide proof of what they have done with the money over the years. We don’t want to protest anymore, we are tired of burning tyres. They must stop calling us to meetings just to lie to us,” says resident Molefe Mkhwebane. The land that was earmarked for the houses stands vacant.

The residents of KwaZenzele say that at this point, all they want is for the municipality to subdivide the land so they can build the houses themselves and provide bulk services. However, ward Councillor for Kwazenzele, Simon Myakeni says, “The issue of housing is a very serious issue and it has been addressed...The contractor has been appointed and we’re waiting for province to sign off on the project”.²⁹ From such a response, residents will most likely retort, ‘here we go again with the promises and waiting on province’, and who would blame them.



²⁸ PLANACT Annual Report, April 2014 – March 2015

²⁹ They Came to Sell us Dreams! by Sthembiso Lebuso, Wednesday, March 14, 2018 13:33
Daily SUN (Online) - <https://www.dailysun.co.za/News/National/they-came-to-sell-us-dreams-20180313>

3.3 MPOLWENI, UMSHWATHI (UMGUNGUNDLOVU)

Work being undertaken by the Built Environment Support Group (BESG), who is one of the project partners (as part of this ABS Project) for the Mpolweni community in uMshwathi, a predominantly rural municipality in the KwaZulu-Natal Midlands, noted that there is a strange set of statistics around government's efforts to address extreme poverty. There are over 17 million social grant recipients, but only 3.5 million households receive Free Basic Services through the Equitable Share Grant (ES).³⁰

There has been long-standing criticism that the equitable share allocation is given unconditionally by National Treasury. There are no controls on how it is utilised, and for many smaller local municipalities who do not have a rates base and rely on central funding, it is mostly directed into operational costs including annually increasing salaries. However, even when local municipalities commit to making Free Basic Services available to the poorest of the poor, human resource and operational issues can hamper effective service delivery.

Historically, water was supplied to Mpolweni by parastatal Umgeni Water on a flat rate of R50 per household. The responsibility for water provision was subsequently transferred to uMgungundlovu District Municipality (uMDM) as a water services authority. In 2011, when it emerged from two years of being under administration, the new leadership set about a comprehensive turn-around strategy. For the first time, it introduced billing for water. By 2012, many communities were resisting paying for water for which they had never been billed previously. By 2016, when the ABS project commenced, some households had consolidated accounts in excess of R20,000, but many complained that their meters were never read, or their meters had been broken or stolen by metal thieves.

In February 2017 BESG supported the CBO in conducting a baseline study involving 225 households, with the aim of assessing the level of awareness by the members of the Mpolweni community regarding indigent support and ascertain their level of indebtedness. Key findings were:

- 15% of the sample (35 households) have historical debt of between R350 and R25,000. The majority are pensioners and social grant recipients;
- Of the 35 households in water debt, only 3 had a monthly income over the indigent threshold. Only 17 households earned above the R3,000 monthly qualifying income limit for Free Basic Services;
- 69% of households with a metered water service stated that they pay for water on a monthly basis; and
- Only 8% of the sample was aware of the Indigent Support policy adopted by the uMDM. The source of information was either an NGO (78%) or the Ward Councillor (22%).

In its 2015/16-2017/18 Medium Term Revenue and Expenditure Forecast, uMDM budgeted R3m of a total expenditure of R576,9m – or 0.52% of its operating budget – for the provision of Free Basic Services. By contrast, it made a R37.9m provision for Doubtful Debt – more than 12 times the amount budgeted for Free Basic Services.



³⁰ Built Environment Support Group, Mpolweni community mobilises to access Free Basic Services, February 2018.

In its current 2017/18 financial year, uMDM allocated an amount of R59m for the provision of Free Basic Services; this was in spite of a failed plan to roll out R500,000 of Water Consumer Education in 2016/7. The 2017/8 Integrated Development Plan records various commitments running to several million Rands to update the indigent register, promote access to basic water services, and communicate water provision and drought awareness information at community level. As the close of the municipal finance year approaches, the CBO reported that uMDM had not disseminated any information to communities. As a consequence, the R59m provision for FBS will have been largely underspent.

The Water Services Authority within uMDM declined to engage with BESG on its plans to roll out information and application forms to qualifying households. In response, the Mpolweni CBO, with logistical support from BESG, embarked on a Mass Registration Drive to assist qualifying households in applying for indigent support in November 2017. A total of 343 people were assisted on the day of the drive. A total of 251 applications were submitted to uMDM for processing directly after the drive, while community volunteers assisted the balance of applicants with missing documents. The exercise was a true expression of citizen empowerment and a demonstration to the district that much can be achieved with a little will and human resource capacity.³¹

By June 2018, many applications were still awaiting processing. While the uMDM indigent policy links approval for Free Basic Services with a write-off of historical debt, this has not been applied to those who applications have been approved.



³¹ Built Environment Support Group, Mpolweni community mobilises to access Free Basic Services, February 2018.

4. KEY CHALLENGES, GAPS AND OPPORTUNITIES IN SERVICING AND DIGNIFYING INFORMAL SETTLEMENTS

The Constitution enshrines the rights of all people in the country to dignity, equality before the law, freedom and security, and commits government to take reasonable measures, within its available resources, to ensure that all South Africans have access to adequate housing, health care, education, food, water and social security. 24 years after attaining democracy and 22 years after the enactment of the Constitution, the reality in our cities, towns and rural areas is far from this ideal.

It should always be acknowledged that tremendous progress has been made in providing and extending basic services to the majority of South Africans over the last 24 years, and that local government has an enormous task in tackling poverty, inequality and unemployment head on (and not at arm's length as provinces and national government do). It is also true that for many municipalities, the task is that much more difficult as they have a high rate of indigency and very little revenue raising potential, thus are reliant on grant funding from the other spheres of government (national in particular) to deliver on its developmental mandate. In some cases, municipalities are simply unreasonably expected to deliver far too much with very limited capacity or financial resources.

It is also true that being the sphere of government closest to the people, and irrespective of which sphere or department is responsible, municipalities will always bear the brunt of communities' dissatisfaction with government as a whole, since it is the face of government to the people.

However, and notwithstanding the various protections afforded to poor communities by the Constitution and other legislation, as well as substantive case law, it is poor people (and those in informal settlements in particular) who continue to experience daily rights violations and suffer the effects of exclusion and non-delivery of FBS by local government, to which they are entitled in terms of the Constitution, and for which local government is directly funded.

4.1 FINANCIAL STATE OF LOCAL GOVERNMENT PUNISHING THE POOR

The financial state of local government is indicative of why the poor continue to suffer and why many municipalities deliberately withhold up to 90% of funding (LGES) intended for service provision to the poor, and instead use it to fund their operations. Recent reports by SALGA indicate that some 112 municipalities (out of 257) don't have the money to carry out service delivery plans for the current financial year due to unfunded municipal budgets.³²

Confirming this situation was a worrying report by the Auditor-General (AG) on the audit outcomes for local government for 2016-17, published on 23 May 2018.³³ Auditor-General Kimi Makwetu painted a dismal picture of the state of municipalities. Their level of non-compliance with proper financial controls is at its highest in five years. Municipalities are not paying their debts because they don't have the money to do so, owing Eskom and water boards billions. The AG indicated that 31% of municipalities conceded that they might not be able to continue operating.



³² SALGA, Rio Nolutshungu interview in response to wage negotiations, SALGA Facebook page, 17 May 2018.

³³ <http://ewn.co.za/2018/05/23/kimi-makwetu-paints-dismal-picture-of-state-of-municipalities>

While vacancies, a lack of skills and poor leadership were cited as reasons for the poor performance, the AG was of the view that many municipalities are in fact just showing a blatant disregard for financial controls and the advice of his office. He indicated that accountability continues to fail in local government, with glaring governance, leadership and oversight lapses at municipal level contributing immensely to undesirable audit results. There was a 75% increase in municipal irregular expenditure, from R16,2 billion in the previous year to R28,3 billion in the 2016/17 financial year, the year under review. Fruitless and wasteful expenditure amounted to R1.5 billion, a 71% increase from the previous year.

The AG stated that 45 municipalities regressed while only 16 improved, and that only 33 municipalities, or 13%, managed to produce quality financial statements and performance reports, as well as complied with all key legislation, thereby receiving a clean audit. "When we released the 2011/12 municipal audit outcomes in August 2013, we highlighted, among other things, a lack of decisive leadership to address the lack of accountability by ensuring consequences against those who flouted basic processes that hampered effective municipal governance. We reported weaknesses in internal control and the risks that needed attention in local government by providing root causes for audit findings and recommendations to remedy these underlying causes. It is now five years later, and we are still faced with the same accountability and governance challenges we had flagged throughout these years. There has been no significant positive change towards credible results; *instead, we are witnessing a reversal in audit outcomes.*"³⁴

In 2015, the South African Human Rights Commission's (SAHRC) investigative Report entitled 'Access to Housing, Local Governance and Service Delivery'³⁵ investigated challenges faced by local government that had a negative impact on delivering basic municipal services. The challenges identified included, among others, a lack of:

- a) Proper governance and budgeting, particularly in the implementation of and spending on projects;
- b) Capacity and skill (both in the sense of having the adequate knowledge as well as a high vacancy rate in municipalities);
- c) Transparency in hiring external contractors and in holding contractors accountable for the quality of services delivered;
- d) Understanding or implementation of a human rights-based approach to service delivery in respect of transparency and public participation;
- e) Monitoring and evaluation of projects implemented by local government; and
- f) Monitoring and evaluation of the utilisation of funds allocated to local government.

Even though these issues were identified within the context of access to water and sanitation, the same challenges exist in other service delivery areas, especially with regard to provision of adequate housing. Access to adequate housing is intrinsically linked to a number of other crosscutting rights, such as the right to public participation, equality, human dignity, and access to information.



³⁴ <https://citizen.co.za/news/south-africa/1935915/auditor-general-municipalities-are-mostly-going-backwards/>

³⁵ The South African Human Rights Commission Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery, 23 – 25 February 2015

Unless the challenges that clearly undermine service delivery are addressed, the SAHRC cautioned that it will be impossible to achieve the full realisation of the rights promised by the Constitution. The disconnection between the legal framework governing access to housing and general service delivery, and the lack of effective implementation of policies giving effect thereto, has led to the cycle of poverty and inequality, in addition to the reinforcement of marginalisation and exclusion of poor people.³⁶

Consequently, despite the gains made over the past 20 years to alleviate the burden inherited from apartheid, the housing and service delivery demands continues to intensify while the ability of the state, and local government in particular, appears to be regressing.

4.2 FREE BASIC SERVICES OR HOUSING?

One of the issues cited in the SAHRC report that had a negative impact on service delivery was “understanding or implementation of a human rights-based approach to service delivery”.

In the previous section, the following was stated directly from the Lesedi Local Municipality IDP:

“[It] strives to achieve the national target of eradicating the informal settlements by providing houses to poor communities. Lesedi work very closely with the Gauteng Department of Human Settlements by providing the land and all necessary infrastructures to ensure successful housing delivery. The municipality has been able to address about 60% of housing delivery backlogs, however due to continuous migration problems into the area, the housing backlog remains high”.

A number of problems are immediately obvious with this statement, which clearly informs the municipality’s approach to the challenges presented by its informal settlements. First, the statement that it is striving to ‘eradicate’ informal settlements by providing houses is hugely problematic, outdated (since it is no longer the policy approach as indicated in the UISP) and is indicative of its mind-set that almost views these settlements as a scourge. While formal housing is an end goal, in the meantime, the IDP or budget presents no clear plan for what it will do in the interim to ensure the dignity and service requirements of the informal settlements in its jurisdiction.

It is clear that the municipality, in fact, does not have a plan (and hasn’t for the last 10 years in respect of KwaZenzele) for working with communities and community organisations as required by legislation and the Constitutional imperatives. The municipality only sees its role as allocating land and then providing the necessary infrastructures to ensure successful housing delivery; it sees no role for itself in the interim, and in the case of Kwazenzele that has been some 11 years without dignity and a liveable human settlement, irrespective of the housing goal.

It took the initiative of Planact (an NGO), to improve water access and basic waste bins to keep the settlement clean and improve the living conditions through additional standpipes. There can be no argument about a lack of funds for such basic initiatives, when that municipality spends less than 20% of the funds allocated for basic services on poor or indigent households. The municipality has made little effort to work with communities to develop workable solutions to the service delivery needs of the communities.



³⁶ SAHRC report, page 46

The IDP laments the lack of funding, but the municipality's approach seemingly uses this as an excuse to sit on its hands and blame the province for its service failures, and does not appreciate its constitutional obligation to ensure living conditions and work with communities to find solutions to the challenges they face. Once clear plans are in place, to then seek the funding for it through partnerships or incrementally improve living conditions. As indicated in the Buffalo City upgrading policy and strategy, "financial affordability is usually not the main constraint to adopting flexible standards, but rather institutional capacity and political will".³⁷

Indeed, the Mpolweni example (and reblocking examples elsewhere) suggest that not a lot of resources are required where there is a little will and the willingness to utilise the considerable human resources present among the residents of informal settlements. For example, waste removal is a simple follow up service (to providing waste bins) that can be done employing locals from the settlement in question, at considerably less cost than would ordinarily be the case.

Likewise, the Mpolweni example illustrates that the Water Services Authority within uMDM was less than enthusiastic to engage with BESA about plans to roll out information and application forms to qualifying households. As concluded in the ABS Project Policy Brief on Free Basic Services³⁸, it firmly suggests that municipalities are deliberately reluctant to widen the net, as it were, ensuring that the number of beneficiaries remain as small as possible, thus leaving more ES funds for operational expenditure.

The fact that so few residents in informal settlements are aware of FBS and indigent support, and the fact that far less than 20% of the funds intended for the very poor actually reaches them (especially in Lesedi as indicated in the ABS Project Policy Brief on Free Basic Services), is indicative of a lack of will to make FBS accessible to those who need it.

Moreover, it is apparent that a shift has occurred in recent years from housing as a human process to an administrative one. Whereas previously, government worked with communities in the housing process, now the focus is almost exclusively on the product. Consequently, the disadvantaged, increasingly marginalised, have developed the characteristics of an underclass and a sense of the state becoming the enemy. This positioning is manifest in the large increase of service delivery protests, as illustrated in the Kwazenzele protests which centred on government lying to residents repeatedly about when and where their promised houses would be built, and pleas for services falling on deaf ears.

The harsh reality is that the majority of informal settlements have still not received significant development attention whether in the form of full upgrading, relocation to housing projects, or the provision of significant interim interventions to mitigate poor living conditions. In real terms, the residents in such settlements thus remain substantially outside of the new South African democratic experience because in many respects, they continue to receive limited tangible benefits from government programmes and policies. The causes for discontent are therefore not only about lack of housing and service provision, but also in respect of a strong perception by residents of informal settlements that the state does not care about their predicament and that they are somehow inferior and ineligible due to their 'informal' or 'shack' status.³⁹



³⁷ Buffalo City Metropolitan Municipality, Informal Settlement Upgrading Policy and Strategy, page 32.

³⁸ ABS Project Policy Brief #1, The Realities of Free Basic Services and The Indigent: A Matter of Human Rights, Dignity and Financial Sustainability, May 2018.

³⁹ SAHRC Investigative Hearing Report, page 100.

4.3 INFORMAL SETTLEMENTS ARE HERE TO STAY – BEST WE PLAN ACCORDINGLY

Land tenure security is one of the most essential aspects of the informal settlements upgrading programme, as it provides the social and economic security for informal settlement residents to occupy the land without being evicted; it also provides the impetus for residents to begin investing physically, socially and economically in the settlement, which is a fundamental aspect of incremental upgrading.

Tenure is also one of the most complicated issues to resolve in an incremental in-situ upgrading programme, as tenure rights in this context need to be flexible, as households move between informal and formal and do so at different paces. Various tenure options exist and the tenure options chosen in an upgrading should be suited to the local context.

The pre-occupation with full title as a primary building block, and perhaps the cornerstone of housing delivery and settlement upgrading, is highly problematic. It is critical that a distinction is made between the concepts of 'formal tenure' and that of 'security of tenure'. The latter can be achieved more efficiently in most circumstances by mechanisms other than full title. Tenure reform must allow people to choose the tenure system that is appropriate to their circumstances and should be consistent with the Constitution's commitment to basic human rights and equality. In order to deliver security of tenure, a rights-based approach should be adopted.

Indeed, the South African Human Rights Commission's (SAHRC) investigative Report⁴⁰ illustrated ambiguous approaches to the implementation of UISP, poor planning and the state continuing to view long established informal settlements as temporary and thus not providing requisite access to basic services. Communities are not provided with a detailed, integrated, or time-bound plan regarding the manner in which the informal settlements they reside in will be developed, or relocated should in-situ upgrading not be feasible for legal, geotechnical, financial or other reasons. Planning is done in a haphazard manner in a context where government views even those informal settlements that have existed for many years as temporary or transitory.

However, with the introduction of SPLUMA, a municipality is now required to have a land use scheme that covers all the land within the municipality, including informal settlements. This Act means that the municipality will have to play a role in regulating and offering land use management services in informal settlement areas, including zoning of informal settlements. In practice, there has been slow uptake of those provisions in SPLUMA, but it will have to be applied.

As argued by Harrison⁴¹, we need to accept that most informal settlements are here for at least the medium term and that what is required is a way of managing such settlements and working proactively with the poor who reside in them. This approach needs to include the provision of a range of interim development relief measures appropriate to the settlements in question. Full upgrading (i.e. the provision of conventional levels of service, full title and top-structures) might occur in time, but are unlikely to be the first line of intervention. There are no 'non-qualified' people when it comes to the rights to basic services, decent living conditions and human dignity.



⁴⁰ The South African Human Rights Commission Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery, 23 – 25 February 2015

⁴¹ Phillip Harrison, Africa Insight, vol 22, no 1, 1992, The policies and politics of informal settlement in South Africa: A historical perspective, page 20.

4.4 DEVELOPMENTAL LOCAL GOVERNMENT IS ONE THAT WORKS WITH COMMUNITIES, NOT ONLY FOR THEM

Section 1(d) of the National Housing Act obligates provincial and local government to “Encourage and support individuals and communities... in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of, the community”.

Provincial and local government have been implementing the UISP in a fragmented manner, reinforcing seemingly “top-down” approaches that reflect how the state believes people ought to be living, rather than allowing people to inform that decision-making process on the basis of their daily lived realities. The intergovernmental challenges and recommendations related to housing and infrastructure provision are dealt with in another ABS Project Policy Brief entitled ‘Strengthening accountability and responsiveness in municipalities – the role of IGR’.

Research done by Tissington in the Slovo Park case study⁴², highlights the serious gaps and deficits in official planning processes, and raises serious questions about the ability of even well-organised, cohesive and mobilised communities to participate in the upgrading of informal settlements. It notes that a top-down, consultant-driven approach managed by the provincial government – with little to no engagement between local communities and their elected representatives – is a recipe for disaster.

Such an approach highlights the following key issues:

- There is a lack of coordination and planning between provincial and local government around settlement upgrading;
- Temporary, insecure situations become permanent at settlements and residents are unable to consolidate their living situations and invest in improvements;
- Local government is failing to use resources, knowledge and expertise available within settlements, which are vital to upgrading processes such as enumeration, re-blocking etc.
- Development targets shift continually, with little or no explanation from the responsible authorities, and occur in a context of a general lack of communication from government;
- Transparency in processes and timelines is necessary, and this information must be made available to community leaders and members;
- Community expectations are shifting from a demand for housing to demands for basic services and tenure security, which aligns with the government’s agenda on incremental upgrading; and,
- Protest is increasingly likely when politicians and government officials make empty promises to communities year after year (as in KwaZenzele).

Although protest action does yield results, these are often short-lived and the dysfunctional relationship that currently exists between local authorities and the communities they represent is reinforced. Consequently, where gains are made, they do not always lead to the requisite institutional shifts fundamental to lasting and sustainable solutions.⁴³ This situation is perfectly illustrated in the KwaZenzele case, with popular promises of ‘construction will start in two weeks’ (seemingly as a strategy to silence protests), only for little to happen thereafter.



⁴² Kate Tissington, Socio-Economic Rights Institute (SERI), TOWARDS GREATER community participation in informal settlement upgrading: A case study from Slovo Park, Johannesburg, Putting participation at the heart of development// putting development at the heart of participation: A civil society perspective on local governance in South Africa, Good Governance Learning Network (GGLN) State of Local Government Report, 2012, page 57.

⁴³ SAHRC Report, page 76.

Despite the room for creative policy options available which allows for solutions suitable to a variety of contexts, government appears to be adopting a rigid approach to realising the rights to decent living conditions and incrementally inching towards formal housing. This approach, together with political pressure to speed up the delivery process, has resulted in reactive policy shifts that themselves are poorly planned, which in turn creates a vicious cycle that perpetuates the non-delivery of rights. Communities continue to feel excluded and frustrated by the failure of local government, compounded by perceptions of political bias and the loss of trust between local government representatives and the communities they represent.

While it is true that municipalities are reliant on provinces when it comes to housing provision, the same is not true for free basic services and ensuring that those who are indigent are covered by the FBS policy and are allocated funding. The fact that human settlements are not given basic services and provided with regular and accurate information about what they can expect is certainly a major failing of municipalities. Poor communities continue to feel deeply isolated and marginalised, while the nature of the delivery of basic services reinforces this alienation. The approach adopted by local government tends to focus on meeting quantity targets, rather than creating human settlements that take into account the context of communities who often have a much better understanding of their own needs and how service delivery ought to be handled within their spaces.⁴⁴

The report of the High Level Panel on the assessment of key legislation and the acceleration of fundamental change also acknowledged significant problems in the conceptualisation of the existing frameworks for public participation, as well as in the implementation of these legislative provisions, where they exist. "There is a need to rethink the role of active citizens as co-drivers of change. The existing framework for public participation often only enables the public to participate as invited guests in processes as opposed to partners and co-creators. Parliament should consider identifying and reviewing all legislation that includes a public participation component, such that where provision is made for the public to be consulted this consultation is meaningful and effective."⁴⁵

Much evidence exists to suggest that communities (anywhere) are not unreasonable; if there are limited funds they understand that, but it is being treated as passive recipients with as little information provided as possible, and flat out being lied to time and again that annoys and antagonises communities (as evidenced in KwaZenzele). Municipalities have to learn that honest discourse with communities will go a long way to establishing trust and a working relationship of finding local solutions to local problems. "We only have x amount, let's see what we can do together and let's start doing something", is an approach that will go a long way with residents of any settlement, not least informal ones. The desperate need for housing and security of tenure are some of the biggest challenges facing the country. It is municipalities' obligation to ensure that residents in insecure environments are able to access basic services and are treated with decency and dignity, which is the minimum that the Constitution promises.

A developmental local government, as the White Paper indicated, is not one with a tremendous amount of resources, but one which works with communities to find solutions to local problems and work with the resources at its disposal, relying on the collective energies of its inhabitants and partnerships to co-fund development projects. This challenge in fact presents a golden opportunity to become truly developmental in collaborating with communities to find workable, cost effective and innovative solutions to the mounting challenges.



⁴⁴ SAHRC report, page 73.

⁴⁵ Report of the High Level Panel on: The Assessment of Key Legislation and the Acceleration of Fundamental Change, page 66.

5. RECOMMENDATIONS

The following are the key set of recommendations for policymakers and practitioners to ensure that the constitutional rights to basic services and dignity of the poor are in fact much more progressively realised. The policy approaches and concomitant fiscal allocations would need revision.

It must be recognised that in-situ upgrading can be a highly politicised and contentious process. However, if access to basic services and dignified living conditions in informal settlements is to improve, then:

1. Municipalities, giving effect to the provisions of SPLUMA, must have a land use scheme that covers all the land within the municipality, including informal settlements. The municipality will have to play a role in regulating and offering land use management services in informal settlement areas, including the zoning of informal settlements. CoGTA (provincial CoGTAs in particular), as part of their monitoring and oversight responsibilities, should play a key role in ensuring that the provisions of SPLUMA are in fact part of all municipal policies and land use schemes, and monitor the implementation thereof – it is a legislative requirement.

2. Municipalities, working with, rather than waiting on, provincial governments, must create integrated and time-bound plans for the upgrading of all informal settlements, which should be developed after conducting meaningful consultations with affected communities and must be made publically available.

3. Information relating to the prioritisation of projects to upgrade informal settlements must be made publically available by the municipality via the ISP review process. In instances where the upgrading of informal settlements is not anticipated to take place within the next 12 months, municipalities must take interim measures to ensure that communities are provided with access to basic services, including adequate water and sanitation as well as refuse removal services.⁴⁶

4. Even in the case of relocations – while government identifies alternative land and/or obtains the necessary environmental and town planning approvals – the municipality must ensure that all households have access to interim or emergency services, no matter into which upgrading path or option they fall. A set of guidelines details how such initial basic services should be provided.

The housing issue and servicing insecure environments is a complex one where a balance is required between the need to address basic service needs and housing backlogs quickly and affordably, while at the same time, providing human settlements that will offer dignity and decent living opportunities for income generation and human development.

5. It is therefore critical that the utilisation of full title as the primary form of tenure be reviewed in the light of its incompatibility with the South African poor. It is critical that a distinction is made between the concepts of ‘formal tenure’ and that of ‘security of tenure’. The latter can be achieved more efficiently in most circumstances by mechanisms other than full title.



⁴⁶ SAHRC report, page 91

In sum, what is required is a shift in mind-set of how the state (and municipalities in particular) approach their housing and service delivery obligations and interpret the concept of 'security of tenure' in respect to policies, to ensure that rights violations are addressed. For example, the norms and standards usually not applicable to the provision of emergency and temporary accommodation should be incorporated, noting that temporary housing provided is becoming more permanent; informal settlements should be provided with basic services while time-bound plans to develop them into integrated and liveable human settlements are established, and people should be afforded the opportunity to build their own houses with the necessary assistance provided by the State.

Not only will these recommendations ensure that rights are protected, but it will also assist government in its planning processes and alleviate the current burden being experienced. Dignity, after all, is about respecting the way in which people live without forcing one specific model of living upon them, while at the same time ensuring that living conditions are constantly improved and all South Africans have access to the basics needed to live a dignified life.



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