

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

Summary 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 summary 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. It is accompanied by a more detailed policy brief, which elaborates on the information and analysis presented.



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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



THE REALITY OF INSECURE ENVIRONMENTS

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.

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). Residents that live in these informal settlements exist in a permanent state of legal and social insecurity, as they live on land without the necessary consent, 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.¹ 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 1 249 800.² 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. 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, contrary to what official estimates suggest, there has probably not been a decline in numbers of households living in informal settlements in recent years.³

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, it must be recognised that 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.⁴ 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.

¹ StatsSA web data – <http://www.statssa.gov.za/?p=1555> and Statistics South Africa, 2016, mid-year population estimates. Statistical release P0302. <http://www.statssa.gov.za/publications/P0302/P03022016.pdf>

² StatsSA General Household Survey (2002-2014) and the Census (2006-2011)

³ 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. 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.

⁴ Phillip Harrison, Africa Insight, vol 22, no 1, 1992, The policies and politics of informal settlement in South Africa: A historical perspective, page 19.



The National Department of Human Settlements (NDoHS) estimates that with the median individual housing subsidy (Rand value) 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.



POLICY AND INSTITUTIONAL CONTEXT

The National Housing Code of 2009 dealing with the Upgrading Informal Settlement Programme (UISP) adopts a very broad and inclusive definition for informal settlements. However, its main focus is on conventional informal settlements (often referred to as slums, squatter camps or shack settlements) which are typically located within or adjacent to urban areas and major towns. The nature and dynamics of such settlements vary considerably.

In 2010, government moved towards accepting that the upgrading of informal settlements has to be a central part of handling the problem. In September 2014, government adopted the Medium Term Expenditure Framework 2014-2019 which includes an Outcome 8 target 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.

It is not completely clear in publicly available policy and budget documents how the UISP should be financed. While under the HSDG there are specific provisions for the UISP and Emergency Assistance Programme⁵, there is anecdotal evidence of HSDG projects being counted as UISP in order to fulfil the Outcome 8 target; but 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 (SALGA), the national Department of Planning, Monitoring and Evaluation (DPME), and the Financial and Fiscal Commission (FFC) 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 [i.e. the Human Settlements Development Grant and the Urban Settlements Development Grant] without clear policy guidelines over which grant is for which aspect of informal settlement upgrading – as evidenced by inputs from metros."⁶

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 DoRA 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."⁷



⁵ see KZN DHS Circular 1/2013 Annexures C and E

⁶ 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

⁷ National Treasury. 2016a. Division of Revenue Bill. http://www.treasury.gov.za/legislation/bills/2016/bills2016_bill022016.pdf

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. While SPLUMA is a framework law, 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'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. 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.

KEY CHALLENGES, GAPS AND OPPORTUNITIES

MUNICIPAL PRACTICES

Examples from KwaZenzele informal settlement in Lesedi Local Municipality and Mpolweni in uMshwathi (uMgungundlovu), indicate that municipalities continue to view these communities as a scourge to be “eradicated”, and do not appreciate their constitutional obligation to bring services and dignity to all who reside within their jurisdiction. The KwaZulu-Natal Department of Human Settlements, along with many local municipalities, still subscribe to a “Slums Clearance Strategy” that is enshrined in the KZN Elimination and Prevention of Re-Emergence of Slums Act 2007, in spite of housing delivery failing to keep pace with increasing demand.

The Lesedi Local Municipality IDP indicates that “[it] strives to achieve the national target of eradicating informal settlements by providing houses to poor communities”. 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 collective institutional mindset. While formal housing is an end goal, in the meantime, the IDP or budget presents no clear plan for what it will do to ensure the dignity and service requirements of the informal settlements in its jurisdiction.

It is rather 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 simply does not appreciate its obligation to ensure decent living conditions, but only sees its role as allocating land and then providing the necessary infrastructures to ensure successful housing delivery. The municipality 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.

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. The municipality has made little effort to work with communities to develop workable and specific solutions to the service delivery needs of those communities. 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”.

Indeed, the Mpolweni example suggests that not a lot of resources are required where there is a little will and willingness to utilise the considerable human resources present among the residents of informal settlements. Likewise, the Mpolweni example illustrates that the Water Services Authority within uMgungundlovu was less than enthusiastic to engage with the Built Environment Support Group (BESG) about plans to roll out information and indigent application forms to qualifying households.

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.



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.⁸

IS THERE ANY HOPE FOR IMPROVEMENT? OR ARE LOCAL GOVERNMENTS CRUMBLING?

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.

While it must 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, it is also true that 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.

The financial state of local government is indicative of why the poor continue to suffer and why many municipalities deliberately withhold up to 80-90% of funding (LGES) intended for service provision to the poor, and instead use it to fund their operations. A deeply worrying and somewhat depressing report by the Auditor-General (AG) on the audit outcomes for local government for 2016-17, painted a dismal picture of the state of municipalities.⁹ Their level of non-compliance with proper financial controls is at its highest in five years. The AG indicated that 31% of municipalities conceded that they might not be able to continue operating.

The AG is 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. 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. "There has been no significant positive change towards credible results; *instead, we are witnessing a reversal in audit outcomes.*"¹⁰



⁸ The South African Human Rights Commission (SAHRC) Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery, 23 – 25 February 2015, page 100.

⁹ Auditor-General of South Africa, 2016/17 MFMA, Consolidated general report on the audit outcomes of Local Government

¹⁰ <https://citizen.co.za/news/south-africa/1935915/auditor-general-municipalities-are-mostly-going-backwards/>

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.

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. Various tenure options exist and should be based on 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. In order to deliver security of tenure, a rights based approach should be adopted.

Indeed, the South African Human Rights Commission’s (SAHRC) investigative Report ¹¹ 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 the 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 land-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, despite the obligations imposed by SPLUMA which requires a municipality to 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 zoning of informal settlements. In practice, there has been slow uptake of those provisions in SPLUMA, and greater enforcement thereof will have to be implemented. Developmental local government is one that works with communities, not 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. 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.



¹¹ The South African Human Rights Commission Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery, 23 – 25 February 2015.

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. Communities continue to feel excluded and frustrated by the failure of local government to consult and include them in the decision-making process.

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 on Local Government 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. In the face of serious fiscal constraints (which won't ease up anytime soon), one would think it forces local governments to become truly developmental in collaborating with communities to find workable, cost effective and innovative solutions to the mounting challenges.



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.

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. 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. This consultation and planning should be done using the provisions of SPLUMA which require the municipality to develop spatial plans that include informal settlements, as well as to determine land use of informal settlements (and the use of the progressive provisions in SPLUMA, which provide immediate relief to tenure security).

3. Information relating to the prioritisation of projects to upgrade informal settlements must be made publically available by the municipality annually 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.¹²

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.

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¹² SAHRC report, page 91.

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.

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 by mechanisms other than full title.

In sum, what is required is a shift in mindset 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. 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 taking into account circumstances that may prevent them from acquiring the basics needed to live a dignified life.

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