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**Sustainable Policy Series**

# **VACANT AND ABANDONED INNER CITY BUILDINGS:**

## **IMPLICATIONS FOR PARLIAMENTARY OVERSIGHT**

**1 November 2023**

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# **An intersectoral project of the Parliamentary Research Unit (PRU)**

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## 1. INTRODUCTION

In the early hours of 31 August 2023, a devastating fire erupted in an unlawfully occupied building in the neighbourhood of Marshalltown, in the Johannesburg inner-city. The fire is regarded as one of the most devastating in recent times and resulted in the deaths of more than 70 people, including 12 children. Estimations<sup>1</sup> at the time put the number of deaths at 77 people.<sup>2</sup> The Marshalltown fire reignited debates on the regeneration of urban spaces, affordable inner-city housing, and the creation of more inclusive urban spaces. It also underscored the vulnerability of those without access to affordable housing, as well as the critical role of metros in facilitating access to safe, affordable, and inclusive housing.

It is reported that this building housed about 200 households, including young children, and that it lacked basic amenities including running water, ablution facilities, and formally connected electricity. Two weeks following the August 2023 fire, on 15 September 2023, another unlawfully occupied building in Marshalltown caught fire – the flames once again bolstered by the perilous living conditions of makeshift partitions and lack of running water. While thankfully no lives were lost during the latter, it rendered several people destitute and homeless.

In the immediate aftermath of the devastating fire of 31 August, various media outlets (both local and international) printed articles of “hijacked” buildings across South Africa’s urban landscape in general, and Johannesburg in particular.

Much of the reporting, unfortunately, does not make any distinction between the various types of vacant buildings: i.e.

- a. buildings that are vacant and remain unoccupied,
- b. buildings that are vacant, and have been abandoned by lawful owners,
- c. buildings that are vacant, but not maintained by its lawful owners (thus not ‘abandoned’ in any real sense), and
- d. buildings that have been abandoned by its lawful owners and are occupied by individuals without any legal claim on the buildings.

Instead, it would appear that “hijacked buildings” has become the catchphrase to describe vacant and decayed inner-city buildings, without attempts to ascertain its actual status.

Moreover, “hijacked” is a phrase that should be carefully applied as it conveys a sense of criminal activity and may further stigmatise those who, in their desperation for shelter, may occupy spaces they do not legally have a claim to. While there are several reports of criminal syndicates operating

**The term “hijack” stigmatizes occupants of abandoned buildings and increases their vulnerability.**

<sup>1</sup> Malinga, C. (2023) *JacarandaFM*; Cotterill, J. (2023). *Financial Times*; Molapo, M. (2023) *EWN*

<sup>2</sup> The Usindiso Inquiry into the fire that was since established by October 2023 is set to determine the exact number of victims who succumbed in the fire.

from decayed inner-city buildings and charging occupational fees to which they are not entitled, this may not necessarily apply to the occupants paying a ‘rental’ fee to reside inside these buildings.

The two recent Marshalltown fires in unlawfully occupied buildings are reminiscent of the lethal Cape York building which caught fire in the Johannesburg inner-city during 2017 – resulting in the deaths of 7 people.<sup>3</sup> The same building was flagged four years previously, in 2013, when it was allegedly set alight and 4 people, including an infant, perished. As is the case of unlawfully occupied buildings, the flames were heightened by a lack of running water and improvised, highly flammable partitions.<sup>4</sup> While these fires were reported in the City of Johannesburg, the rest of the metros across the country are equally vulnerable to fires in unlawfully occupied inner-city buildings due to the highly flammable materials used to construct makeshift housing units and the absence of running water.

Several media outlets reported that following the deadly fire on 31 August 2023, the metros of Cape Town and Durban made attempts to bolster their responses to unlawfully occupied buildings that pose a high risk for fires. However, **there does not appear to be a coordinated and cohesive response to abandoned or unlawfully occupied inner-city buildings across the country**, including reducing the risks of fires and high-risk living arrangements of the urban poor.

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<sup>3</sup> Mbuza E. and Jordaan, N. (2027).

<sup>4</sup> Ibid.

## 1.1. Case study: Profile of City of Johannesburg

### Population dynamics



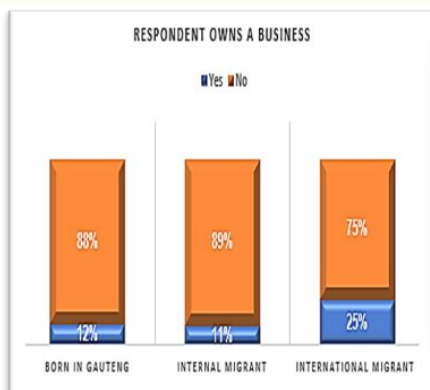
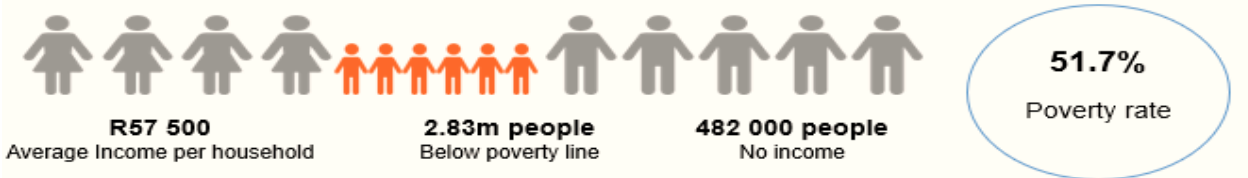
= 15,1 Million

Census 2022

The City of Johannesburg is among the top 100 cities in the world, ranked 72<sup>nd</sup> in the Brand Finance City Index.<sup>5</sup> The Cooperative Governance and Traditional Affairs Department (COGTA) describes the city as “South Africa’s largest metropolitan municipality in terms of population, size, and economy,” providing the highest number of jobs compared to other cities in the province.<sup>6</sup> COGTA adds that, historically, the city has been a “magnet for entrepreneurs and work seekers.”<sup>7</sup>

Migrants leave very harsh socio-economic conditions, political instability, and civil strife in their countries of origin to settle in the “city of gold”<sup>8</sup>. Most people migrate in search of work and better economic opportunities, access to services, political asylum, and refuge.<sup>9</sup>

The city faces its own challenges such as rapid urbanisation, poverty, increasing unemployment, low levels of economic growth, among others.<sup>10</sup> COGTA notes that “over the past couple of years, growth in crucial job creating industries such as manufacturing and mining has declined significantly in Johannesburg.”<sup>11</sup> Meanwhile, the city is also experiencing an increasing population growth with a low annual economic growth rate of 1.81 per cent every year.<sup>12</sup>



Approximately 55 per cent of the people who move to Johannesburg are from other parts of Gauteng. A further 36 per cent are born in South Africa but in another province, and 9 per cent are from another country.<sup>11</sup>



Source: Joburg Inner City Partnership (2021)

<sup>5</sup> Brand Finance (2023)

<sup>6</sup> COGTA (2020)

<sup>7</sup> Ibid

<sup>8</sup> Joburg Inner City Partnership (2021)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> COGTA (2020)

<sup>12</sup> Joburg Inner City Partnership (2021)

## 2. CONTEXTUAL OVERVIEW OF URBAN SPACES

### 2.1 Persistent Spatial Inequalities

South Africa's policy aspirations for urban development offer a vision of an urban future that spatially exhibits the nation's ideals of equity, prosperity, and sustainability.<sup>13</sup> However, despite progress made since 1994, these ideals have yet to be reached – at least for most poor urban dwellers.



Within urban spaces, economic and social inequities manifest through spatial imbalances: the urban poor residing distances from work opportunities and having to contend with long and expensive commutes, while neighbourhoods are distinct in terms of both race and class. Further, historically black neighbourhoods located in urban peripheries and inner-city areas are characterised by inadequate and informal housing and environments, while economies continue to be concentrated far from the poor majority. In response to these spatial imbalances, there has been consistent calls for spatial transformation of the South African urban landscape.<sup>14</sup>

The National Development Plan (NDP) Diagnostic Report argues that South African cities are far from achieving the Reconstruction and Development Programme (RDP) goals of *“breaking down apartheid geography through land reform, more compact cities, decent public transport and the development of industries and services that use local resources and/or meet local needs”*. Despite reforms to the country's planning system, colonial and Apartheid legacies still structure space across different scales.

South African cities remain largely resistant to changes in patterns inherited from Apartheid-era spatial planning. By 2022 only about 20.8% of residents in the country's main urban and economic hub, Johannesburg, were living within convenient walking distance to public transport. For Port Elizabeth, another of our urban centres, the figure was significantly lower, i.e., 5.6%.<sup>15</sup> These are mostly poor, black households eking a living on the urban fringes.

### 2.2 Increased Urbanisation

South African is following the global and continental trend of increased urbanisation, evidenced by rapid changes in the share of urban dwellers. By mid-2015, about 64.8% of the population were making their living in urban areas, which can be compared to the projected 69.8% by the year 2025.<sup>16</sup> In terms of sheer numbers, it means that during the ten-year period, the urban population would have increased from 35.8 million to 43.1 million. Estimations are that by 2030, 71% of the South African population will be living in cities.<sup>17</sup> According to the 2022 Census figures, 50% of the South African population of 62 million people currently live in the largest 17 municipalities across the

<sup>13</sup> South African Cities Network (2016).

<sup>14</sup> Ibid

<sup>15</sup> State of the World Cities Report (2022).

<sup>16</sup> State of the World Cities Report (2022).

<sup>17</sup> CAHF

country. This means that about 31 million people are concentrated in 17 municipalities. Of these , 7.7% reside in the City of Johannesburg and the City of Cape Town respectively, 6.8% reside in eThekweni, 6.6% in Ekurhuleni and 6.5% in the City of Tshwane.<sup>18</sup>

The Department of Human Settlements indicates that urbanisation is no longer an exclusive activity of metros but has since become a pressure point for secondary or intermediate cities and small town<sup>19</sup>. As such, relevant statistics reveals that the rate of urbanisation in intermediate cities and small towns has surpassed that of the major metros, and these settlements are increasingly under pressure to provide accommodation<sup>20</sup>.

Informal settlements offer new migrants and the urban poor an affordable point of access into towns and cities, although they are also associated with high levels of physical and social vulnerability. Moreover, vacant inner-city buildings that are neither maintained nor secured by its owners have increasingly become a ready source of affordable housing, including to foreign nationals.

The informal arrangements that govern habitation in vacant and abandoned inner-city buildings means that occupants do not have any real security of tenure – leaving them perpetually vulnerable to crime syndicates and the constant threat of evictions by either lawful owners or municipal authorities.

### **2.3. Inner-city decline**

Several of South Africa’s inner-cities have experienced a dramatic decline over the past few decades. For the City of Johannesburg, in particular, the demise of the inner city commenced with the so-called ‘white flight’ of middle- to upper-class households during the 1960s and 1970s to the northern suburbs, together with businesses, banks, law firms etc. Towards the end of Apartheid in the late 1980s, as racial segregation and regulations begun to disintegrate, black people who had been prohibited from occupying urban inner-city areas began to occupy inner-city buildings.<sup>21</sup> Unmanaged and unmaintained buildings (which became overcrowded) were a result of owners who simply abandoned buildings or appointed managing agents who reneged on payment of rates and services. Non-payment meant that basic services such as water, sanitation and refuse removal to such buildings were discontinued by urban authorities. The perception of inner cities in the period 1990s to 2000s is largely that of decay and disorder.<sup>22</sup>

### **2.4 Acute Housing Shortages**

Despite supplying more than 3 million state-subsidised homes to low-income households since 1994, the state subsidised housing has not kept pace with the urban population’s housing needs.

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<sup>18</sup> StatsSA (2023a)

<sup>19</sup> Department of Human Settlements (2023a).

<sup>20</sup> Ibid.

<sup>21</sup> SERI (2013)

<sup>22</sup> Ibid

Some good news from the 2022 Census results which indicate that the proportion of South African households living in informal housing halved between 1996 and 2022, from 16.2% to 8.1%. Commensurately, the proportion of urban households (across the 8 metros<sup>23</sup>) in informal dwellings declined from 18.1% to 10.2% during this period<sup>24</sup>.

Resulting from natural increase in population size, coupled with increased urban migration, the number households across the 8 metros grew from 6.1 million in 2011, to 7.97 million by 2022. However, despite this growth, the number of households living in slum conditions in the metros actually declined during the same period from 1.1 million to 695 thousand.

The eradication of informal settlements is often regarded as a 'moving target', but the newly released Census results suggest that the country may be on its way to reverse the growth in informal households located in the major urban centres.

The increase in urban households does place a greater demand on basic services such as housing, water and sanitation, and electricity, as well as urban transport and ensuring the urban economy is resilient and adaptive to rapid change.

Census 2022 recorded 55 719 homeless persons<sup>25</sup>. Estimations by sector stakeholders have consistently placed this number much higher, suggesting that about 200 000 people live without the basic human right to shelter.<sup>26</sup> While there may not be consensus on the exact number of homeless persons living in the country, statistics indicate only about 20.1% of the homeless population live in shelters, while the rest live roofless<sup>27</sup>. About 75% of those who are homeless live in urban areas. Gauteng is home to the highest proportion of the homeless population (45,6%), followed by the Western Cape (17,5%).

The City of Tshwane (18.1%) is host to the highest proportion of homeless people, followed by the City of Joburg (15.6%), and City of Cape Town (11.9%).

Homelessness is generally regarded as one of the foremost and most visible indicators of extreme poverty.<sup>28</sup>

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<sup>23</sup> These are: City of Johannesburg, Ekurhuleni, Tshwane, City of Cape Town, Nelson Mandela Bay, eThekweni, Mangaung, Buffalo City.

<sup>24</sup> StatsSA (2023b)

<sup>25</sup> StatsSA (2023). Census 2022 Results.

<sup>26</sup> The Borgen Project (undated).

<sup>27</sup> StatsSA (2023a). Census 2022 Results.

<sup>28</sup> The Borgen Project (undated)

Figure 1: Proportion of homeless population per province

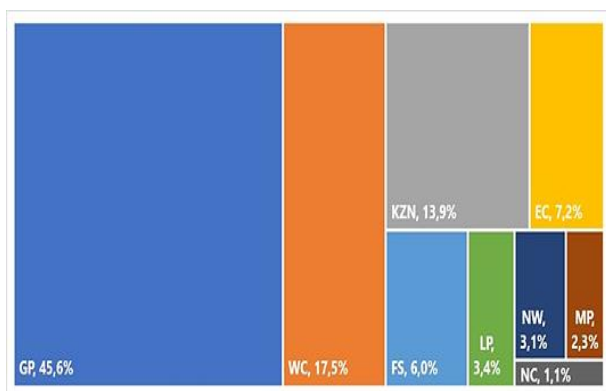
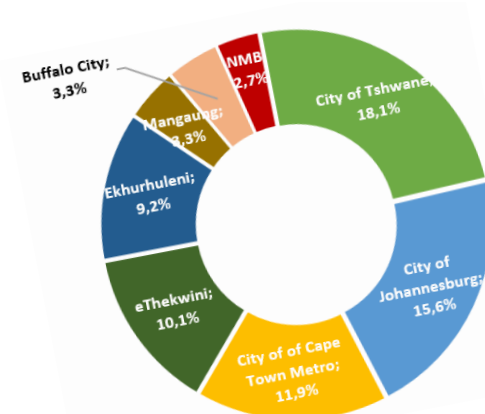


Figure 2: Proportion of homeless population per metro



## 2.5 Urban Regeneration

According to the Housing Development Agency (HDA), an entity of the national Department of Human Settlements, South Africa lacks a strong policy framework for urban regeneration.<sup>29</sup> While at a national level there are specific programmes guided by legislation, e.g., Urban Development Zones, the country does not offer any comprehensive programmes to guide approaches to urban regeneration.

It is reported that only a few provinces such as Gauteng and the Western Cape have strategies for urban regeneration in place, but these are not linked to delivery mechanisms.<sup>30</sup> The primary planning focus of urban regeneration is contained in the strategic plans of the major metros, but these vary significantly in terms of form, scope, and linkage to implementation mechanisms.<sup>31</sup> The core focus of these urban regeneration strategies is on economic growth. The emphasis is on encouraging sustained private investments and creating a functioning property market which will bring about higher property values (and associated municipal revenue). Strategies such as the enhancement of municipal infrastructure, and the regulation of informal trading feature prominently. As such, the physical upgrading of urban centres (including inner-city neighbourhoods) is generally accompanied by mechanisms to enhance urban management to ‘eradicate crime and grime’ (cleansing, by-law enforcement and slums clearance).<sup>32</sup>

A major shortcoming of urban regeneration strategies is the limited reference to the provision of housing to low- and middle-income households, and no acknowledgement of social housing as a potential driver or significant contribution to such initiatives. In instances where municipal urban regeneration strategies do consider the need for urban housing, these have reportedly not translated into sustained programmatic delivery, but instead constitute reliance on sporadic ad-hoc projects.<sup>33</sup>

<sup>29</sup> Housing Development Agency (2013)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

## 3. AN OVERSIGHT PERSPECTIVE OF HUMANITARIAN RESPONSES FOLLOWING A DISASTER

### 3.1 Overview

The humanitarian response following a disaster is a type of response that focuses on people. It is concerned with saving or preserving life, alleviating suffering, and maintaining human dignity during and after human-induced crises and disasters caused by natural hazards. It is an immediate response following a disaster.<sup>34,35</sup> Examples of humanitarian assistance following a disaster include the distribution of food and non-food items; cash; shelter; water, sanitation, and hygiene; child protection; assistance with livelihoods; education; mental health assistance; medical care; and assistance with gender-based violence.

One of the fundamental principles promoted by the International Red Cross and Red Crescent Movement is that humanitarian assistance should be governed by the humanitarian principles of humanity, impartiality, neutrality, and independence. To this end, the Movement's Code of Conduct commits it to assessing aid priorities purely on the basis of need, regardless of race, creed or nationality of the recipients, and without adverse distinction of any kind.<sup>36</sup> In the case of the fire outbreak that gutted the Marshalltown block of flats in the Johannesburg City Centre, the immediate humanitarian response would, for example, call for the provision of emergency medical care, search and rescue, provision of temporary shelter that is equipped with water, sanitation, and hygiene facilities, distribution of food and non-food items to maintain life, improve health, and boost the morale of the victims.

In the context of South Africa, the policy framework underpinning the humanitarian response to disasters includes the Constitution of the Republic of South Africa, 1996, the **Disaster Management Act**, No.57 of 2002, the National Development Plan 2030 and the **National Disaster Risk Management Framework** of 2005. This section provides an overview of the key legislative and policy provisions that should underpin the humanitarian response to disaster in South Africa.

It also reflects on Parliament's capacity to conduct oversight of disaster management responses and proposes recommendations to address current shortcomings in the Parliament's oversight responses.

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<sup>34</sup> Disaster Management Act No.57 of 2002

<sup>35</sup> United Nations Office for the Coordination of Humanitarian Affairs (2018) Field Handbook, 7<sup>th</sup> Edition [Online] [https://resourcecenter.undac.org/wp-content/uploads/2021/01/UNDAC\\_handbook\\_2018.pdf](https://resourcecenter.undac.org/wp-content/uploads/2021/01/UNDAC_handbook_2018.pdf)

<sup>36</sup> The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief.

## 3.2 Policy and Legislative Framework on Disaster Management

The *Bill of Rights in the Constitution* enshrines various human rights that provide an indication of the type of considerations that should underpin the humanitarian response following a disaster. These include the right to dignity and not to be treated in a cruel, inhuman, or degrading way.<sup>37</sup> It also includes the right to an environment that is not harmful to a person's health or well-being and not to be arbitrarily deprived of property.<sup>38</sup> Socio-economic rights enshrined include the right of access to adequate housing, health care services, sufficient food and water and social security. With regard to children, the Constitution sets the best interest of the child as the standard in all matters concerning children, including basic nutrition and shelter.<sup>39</sup>

The *Disaster Management Act* provides for, amongst others, an integrated and coordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery. The Act defines a *disaster* as a progressive or sudden widespread or localised natural or human-caused occurrence which causes or threatens to cause death, injury, or disease; damage to property, infrastructure, or the environment; or disruption of the life of a community that is so big that the people affected do not have the resources to cope with its effects. Further, the Act defines *disaster management* as a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at preventing or reducing the risk of disasters; mitigating the severity or consequences of disasters; emergency preparedness; a rapid and effective response to disasters; and post-disaster recovery and rehabilitation.<sup>40</sup>

The Act provides, among others, for the establishment of Disaster Management Centres in all three spheres of Government. The main objective of these Centres is to promote an integrated and coordinated system of disaster management by national, provincial and municipal organs of state, statutory functionaries and other role-players involved in disaster management and communities, with special emphasis on prevention and mitigation.<sup>41</sup> In so doing, the Act explicitly prioritises the application of the principle of cooperative governance in disaster risk management and emphasises the involvement of all stakeholders in strengthening the capabilities of national, provincial, and municipal organs of state to reduce the likelihood and severity of disasters.

The Act places an obligation on Disaster Management Centres to report annually on its work, including disasters that occurred during the year according to classification, magnitude, and severity, as well as the effect/s they had, problems experienced in dealing with the disasters and how they were addressed. At national level, the Centre is required to submit its annual report to the Minister of Cooperative Governance and Traditional Affairs by the end of August. The Minister must submit the report to Parliament within 30 days of receipt from the Centre, i.e., by the end of September.<sup>42</sup>

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<sup>37</sup> Sections 10 and 12.

<sup>38</sup> Sections 24 and 25.

<sup>39</sup> Sections 26-28.

<sup>40</sup> Section 1.

<sup>41</sup> Sections 8 and 9 (national); sections 29-30 (provincial) and 43-44 (municipal).

<sup>42</sup> Public Finance Management Act, section 3 read with section 40.

The Act also outlines guiding principles on the funding of recovery and rehabilitation after a disaster occurs.<sup>43</sup> In terms of these guidelines, organs of state in all spheres of government have the discretion to contribute financially to response efforts and post-disaster recovery and rehabilitation. Further, the cost of repairing or replacing public sector infrastructure should be borne by the organ of state responsible for the maintenance of such infrastructure.

Regarding implementation, the Act empowers Disaster Management Centres to monitor whether organs of state and other relevant key stakeholders comply with the Act and evaluate the impact of the implementation of the Act in line with four key performance areas contained in the *National Disaster Management Framework*. These are integrated institutional capacity for disaster risk management; disaster risk assessment; disaster risk reduction; response and recovery.<sup>44</sup> The Act further requires that Disaster Management Centres in all spheres of Government establish information management systems to collect information from all stakeholders, process, analyse and share it with others. In addition, the Centres are required to monitor, measure, and evaluate disaster management plans, as well as prevention, mitigation, and response activities at all levels of government.

The *National Development Plan 2030 (NDP)* calls for environmental sustainability and resilience that provides for improved disaster preparedness for extreme climate events. This is in line with the Disaster Management Act in that it calls for the mainstreaming of mitigation and adaptation measures across the three spheres of government to ensure the promotion of intergovernmental relations, thus giving expression to the principle of cooperative governance.<sup>45</sup>

### 3.3 Parliamentary Oversight Perspectives on Disaster Management and Response in South Africa

Considering the above background, the role of Parliament as an oversight institution within the realm of disaster management in South Africa is paramount. **The question that arises is whether Parliament is adequately capacitated to monitor and evaluate disaster prevention, mitigation, emergency preparedness, rapid and effective response to disasters and post-disaster recovery** This calls for reflection on the parliamentary response to the National State of Disaster following the floods that devastated KwaZulu Natal, the Eastern Cape and the North-West Provinces in early 2022.

<sup>46</sup>

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<sup>43</sup> Section 56.

<sup>44</sup> Department of Cooperative Governance and Traditional Affairs (2005) national disaster management framework. Pretoria, South Africa

<sup>45</sup> The Presidency (2012) National Development Plan 2030. Pretoria, South Africa

<sup>46</sup> Parliament of the Republic of South Africa (2022) Report of the Ad Hoc Joint Committee on Flood Disaster Relief and Recovery, 17 November 2022.

Parliament established the *Ad Hoc Joint Committee on Flood Disaster Relief and Recovery* to, among others, oversee the disaster response and implementation of disaster relief measures by the various spheres of government.<sup>47</sup> The Committee used oversight visits and committee meeting briefings to assess the effectiveness of the government-wide disaster response.

**A key question is whether Parliament is adequately capacitated to conduct oversight over disasters and post-disaster recovery.**

The Committee, in its assessment, found that there is **poor coordination of disaster response measures; a lack of capacity within municipalities to implement disaster risk management and subsequent application of the disaster response and relief measures** (e.g., application for the disaster relief funds); poor to non-existent disaster management plans; mismanagement of social relief parcels such as food, blankets etc. (officials stealing or handing out to their favourites among the victims); slow pace of releasing funds after a disaster; lack of funding and resources to provide adequate humanitarian relief.

It is submitted that **parliamentary oversight of the National Disaster Management Centre is inadequate due to competing issues on the programmes of Committees mandated to oversee CoGTA issues**. The unpredictable nature of disasters may also contribute to them not featuring among the oversight priorities of committees. It is only when a disaster has struck that oversight on disasters is heightened. This is evident in the recent floods and fire incident that occurred in the Johannesburg City Centre. The lack of oversight over disaster management can arguably partly be ascribed to insufficient capacity within Parliament, both in personnel numbers and resources; lack of a dedicated committee on disaster management in line with the National Disaster Management Framework; and lack of primary, inter-sectoral data to appraise Members of Parliament of the risks associated with the occupation of dilapidated abandoned and unlawfully occupied buildings across the country that would empower them to conduct evidence-based oversight of municipalities and/or building owners.

Further, the special **programmes of Parliament, such as Taking Parliament to the People and Provincial and Local Government Weeks are not effective in highlighting disaster management, as they are usually annual events with a general lack of follow-up on executive undertakings and general recommendations from Parliament**. For example, the Taking Parliament to the People programme held in Gauteng in 2019 raised several issues about the condition of health facilities, such as the Tembisa Hospital, where expenditure was high but there was no improvement in the facility. A year ago, substantial procurement corruption was uncovered, which allegedly resulted in the assassination of the official who reported it.<sup>48</sup>

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<sup>47</sup> Ibid.

<sup>48</sup> Global Initiative (2021). Faces of Assassination - Babita Deokaran [Online] <https://assassination.globalinitiative.net/face/babita-deokaran/>

**Coalition governance in the Johannesburg metro is also a major cause of breakdown in service delivery and general governance challenges in local government.** The Councils spend a significant amount of time on power struggles for political positions rather than implementing the constitutional mandate of local government, which includes disaster prevention and management in general. The frequent changes in the Council led to the cancellation of some of the progressive programmes, such as Operation Nomakanjani,<sup>49</sup> which, among others, targeted unlawfully occupied buildings in the inner City of Johannesburg, led by Former Mayor Herman Mashaba in 2018.<sup>50</sup> It has been suggested that if this programme had continued it may have prevented the recent fire outbreak that cost the lives of more than 70 people, as the building that burnt down was among those identified for the City Rejuvenation Programme.<sup>51</sup>

### 3.4 Recommendations

The Report on the Independent Panel Assessment of Parliament (n.d.) notes that parliamentary oversight can only be effective if the institution asserts its independence and embraces its constitutional oversight mandate. This requires a thorough understanding of this mandate on the part of Members of Parliament and political will to assert their constitutional authority to improve service delivery and governance. It is submitted that **effective oversight also requires appropriate structural oversight mechanisms to ensure that issues arising from Parliament's oversight activities are properly directed and followed through to their logical conclusion or resolution.** Considering the challenges in Parliament's oversight of disaster management, the following measures are recommended:

#### *Tracking mechanism for following up on undertakings or recommendations arising from oversight programmes and activities.*

The Oversight and Accountability Model of Parliament recommends that an Oversight and Advisory Section be established. The main objective of such a section would be to provide advice, technical support, oversight coordination, and tracking and monitoring of issues arising from oversight and accountability activities of the institution. The Model recommends that the section comprises three units. These include a Tracking and Monitoring Unit (to address decisions in the House(s) and at committee level, as well as issues emanating from the floor of the House(s) and from committee reports that get tabled in the House(s)); and an Advisory Unit (to identify issues from sectoral parliaments, other assemblies, international bodies and compliance with international protocols, treaties and conventions, as well as petitions). It is recommended that Parliament revisits this recommendation in the Model with a view to establishing a centralised tracking mechanism that will track progress on undertakings or general recommendations arising from Parliament's oversight

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<sup>49</sup> IOL (2023) Herman Mashaba warned the City of Joburg against 'mafia-like landlords [online] <https://www.iol.co.za/saturday-star/news/herman-mashaba-warned-the-city-of-joburg-against-mafia-like-landlords-42b5bb5d-07f2-41b9-b97d-3c297998b9ab> published on 04 September 2023

<sup>50</sup> Fourways Review (2018) Operation Nomakanjani set to clean up Joburg by any means necessary. [Online] <https://fourwaysreview.co.za/274705/operation-nomakanjani-set-clean-joburg-means-necessary/>

<sup>51</sup> News24 (2023) Joburg's internal investigations department probing 188 hijacked building cases - 13 owned by City [Online] <https://www.news24.com/news24/southafrica/news/joburgs-internal-investigations-department-probing-188-hijacked-building-cases-13-owned-by-city-20230905>

work, including work in committees and plenary, as well as dedicated oversight programmes, such as Taking Parliament to the People, Provincial Week and Local Government Week. It is envisaged that this mechanism will refer undertakings or recommendations to the relevant committee/s for processing.

### *Establishment of a permanent Joint Committee on Disaster Management*

South Africa faces increasing levels of disaster risk due to its geographic location, socio-economic profile, and climate change. It is exposed to a wide range of weather hazards, including drought, cyclones and severe storms that can trigger widespread hardship and devastation in both urban and rural areas. The country shares borders with six southern African countries with a lower human development index status, presenting both natural and human-induced cross-boundary risks. In addition to these natural and human-induced threats, and despite ongoing progress to extend essential services to poor urban and rural communities, large numbers of people live in conditions of chronic disaster vulnerability in under-served, ecologically fragile or marginal areas where they face recurring natural and other threats. These range from drought to repeated informal settlement fires.<sup>52,53</sup>

The Oversight and Accountability Model recommends that Parliament strongly considers resourcing, capacitating, and developing specialised committees to deal with broad issues that cut across departments and ministries in all spheres of government. It is submitted that disaster management is an issue that calls for coordinated parliamentary oversight, as it spans various departments in all spheres of government. To this end, Parliament should consider reviewing its oversight structures with the view to establishing a permanent Joint Committee on Disaster Management in anticipation of unfolding disasters to protect the people that it represents. This committee would be instrumental in holding Government in all spheres accountable for the country's management of disasters. The Committee could use its monitoring and oversight function to ensure that organs of state in all three spheres of government have disaster management plans, as required by the respective national, provincial, and local Disaster Management Frameworks. It will also be able to monitor the implementation of these plans. The Committee would also scrutinise the Annual Reports of the National Disaster Management Centre, as well as any matter referred to it by the proposed tracking mechanism or the Presiding Officers of Parliament. Capacitating such a committee is also sanctioned by the Oversight and Accountability Model, which recommends that Members be provided with additional support to execute their duties. This should take the form of, amongst others, dedicated content/subject advisers, dedicated researchers and increased utilisation of facilities and resources (such as libraries, the internet and referencing facilities). This means that the Committee would be capacitated with full-time research and content support to conduct reactive and proactive research on disaster management and related matters. The Committee would consist of Members of both Houses. These Members would permanently serve this committee throughout their term of office to ensure continuity.

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<sup>52</sup> Parliament of RSA (2022) Report of the Ad Hoc Joint Committee on Flood Disaster Relief and Recovery, 17 November 2022.

<sup>53</sup> Department of Cooperative Governance and Traditional Affairs (2005) Department of Cooperative Governance and Traditional Affairs (2005) national disaster management framework. Pretoria, South Africa

### *Coalition government legislation*

The City of Johannesburg has had nine executive mayors over the past seven years, with the 8<sup>th</sup> Mayor only serving 87 days in office.<sup>54</sup> The removal or resignation of a mayor dissolves the Executive Council, which is comprised of Members of the Mayoral Council (MMC) responsible for various issues, such as community safety, etc. This implies that the City of Johannesburg has been unstable for the past seven years, which could seriously compromise service delivery. A new Mayor comes with their own strategies and priorities. For example, the 9<sup>th</sup> mayor, Mr. Kabelo Gwamanda, dissolved the Group Forensic and Investigation Services (GFIS) that was responsible for dealing with corruption within the City. As a result, several investigations were abandoned, leaving accusations of corruptions unresolved with respect to officials employed by the City.<sup>55</sup> The South African Municipal Workers Union (SAMWU) is on record as alleging that the coalition government is responsible for rampant corruption that has stalled key projects, such as the housing projects (e.g., Alexandra Temporary Residential Accommodation) and road infrastructure development programmes.<sup>56</sup> The lack of legislation to regulate coalitions creates a conducive environment for corruption and all sorts of malfeasance, ultimately jeopardising service delivery. **Accordingly, it is recommended that local government legislation regulating coalitions should be enacted to protect municipalities and its communities.**

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<sup>54</sup> Njilo (2023)

<sup>55</sup> News24 (2023) Joburg corruption worth R2.2 billion to be 'ignored' by City after disbanding of graft-busting unit [Online] <https://www.news24.com/news24/politics/government/joburg-corruption-worth-r22-billion-to-be-ignored-by-city-after-disbanding-of-graft-busting-unit-20230705> 05 July 2023

<sup>56</sup> Banda and Barthelemy (2023).

## 4. LOCAL GOVERNMENT

### 4.1 Overview

The tragic Johannesburg fire incident offers a case study on how various sectoral challenges intersected, along with a lack of cooperative governance - ultimately resulting in a catastrophe. A combination of inter-sectoral challenges contributed to this incident. These include urbanisation, illegal immigration, a lack of affordable housing in city centres, unlawful occupation of buildings, poor administration and management of City-owned buildings and a lack of law enforcement and inspections.

The Operation Bring Back Programme of the Department of Public Works and Infrastructure estimates that approximately 1 260 of the 29 000 buildings in the Department's asset register have been unlawfully occupied.<sup>57</sup> Of this number, approximately buildings are located in the City of Johannesburg.<sup>58</sup>

**By 2018, an estimated 1 300 unlawfully occupied buildings were identified across the country.**

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Unlawfully occupied buildings often do not adhere to health and safety standards, and often do not have safe or functioning electricity, water, or sanitation services. In such cases, people often resort to building fires inside the building for heat or cooking purposes, posing a fire hazard.<sup>59</sup>

By 2018, approximately 1 300 unlawfully occupied properties were identified nationally, of which 28 properties were verified and were in the process of being addressed through lease agreements and eviction processes. The occupants of the remaining 1 272 properties were being verified, and assessments of the affected buildings were conducted to determine their safety and habitability.<sup>60</sup>

One of the 57 unlawfully occupied buildings in the Johannesburg Metropolitan Municipality is the Marshalltown building at 80 Albert Street. The building is owned by the City of Johannesburg. It is a historic building, which once housed the Albert Street Pass office (a symbol of Apartheid oppression). However, it was transformed into a place of hope when it was leased to the Department of Social Development,<sup>61</sup> which utilised it as a women's shelter and clinic through the non-governmental organisation (NGO) Usindiso Ministries, which operated the shelter.<sup>62</sup>

<sup>57</sup> Gwegwe (2023).

<sup>58</sup> Reuters (2023).

<sup>59</sup> Le Roux (2018).

<sup>60</sup> Department of Public Works and Infrastructure (2018).

<sup>61</sup> Rall (2023).

<sup>62</sup> Haffajee (2023).

After the lease expired, (and following growing hostilities)<sup>63</sup> the building was unlawfully occupied since 2017/2018. In 2019, an investigation was conducted on site and some unlawful occupiers arrested. Approximately 140 of the people arrested were foreign nationals collecting rent from occupants. A case was opened at the Johannesburg Central Police Station at the time.<sup>64</sup> The case has since been closed, due to a lack of evidence. The City did not undertake any further interventions, as the building has reportedly become a hostile environment.<sup>65</sup>

It is reported that on occasion, buildings are taken over by syndicates operating with fraudulent title deeds or utility accounts, renting, or selling space in these buildings to desperate people.<sup>66</sup>

Land and properties owned by a Metro remain the responsibility of the municipality and in the case of Johannesburg, are generally managed through the Johannesburg Property Company (JPC). Some of the challenges identified in the JPC's 2019/20 business plan were the serious cashflow issues it experienced during 2017/18 due to non-payment by government departments and the slow progress made on its inner-city rejuvenation project, due to large parts of the inner-city becoming unsafe and dilapidated. The JPC reportedly developed a plan to partner with private sector partners to implement the plan in a phased manner.<sup>67</sup>

Apart from the overall management, administration and maintenance of city-owned properties, additional functions, and mandates of local government in relation to unlawfully occupied buildings include the enforcement of bylaws, health and safety codes, security, and, where necessary, evictions and the provision of alternative accommodation.<sup>68</sup>

Due to the leasing of City-owned buildings to other government departments, the need for cooperative governance to ensure the timely and efficient collection of revenue and the ongoing management, maintenance and administration of buildings is of critical importance. The City also remains responsible for ensuring that its buildings comply with health and safety legislation, such as the Occupational Health and Safety Act (No. 85 of 1993) and relevant building regulations.

The City of Johannesburg previously formed the Problematic Properties task team aimed at investigating and addressing the issue of unlawfully occupied buildings and had reportedly started to make progress. It was scaled down significantly to the point where it was no longer functional after a change in City leadership. The task team comprised the Police, the Joburg Metro Police Department (JMPD), Johannesburg Property Owners and Managers (JPOMA), the Department of Social Services, and the Department of Home Affairs.<sup>69</sup>

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<sup>63</sup> [Njilo \(2023\)](#).

<sup>64</sup> [Rall \(2023\)](#).

<sup>65</sup> [Ibid.](#)

<sup>66</sup> [Haffajee \(2023\)](#).

<sup>67</sup> [JHB Property \(2019\)](#).

<sup>68</sup> [Banda \(2023\)](#).

<sup>69</sup> [Haffajee \(2023\)](#).

## 4.2 Policy Implications

South Africa has come a long way in protecting the right to secure tenure. Section 26 of the Constitution provides that no one may be evicted from their home, or have their home demolished without an order of the court.<sup>70</sup>

The passing of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No. 19 of 1998) and the Extension of Security of Tenure Act (No. 62 of 1997) are important legal instruments to give effect to the Constitutional right.<sup>71</sup>

Home ownership and security of tenure are concepts increasingly forming part of the definition of “adequate housing” and an improved quality of life.<sup>72</sup> Especially in the case of the unlawfully occupied buildings in Johannesburg, it therefore ultimately becomes a matter of balance of rights between the right to adequate shelter and ensuring safe living conditions.

The Constitutional court ruling in the matter of *Township and 197 Main Street, Johannesburg v City of Johannesburg and Others (CCT Occupiers of 51 Olivia Road, Berea 24/07)* is noteworthy. In this case, the City of Johannesburg sought an eviction order against unlawful occupants of unsafe buildings in the City. The court ultimately emphasised the need for meaningful consultation prior to eviction attempts and the provision of alternative accommodation. While an important judgement in terms of security of tenure and the need for meaningful consultation, **it highlights the lengthy, costly, and intricate process that municipalities must go through to ensure that people move out of unsafe buildings and living conditions.**<sup>73</sup>

Based on key points raised in the above-mentioned court case, as well as the circumstances surrounding the recent Marshalltown fire in Johannesburg, there are several issues, as well as policy recommendations for further consideration. Some of these are listed below.

- Where appropriate, streamlining eviction processes in cases where the health and safety of occupants are at risk, should be investigated, while being cognizant of occupants’ rights to adequate shelter, dignity, alternative accommodation, and meaningful consultation.
- The regulations imposed during the first few phases of the COVID-19 lockdown measures during 2020 are also relevant in this regard, as it prohibited evictions during the first few months of the lockdown.<sup>74</sup>
- Considering that the last inspection of the Marshalltown building was done in 2019 and that part of the reasons provided for not continuing with regular inspections were due to safety concerns and the hostile environment, there is a need for greater cooperation between law

**The constitutional court ruling in the matter of *Township and 197 Main Street* served to highlight the lengthy, costly, and intricate process that municipalities must go through to ensure that people move out of unsafe buildings and living conditions.**

<sup>70</sup> SAHRC (2020).

<sup>71</sup> Ibid.

<sup>72</sup> Le Roux (2018).

<sup>73</sup> Chenwi & Liebenberg (2008).

<sup>74</sup> Kiewiet (2020).

enforcement agencies and the metro, as well as the metro and other government stakeholders, such as the Department of Social Development, to which it rented out the building until early 2018. Legislated specialised structures for the protection of affected buildings during the legal eviction processes, or otherwise the turnover of tenants, should be provided to limit opportunities for hijacking buildings.

- The City of Johannesburg developed its Bylaw on Problem Properties (2014), which empowers it to inspect and declare properties as “problem properties” and compel owners of such properties to comply with requirements, face fines or imprisonment.<sup>75</sup> It is not clear to what extent the Bylaw has been applied in the cases of abandoned and unlawfully occupied buildings in the Johannesburg Metro’s inner-city area and how effective it is.
- Where appropriate, legislation at a national level of government could be explored to provide provinces and municipalities with greater guidance and support, as well as a national framework to best approach the challenge of abandoned buildings.

### 4.3 Oversight Imperatives for Parliament

Parliament should use its monitoring and oversight function to oversee:

- The extent to which the City of Johannesburg implemented its own Bylaw on Problem Buildings, along with the efficacy of the Bylaw as a tool for addressing the issue of abandoned buildings.
- The extent to which legislative and administrative tools (such as compliance notices, eviction processes and consultations, or otherwise court orders) were utilised to prevent occupants from living in dangerous conditions.
- The extent of unlawfully occupied buildings in each municipality, focusing on the most severe cases first.
- Initiatives to ensure the balancing of rights between the right to adequate housing and safety concerns, and the right to security of tenure.
- Whether legislation, if applied appropriately, currently provides an appropriate framework to prevent recurring events of this nature.
- The ways through which some foreign nationals illegally enter South Africa and how to best respond to this challenge.
- Inner-city revitalisation efforts and the possibility of transforming abandoned buildings into legitimate social housing or other forms of subsidised housing.
- The provision of enhanced security at State-owned buildings.
- The reasons for the Metro failing to implement its own Bylaws and abandoning its task team, which was aimed at resolving the challenge of unlawfully occupied buildings.
- Means to improve cooperative governance.
- Progress made in terms of verifying the 1300 unlawfully occupied properties in the country.
- The progress made under the Problematic Properties task team, the circumstances under which the task team ceased to function and the possibility of resuscitating this inter-governmental task team in relation to the illegally occupied buildings.
- The extent to which the renting of the building to the Department of Social Development, which in turn allowed an NGO to run a shelter in the space, may have contributed to the unlawful occupation and whether such agreements are currently in place for other buildings, which may

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<sup>75</sup> [City of Joburg \(2014\)](#).

pose similar risks in future? It should also be considered whether protocol needs to be developed for instances where City-owned buildings are rented out to other entities, departments, or organisations.

#### 4.4 Oversight Areas Previously Raised by Parliament

- During the Taking Parliament to the People (TPTTP) pre-visit to Gauteng in 2018, the challenge of unlawfully occupied buildings was referenced in relation to the slow progress on the Wembley Temporary Accommodation, which had to house families affected by a fire, as well as people affected by the hijacking of two buildings.<sup>76</sup> The delegation recommended that the City of Johannesburg prioritise the relocation of residents to park homes.<sup>77</sup> The report did not specify whether the residents referred to were those affected by the fire, or those affected by the unlawfully occupied buildings.
- During the TPTTP public hearings in 2019, the Deputy Minister of Police stated that foreign nationals illegally occupying buildings were being arrested and that the public should assist the police by reporting these issues to them.
- During a meeting between the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure and the Department of Public Works and Infrastructure on 24 July 2019, a member of the Committee raised a question around the issue of unlawfully occupied buildings. The Department responded that it was struggling with this challenge, but that it was implementing *Operation Bring Back* and that it would be moving to the next phase of implementation, which would include regulating and regularising the occupation.<sup>78</sup>
- In April 2015, the Department of Home Affairs met with the Portfolio Committee on Home Affairs, during which it presented an action plan together with the police, to address inter-departmental challenges. This included the hijacking of buildings.<sup>79</sup>
- During a meeting of the Portfolio Committee on Police with the South African Police Service (SAPS) in February 2018, it was stated that the SAPS was mandated to conduct further investigations into unlawfully occupied buildings and arrest individuals, as well as to place the building under police custody. According to the SAPS, they had formalised a multi-disciplinary collaborative approach to dispose of any building used for crime purposes.<sup>80</sup>
- During a meeting between the Select Committee on Finance and Provincial Treasuries, the Provincial Treasury of Gauteng stated that laws around private-owned derelict or abandoned

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<sup>76</sup> Parliament (2018).

<sup>77</sup> Parliament (2018a).

<sup>78</sup> Department of Public Works and Infrastructure (2019).

<sup>79</sup> Department of Home Affairs (2015).

<sup>80</sup> SAPS (2018).

buildings should be applied by municipalities. Buildings in contravention of Bylaws could also be taken over by the municipality, as this has been done in the past.<sup>81</sup>

## 4.5 Possible Issues for Investigation with Province

- Does the City have a record of all unlawfully occupied buildings within its jurisdiction?
- What is the extent of such unlawful occupation?
- To what extent has the City implemented its *Bylaw on Problem Properties* and how effective is this legal instrument?
- How does the City address cases of non-compliance?
- What other City by-laws and safety regulations apply to the sub-division of buildings?
- Who monitors and oversees compliance with the relevant Bylaws and regulations (if any) and how often does this occur?
- What are the main challenges in addressing the issue of unlawful occupation of inner-City buildings and what measures have been deployed to address these challenges to date.
- What is the geographic profile of the people who occupied the Marshalltown building at the time of the fire?
- Does the City's disaster management plan provide support and budget allocation to assist in incidents like the Marshalltown building fire? What does this support and budget entail?
- Which inter-disciplinary forums or structures, if any, are in place to deal with the challenge of unlawfully occupied and/or abandoned buildings and how does the City plan to use these measures to avoid future incidents of this nature?
- To what extent has the City and relevant stakeholders sought to educate potential victims of illegal leasing of abandoned buildings by illegal landlords?

## 5. HOME AFFAIRS

### 5.1 Overview

Post-1994 **South African cities became key destinations for foreign migrants hailing from across the continent.** In 1996, there were about 800 thousand immigrants living inside the country's borders, by 2022 this number rose to 2.4 million<sup>82</sup>. The number of immigrants literally doubled between 2011 and 2022, from 1.2 million to 2.4 million.<sup>83</sup>

Various studies reported suggest the following proportion of foreign-born migrants living in inner-city neighbourhoods: 25%



<sup>81</sup> Gauteng Provincial Treasury (2017).

<sup>82</sup> StatsSA (2023a)

<sup>83</sup> Ibid.

of Johannesburg inner-city residents (2003)<sup>84</sup> (and possibly higher in specific neighbourhoods), and between 7.5% and 11% of eThekweni (2007).<sup>85</sup>

These statistics suggest that the impact of international migration on our cities cannot be disregarded, or likely reversed.

It is argued that more than providing physical shelter, access to housing significantly impacts health and livelihood options, and shapes a migrant's sense of belonging in a new city. Both internal and international migrants are typically confronted with a serious housing challenge when they arrive in South African cities.<sup>86</sup>

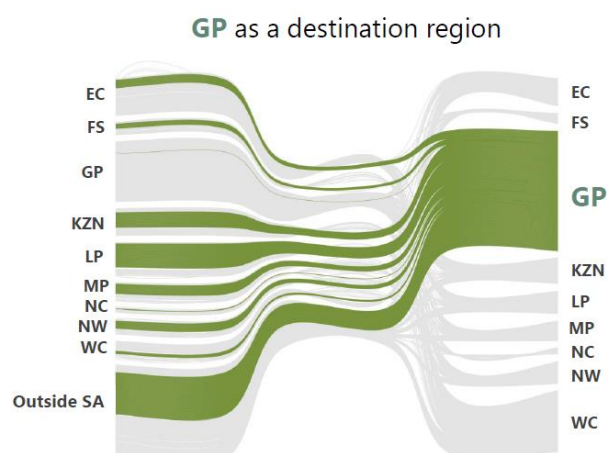
### Migration trends

South Africa is experiencing a high urbanisation rate as more people move to provinces that offer better economic opportunities. Gauteng and the Western Cape retains their status as the two provinces with the highest net migration. Gauteng's economic dominance makes it a highly attractive destination, attracting the highest net in-migration. Gauteng attracts internal migrants most notably from provinces such as Limpopo, KwaZulu-Natal, Mpumalanga, and the North West.<sup>87</sup> The Western Cape, on the other hand, attracts internal migrants primarily from the Eastern Cape and Gauteng. It should be noted that the following provinces experienced negative net migration by 2022, meaning more people were leaving these provinces than what they were gaining: Free State (-9 878), KwaZulu-Natal (-10 067), Eastern Cape (-62 629), and the highest from Limpopo (-114 328)<sup>88</sup>.

**Gauteng is also the preferred destination of international migrants.**<sup>89</sup> According to the latest Census, in 2022 there were 2.4 million immigrants in the country, which is slightly less than 4% of the population of 62 million<sup>90</sup>

Statistics shows that the majority of foreign migrants originate from the following neighbouring states: Zimbabwe (45.5%), Mozambique (18.7%), and Lesotho (10.2%), and Malawi (8.9%).<sup>91</sup>

The United Kingdom is the 5<sup>th</sup> highest sending country, contributing to 2.8% of foreign migrants by 2022 – albeit much lower the 4.1% recorded in 2011.



Source: StatsSA (2023a)

<sup>84</sup> Institute for Security Studies survey reported by Greenburg and Polzer (2008).

<sup>85</sup> Inner City Survey conducted by the eThekweni Municipality reported by Greenburg and Polzer (2008).

<sup>86</sup> Greenburg and Polzer (2008).

<sup>87</sup> Stats SA (2023a).

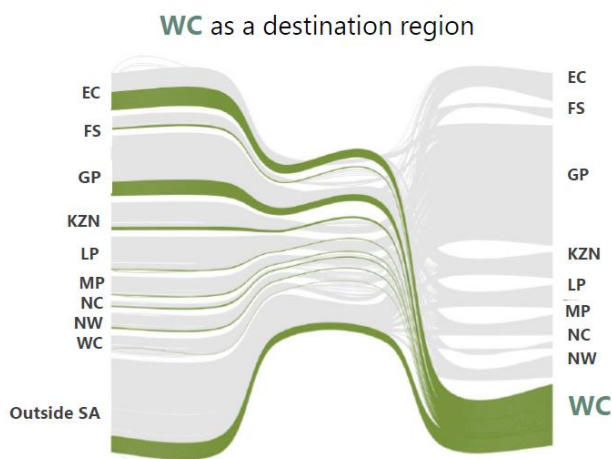
<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> StatsSA (2023a)

<sup>91</sup> Ibid.

During the 2018 Taking Parliament to the People, it was reported that research pointed to migration of people from across the country and across the continent to Gauteng as a major factor behind a number of service delivery challenges facing the province. The Premier at the time, David Makhura, stated that migration placed pressure on education, health, housing backlog, and crime in Gauteng, and has implications for planning and development.<sup>92</sup>



Cape Town, while the second most sought-after destination for foreign migrants, experiences significantly lower international net-migration.

Source: StatsSA (2023a)

### **Policy approach: refugees' right to housing**

South Africa is signatory to several international human rights instruments, which guarantee universal human rights, as well as specific protection to refugee and migrant populations.

Most notably, the 1948 *Universal Declaration of Human Rights* and the 1966 *International Covenant on Economic, Social and Cultural Rights* both recognise the right to adequate housing.

The 1951 *Convention Relating to the Status of Refugees* (Refugee Convention) makes it obligatory for states "... so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

Key aspects raised by the *Refugee Convention* with respect to housing include:

- Provision of housing must be what the state offers or is able to offer in accordance with its own laws.
- It applies to documented (or lawful) refugees or asylum seekers.
- Housing may not be inferior or be less favourable than what is available to other categories of non-citizens who are in similar circumstances.

**South Africa, unlike many of its neighbouring states, have historically applied a non-encampment policy to the housing needs of refugees and asylum seekers.**

<sup>92</sup> Taking Parliament to the People, 2018.

Unlike some of its neighbouring states, South Africa has historically applied a non-encampment policy to the housing needs of refugees and asylum seekers. It views an encampment policy as socially negative likely to “create serious logistical, security and humanitarian problems”. Non-encampment-based refugee protection is intended to be affected through the extension of the application of the rights contained in the Bill of Rights to refugees and asylum seekers.<sup>93</sup>

The *Bill of Rights* contained in chapter 2 of the Constitution provides that “*Everyone has the right to have access to adequate housing.*”<sup>94</sup> South Africa’s Housing Act (No. 107 of 1997), as amended was enacted to give effect to the Constitutional right to access to housing, but states that this right will apply on a progressive basis to citizens and permanent residents. **The Housing Act, therefore, does not confer the right to access to housing to refugees or temporary residents.** This approach is affirmed by both the 2000 *National Housing Code*, and the 2010 *National Housing Policy and Subsidy Programmes* which also excludes persons without citizenship or permanent residency.

Section 25 of the *Immigration Act* (No. 13 of 2002) specifies that permanent residents are entitled to all the rights conferred to citizens, except where the Constitution or legislation explicitly limits those rights to a citizen. Since refugees and asylum seekers do not have citizenship or permanent residence as prescribed in the various housing policy frameworks, they are not eligible to the right to access to housing as subsidised by the state.

### **Migrant housing options**

Research suggests that **private rental offers accommodation to most migrants** (both local and foreign) in South African cities. International migrants report that their targeting of inner-city residential sites as opposed to the township areas can be attributed to high levels of xenophobia and targeting of foreigners for crime, despite the much higher rental rates in the inner city.<sup>95</sup> Migrants also tend to concentrate in certain parts of the inner city where they have access to existing social networks. Migrants gain access to inner city rental accommodation primarily through friends, family, and other informal social networks.<sup>96</sup>

A 2007 study conducted amongst migrants living in Johannesburg, Cape Town and Durban conformed that private sector rental stock is by far the most important sector, followed by informal accommodation. While there is some variation between cities in the kinds of accommodation available, there appears to be very little dependence on non-governmental shelters or public housing.

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<sup>93</sup> Kavuro (2019).

<sup>94</sup> Constitution of the Republic of south Africa, 1996.

<sup>95</sup> Greenburg and Polzer (2008).

<sup>96</sup> Ibid.

**Table 1: Migrant Type of Housing**

While private sector accommodation is a key option to inner-city migrants, it is reported that migrants are confronted with persistent discrimination and xenophobia.

The perpetrators are reportedly “landlords and estate companies, some of whom are unaware of who constitutes a legal migrant and whether it is legal to rent to refugees”.<sup>97</sup>

What kind of housing do you live in now? <sup>9</sup>				
	Gauteng	Cape Town	Durban	Total
Private rented accommodation	72%	65%	51%	65%
Informal housing/shacks	11%	11%	6%	10%
NGO/church/mosque shelter	3%	10%	10%	7%
Nowhere/Street	1%	4%	8%	4%
Public/government housing	2%	1%	5%	2%
Abandoned building/squat	2%	2%	5%	2%
At work	5%	0%	0%	2%
On a farm	1%	0%	0%	0%
Not stated	0%	4%	8%	3%
Other	3%	3%	6%	4%

Source: Greenburg and Polzer (2008).

Consequently, migrants have little alternative but to engage in informal sub-leasing, living in overcrowded and unhygienic conditions, and subjected to bribes to access accommodation. Such housing arrangements are precarious, and many migrants (including refugees) are subjected to continuous displacement from one temporary form of accommodation to the next.<sup>98</sup> This makes them vulnerable to unscrupulous landlords or syndicates that operate unlawful leasing of vacant or abandoned inner-city buildings.

Migrants reported in the same study conducted in 2007 (see table 2) that overcrowding (42%), and poor or inadequate basic services (31%) are the dominant factors that impact on the quality of their accommodation.

It is notable that **more than (57%) of migrants experienced discriminatory behaviour directly related to their status as non-nationals.**

**Table 2: Migrant Problems Reported with Housing**

What kinds of problems have you experienced with your current housing?	
Overcrowding	42%
Bad Services (water, electricity, refuse)	31%
Bad treatment by neighbours for being a foreigner	17%
Bad treatment by landlord for being a foreigner	15%
Threat of eviction for non-payment	15%
Unable to pay (no threat of eviction yet)	13%
Threat of eviction for being a foreigner	11%
Threat of eviction for no documents	7%
Being forced to pay a higher rent because of being a foreigner	7%
Not stated	2%
Other	5%

Source: Greenburg and Polzer (2008).

These include unfavourable treatment by either landlord or neighbours (32%), threat of eviction for being a foreigner (11%), threat of eviction for lack of documentation (7%) and forced to pay higher rental rates due to being a foreigner (7%).

Undocumented foreign migrants frequently find themselves in a difficult situation where they are unable to access housing or oppose being taken advantage of by the criminals who control the abandoned buildings because they lack proper documentation. Despite its strong legal and human rights framework on refugees and asylum seekers, South Africa’s asylum management system is seen

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

as continuing to fail many in need of protection. The UN refugee agency (UNHCR) estimated that South Africa hosted over 240,000 refugees and asylum seekers as of April 2022. However, many others remained undocumented. Refugees and asylum seekers continue to face enormous challenges in applying for asylum and obtaining or renewing documentation.

## 5.2 Policy implications

### *Application of the Refugee Convention within the South African context*<sup>99</sup>

It been suggested that the interpretation of the right of access to housing in accordance with the Refugee Convention, serves as a barrier to the integration of refugees and asylum seekers. This argument is based on the following key issues:

1. **Equal Treatment with non-citizens:** In terms of the Convention, refugees should be treated as favourable as possible and, in any event, no less favourable than that accorded to non-citizens who are generally in the same circumstances. It is suggested that within South Africa, no other non-citizens' circumstances are similar to those of refugees. Therefore, the challenges in implementing or claiming the right to housing arise from the absence of other groups of non-citizens whose treatment concerning housing should serve as a yardstick for the favourable treatment of refugees.
2. **In the same circumstances:** South Africa is criticised for its implicit assumption that refugees and asylum seekers are able to meet their own socio-economic needs, including housing. For this reason, they are offered no state support to promote their integration. South African policy is viewed as ignoring the fact that asylum seekers' socio-economic status differs from that of other non-citizens, as from the outset, asylum seekers are admitted into the country on humanitarian grounds, being the inherent basis for the protection of refugees.

South Africa's protection of refugees' right to housing, based on equal treatment with non-citizens in the same circumstances, is therefore seen as problematic since it is viewed as often adopting immigration measures that restrict non-citizens – in particular, temporary residents – from accessing positive rights that give effect to socio-economic rights and benefits.

3. **The national housing framework:** South Africa's housing framework is designed to address the housing problems of citizens and permanent residents, to the exclusion of temporary residents. It is therefore postulated that, as temporary residents, refugees, and asylum seekers are not allowed to have access to adequate housing. The argument is therefore that the exclusion of refugees and asylum seekers from benefitting from national housing programmes is constitutionally questionable since they are denied the housing protection intended to provide poor and vulnerable persons with privacy and to protect their well-being, dignity and family unity.
4. **Constitutional obligations:** South Africa's approach to refugee and asylum seekers' right to access adequate housing is viewed as 'exclusionary' and inconsistent with the Constitution and the Refugees Act. In the context of transformative constitutionalism, section 26 of the

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<sup>99</sup> Kavuro (2019).

Constitution imposes obligations on the State “to ensure that all people living in South Africa are able to satisfy all the requirements with regard to adequacy of housing”. It is argued that South Africa is, within this context, obligated to take measures so as not to violate the constitutional and legislative right of refugees and asylum seekers to access adequate housing. Further, South Africa is urged to recognise that to provide a refuge to refugees also comes with the responsibility to respond to their socio-economic needs in a sensible and equitable manner.

### **Exploitation by private housing sector**

Migrants are generally reliant on the private housing market for access to housing, but research shows that in this context they are exploited and forced to live under precarious conditions – coupled with severe insecurity of tenure. South Africans are generally familiar with the protection offered by the Rental Housing Act (No. 50 of 1999) as amended, and the functioning of rental housing tribunals. However, it appears that foreign migrants are either unaware or too desperate to report unscrupulous accommodation practices. What is needed is an innovative approach to protect foreign migrants’ right to adequate housing in the private housing market, including the discriminatory approach of charging higher rates based on their nationality.

Unless exploitative and discriminatory practices in the private housing market are addressed, foreign migrants especially, will continue to gravitate to unregulated and unsafe living spaces. South Africa should consider international best practice in dealing with access to adequate housing for foreign migrants – especially in light of the fact that it remains the destination of choice for migrants on the continent.

## **5.3 Oversight imperatives for Parliament**

Parliament should use its monitoring and oversight function to oversee the following:

- Given the vulnerability of refugees and asylum seekers to exploitation in the private housing market, Parliament should review how this sector may become more accessible to foreign migrants – especially as they do not qualify for state subsidised housing.
- Cooperation of various sectors is essential throughout the entire process of managing a disaster or emergency. "Aligning one's actions with those of other relevant actors and organizations to achieve a shared goal" is the definition of coordination. Therefore, cooperation with other actors and sharing a shared aim are required for effective coordination amongst government departments. Thus, Parliament should review the levels of collaboration and coordination in state actors’ response to the challenge posed by vacant or abandoned inner-city buildings.
- Following the Marshalltown fire on 31 August 2023, there were fingers pointed at refugees and asylum seekers. In this regard, Parliament should consider how relevant agencies may collaborate to avoid stigmatization of foreign nationals following a disaster or emergency.
- South Africa has a robust legal and human rights framework regarding the rights of refugees and asylum seekers, but the system's failure, which has been well-documented over the years, demonstrates how inadequately current laws and policies are put into practice. There is a significant backlog of appeals and reviews. In this context, Parliament should continue to monitor

how relevant government departments adhere to international and local human rights framework for refugees and asylum seekers.

- It is reported that due to the asylum administration system's shortcomings, asylum seekers may spend up to 19 years without a permanent status. This has numerous repercussions on the physical, psychological, and economical front. This makes it more difficult for asylum seekers to find reputable, long-term employment, which places them in unstable income-generating conditions. In the absence of relevant and up-to-date documentation, they are denied access to basic healthcare and education and are at risk of being harassed, arrested, and detained. Parliament should regularly request updates on administrative backlogs with respect to refugees and asylum seekers.
- Parliament should ensure that the status determination procedure remains administratively and procedurally fair, and that it complies with national and international laws and policies. This includes, for example, the practice of issuing appointment letters instead of permits.
- Where refugees and asylum seekers may be affected by an emergency or disaster, Parliament should ensure that oversight is focused on the needs of this group as they may be especially vulnerable given the lack of social networks or familial ties which is often one of the coping strategies for vulnerable households.
- Currently, refugees and asylum seekers do not qualify for the Social Relief of Distress (SRD) grant – but instead are referred to relevant NGOs for assistance and support. Following a disaster or emergency which impacts foreign migrants, Parliament should engage with the relevant NGOs to assess the level of support provided to persons or households affected by such.

## 5.4 Oversight areas previously raised by Parliament

Parliament has been engaging with the issue of migration in the country through a series of meetings with the DHA and the NGOs, public hearings, and other oversight mechanisms.

- During March 2023, the PC on Home Affairs raised serious concerns with the challenges and backlog that persists within the section dealing with permanent and temporary residence applications. The Committee noted the interventions implemented by the DHA to deal with various backlogs, however remained concerned that the permitting environment continues to struggle to deal with its backlog.<sup>100</sup>
- On 15 November 2022, the PC on Home Affairs received a briefing from Lawyers for Human Rights (LHR) on refugee and migrant rights, covering the digitization of the asylum seeker and refugee system, the documentation of children, systematic xenophobia and immigration detention in South Africa, legislation, detention practices, and increased arrests and detention. During its meeting with LHR, the Committee recommended that the Department of Home Affairs asylum seeker management directorate must urgently resume stakeholder engagement meetings to enable information sharing and the discussion of challenges with the asylum seeker online system.<sup>101</sup>

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<sup>100</sup> PMG (2023)

<sup>101</sup> PMG (2022)

- On 2 March 2021, the Portfolio Committee hosted a meeting with the Standing Committee for Refugee Affairs (SCRA) and the Refugee Appeals Authority of South Africa. The Committee expressed reservations about inadequate measures to reduce the backlog in applications. Other issues highlighted were the need for the Department to digitise its processes, strengthen its links with hospitals to ensure quicker registration of births, and to fill vacant positions in priority areas.<sup>102</sup>
- The Portfolio Committee on Home Affairs conducted oversight of Beitbridge and Lebombo Ports of Entry in Limpopo and Mpumalanga provinces from 11 to 15 January 2021. The Committee observed that border security deterrence is unlikely to prevent undocumented crossings into South Africa. Instead, the most crucial border security and management instrument is to promote political stability, good governance, and economic growth in the Southern African Development Community (SADC) region. The Committee put forward that South Africa, through available multilateral forums and international relations instruments, should endeavour to assist the region in improving their socio-economic conditions. It recognised that such would require political will and determination from the Executive<sup>103</sup>.
- In 2018, the National Council of Provinces hosted the *Taking Parliament to the People* public participation initiative in Gauteng. The overall theme focused on the impact of migration on the Gauteng Province, and implications for sectors including peace and security, social development, education, growth and development, infrastructure, and human settlements. It was recommended that the Department effectively manage undocumented migrants and proper coordination of the border posts<sup>104</sup>.

## 5.5 Possible Issues for Investigation with Home Affairs and City of Johannesburg

- How many foreign migrants are estimated to be living in the Johannesburg inner-city? How many are estimated to be living in abandoned inner-city buildings?
- Reports indicate that the Marshalltown building that caught fire on 31 August has been unlawfully occupied since 2018. Further, an operation was conducted in 2019, resulting in the arrest of 141 undocumented migrants. Was the Department of Home Affairs part of the operation conducted in 2019? If yes, what was its role? What process was followed with undocumented migrants that were arrested?
- Media reports suggest that more than 200 people resided in the Marshalltown building and several were undocumented migrants. What steps were taken by the Department of Home Affairs to curb the influx of undocumented migrants?
- How many undocumented migrants are currently awaiting deportation? What process of those currently awaiting deportation resided in Johannesburg?
- How often does the Department update government departments on the current asylum seeker and refugee documentation?

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<sup>102</sup> PMG (2021)

<sup>103</sup> Parliament of South Africa (2021)

<sup>104</sup> Parliament of South Africa (2018).

- How many requests for verification has the Department of Home Affairs received since introducing its refugee/ asylum seeker online renewal system?
- What challenges is the Department of Home Affairs facing in documenting children of asylum seekers and refugees and what is the plan to ensure that these children are timeously documented?
- Over the past five years, how many foreign migrants have been provided with emergency accommodation by the City, and for what period?

## 6. HUMAN SETTLEMENTS

### 6.1 Overview

#### *Increased urbanisation*

South Africa is said to be facing a serious housing crisis, which is exacerbated by unaffordability (fuelled by high unemployment and low incomes) and the unavailability of well-located land for affordable housing.<sup>105</sup> Although results from the 2022 Census suggests that the number of households in slum areas have declined between 2011 and 2022.<sup>106</sup> Cities are confronted by high levels of net in-migration, which means that despite attempt by government to eradicate the historical housing shortage, demand continues to exceed supply.

**The large-scale freehold titled housing model has to a significant extent entrenched the apartheid spatial feature of the country's major cities.**

Accordingly, the state remains a key enabler of affordable housing in South Africa; having subsidised about 50% of the 65 591 newly constructed residential units that were registered in 2021<sup>107</sup>.

Well-located land within urban centres remains unaffordable to the urban poor, forcing them to undertake costly daily commutes from peripheral areas typified by inadequate social and economic infrastructure.

Poor, mostly black, households, are located far from jobs, and they spend a significant portion of household resources on travelling to work opportunities. This creates what is known as a “poverty trap”<sup>108</sup> whereby living on the urban edges is the result of poverty, yet their location keeps them locked in poverty – removed from the economic and social infrastructure required for sustainable livelihoods.

#### *Housing as a strategy to reverse the Apartheid urban landscape*

While redressing Apartheid spatial planning legacies has long been a feature of the post-apartheid housing sector, it has been suggested that the persistent spatial inequalities is particularly difficult

<sup>105</sup> Africanews (2022)

<sup>106</sup> StatsSA(2023b).

<sup>107</sup> CAHF (2022)

<sup>108</sup> Socio-economic Rights Institute of South Africa (SERI) (2016)

to dismantle due to the protections of private property guaranteed in the Constitution.<sup>109</sup> (However, it should be noted that the Expropriation Bill [B23 – 2020] was approved by Parliament during September 2022 – which makes provision for the expropriation of property for a public purpose or in the public interest ). Research by the Socio-Economic Research Institute (SERI) suggests that there are two major causes for the permanency of Apartheid cities<sup>110</sup>:

- Firstly, **private sector developers favour the construction of housing and commercial developments in well-established zones of economic and social activity**, thereby leaving poorer areas underdeveloped and entrenching existing special inequalities. Municipal efforts to entice developers to invest in poorer areas have been mainly rebuffed by a powerful private sector, while property owners have organised into strong lobby groups to protect their personal interest (often articulated as maintaining property values).
- Critically, it is argued that the post-1994 public housing focus on establishing freehold titled housing amongst the poor, via the large-scale, state-subsidised housing programme, has in fact reinforced peripheral development for the poor. In this way, it entrenched existing apartheid-era features of the urban landscape since construction and delivery of freehold housing is cheaper and less complicated to implement at scale on green-field sites on the margins of urban areas, than it is in already built-up areas. Moreover, in this way the dominant **public sector housing model has retained poor households in peripheral locations**, outside of urban spaces that serve as the hub of the city’s economic and social activity.

The dominant state-subsidised housing delivery mode is an approach that views housing as a kind of “asset” which can by itself facilitate poverty exit, and that the delivery of high numbers of RDP houses is therefore a legitimate policy priority. Specifically, the Breaking New Ground policy sees property as “an asset for wealth creation and empowerment”. Some argue that there is little evidence to support this hypothesis.<sup>111</sup> It is suggested that instead of the over-emphasis on the asset-based potential of housing ownership to escape poverty, a more beneficial strategy would be to reduce the spatial discrepancy between housing and jobs for poor households.

**This would suggest an approach that promotes high-rise, compact inner-city housing, and thereby taking full advantage of the available vacant buildings found in several cities across the country – which is the current focus of much public attention.**

### *Affordable inner-city housing*

It is purported that most of the post-Apartheid preoccupation with facilitating affordable rental housing is aimed at households with income between R3 500 and R15 000 per month. As a result, households with incomes below R3 500 per month are experiencing a challenge with securing rental housing that is both safe and affordable.

Private developers have not shown much interest in serving this segment of the population, leaving households to fend for themselves “informally in dilapidated inner-city buildings or in shared or sub-

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<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Ibid

let rooms or rent in backyards in townships, suburbs, and informal settlements".<sup>112</sup> Many of these households are vulnerable to evictions by private developers or municipalities in the interest of regeneration or gentrification planned for inner city neighbourhoods. In instances where municipalities make alternative housing available, this is intended as emergency or temporary accommodation – without any long-term affordable rental housing solutions.

In inner-city neighbourhoods where high-rise and compact accommodation is the most likely alternative, the public rental programme should be the cornerstone of affordable, formal housing delivery for the urban poor. The state currently offers a social housing programme which offers subsidised rental housing aimed at households with an income of between R1500 - R7500 monthly, managed by various social housing institutions (SHIs). A shortcoming of this programme is that households earning less than the minimum income (and who would be eligible for the subsidised or commonly known as RDP single title housing) fall through the cracks – which should be considered for poor and unemployed persons living in inner-city neighbourhoods.

It is suggested that even if SHIs were to expand its reach to lower-level household income, it would be unlikely to be able to deliver to the affordability requirements of most existing inner-city households, nor does it deliver at the scale required to effectively make an impact on the backlog in inner-city areas.<sup>113</sup>

While a multi-pronged approach to affordable supply is required for the country, the public rental programme should serve as the bedrock of affordable, formal housing delivery for households currently resident in inner cities.<sup>114</sup> To this end, high-rise vacant buildings located within the inner-city lend itself as a viable option to contribute to the inner-city housing stock.

Rental accommodation is regarded as a flexible form of tenure which is well-suited to many inner-city households for whom mobility is an important livelihood strategy. Research suggests that many inner-city households are already renting, although the arrangements may be loosely structured, and the living conditions overcrowded coupled with little or no security of tenure.<sup>115</sup>

### ***The Prevention of Illegal Eviction and Unlawful Occupation of Land Act (PIE Act No. 19 of 1998)***

The Prevention of Illegal Eviction of Unlawful Occupation of Land Act was enacted to protect unlawful occupiers against arbitrary evictions. It prescribes the legal process to be followed to obtain an eviction order and offers several legal protections to unlawful occupiers. PIE was passed to give effect to the constitutional requirement (section 26(3)) which mandates a court to consider all the relevant circumstances before granting an eviction order.

**The eviction processes stipulated by the PIE Act does not differentiate between wealthy private developers and vulnerable homeowners - making legal proceedings unaffordable to the latter.**

<sup>112</sup> Socio-Economic Research Institute (SERI) Policy Brief (undated)

<sup>113</sup> Ibid

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

Specifically, sections 4(6) and (7) demand that the eviction of an unlawful occupier should be “just and equitable”. In determining whether an eviction order should be granted, it obligates a court to consider, amongst others, the following factors: whether the occupiers include vulnerable categories of persons (the elderly, persons with disabilities, children, and female-headed households), the duration of occupation, and the availability of alternative accommodation.<sup>116</sup>

## 6.2 Policy implications



- The spatial mismatch between affordable housing and employment opportunities is seen as a key factor in keeping poor urban households locked into poverty and relegated to the urban fringes – which entrenches the legacy of Apartheid spatial planning. This calls for more investment in the type of housing that bridges the spatial divide between housing and jobs for the urban poor.
- Many inner-city households prefer more flexible housing arrangements which are compatible with livelihood strategies that require a level of mobility. In such instances, rental accommodation instead of titled ownership may be better suited.
- The rental housing options offered by SHIs may in effect still be unaffordable to most of the inner-city dwellers who earn below the minimum income threshold, and are thus excluded from formal, affordable rental opportunities. This calls for a multi-pronged housing strategy for the country, which recognises the importance of affordable inner-city accommodation for those households at the lowest income bracket.
- The unintended consequence of the PIE Act is often cited as the reason why landowners and municipalities struggle to evict unlawful occupants from vacant or abandoned buildings. Court processes are protracted and expensive and may discourage especially private landowners from attempting to evict unlawful occupants who may therefore decide to simply cut their losses and abandon the building in its entirety.
- The PIE Act also does not make a distinction between affluent landowners or property developers and vulnerable homeowners who wish to evict unlawful occupants from their premises – in instances where there may be informal living arrangements or verbal agreements in place. For example, a pensioner who may be renting out a backyard structure for additional income would have to follow similar processes for evicting an unlawful occupant – which ultimately would cause additional hardship on the homeowner. Moreover, where a tenant refuses to pay for services as part of the rental agreement, the property owner may not interrupt services until a court order is obtained. In the interim, it increases the burden on especially vulnerable owners who rely on a rental income – since this means the unpaid utility services are transferred to the owner until an eviction notice can be secured.

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<sup>116</sup> Socio-economic Rights Institute of South Africa (SERI) (2017).

- In the event where a building or land is found to presents a health or safety risk to occupants, the PIE Act does not offer an alternative mechanism which would speed up the application for eviction process. Municipalities would have to follow the same protracted process to initiate an eviction notice, as the Act does not specify exceptions to the processes to be followed.
- One of the reported unintended consequences of the PIE Act is that the high burden of eviction proceedings on property and landowners gives cause to the consolidation of land by private developers and corporations, especially in neighbourhoods earmarked for revitalisation. Where individual property owners realise that they cannot afford to engage in eviction proceedings, they may find it much more profitable to sell their property to the only people willing to buy illegally occupied land or buildings, i.e., a private developer.<sup>117</sup>
- In the case of *Blue Moonlight Properties 39 (Pty) Limited v Occupiers of Saratoga Avenue and Another (2006/11442) [2010] ZAGPJHC 3 4 February 2010* (Blue Moonlight Properties) the courts affirmed that municipalities have the responsibility to plan for emergency accommodation. The onus is thus on metros to proactively plan for emergencies, which may have significant financial implications.

### 6.3 Oversight imperatives for Parliament

Parliament should use its monitoring and oversight function to:

- Consider the unintended consequences of the PIE Act, specifically with respect to how lengthy and costly litigation processes may likely impact on vulnerable persons who rely on incomes derived from rentals, and more affordable mechanisms that may be put in place to assist vulnerable homeowners.
- Consider possible amendments to the PIE Act which may, under grave and exceptional instances, empower municipalities faced with unlawful occupations of hazardous buildings or land patches to implement emergency and urgent relocation processes when the loss of life may be imminent, or which poses a serious risk to public safety.
- Given the fact that the courts articulated clear responsibilities to municipalities, (as articulated in the *Blue Moonlight Properties* finding), determine to what extent the metros are planning for emergencies, and are proactively identifying adequate accommodation in the event of disasters or emergencies.
- Appraise the current social housing and the rental housing programmes with a view to encourage a model that offers more flexible and affordable housing options for inner-city households at the lowest income scale, and who may currently be excluded from the Social Housing programme based on affordability.
- Review the extent to which large-scale housing programmes implemented post-1994 has succeeded in transforming the urban spatial landscape which is a legacy of the Apartheid spatial planning.

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<sup>117</sup> Groundup (2016)

- Determine to what extent metros have developed inner-city housing programmes, especially for vulnerable households – including to what extent foreign nationals are able to access affordable inner-city housing.
- Conduct an assessment of how vacant and abandoned high-rise inner-city buildings have been reconfigured by metros for the use of low-cost housing, with a view to encourage best practice and knowledge-sharing amongst metros that are faced with similar challenges.
- A view to inform urban housing policy, assess the impact and affordability of lengthy commutes between work opportunities in the urban core and housing located on the urban fringes on poor households *viz a viz* inner-city high-rise and compact accommodation located closer to work opportunities.
- From April 2023, responsibility for the provision of emergency housing in the event of a disaster was transferred directly to the national Department of Human Settlements – where previously this was the responsibility of provinces and municipalities. The *Emergency Housing Response Fund* managed directly by the national Department is still in its infancy and requires close monitoring by Parliament to ensure that it adheres to its objectives, as well as the level of responsiveness in the event of a disaster.
- Parliament should monitor the specific elements of the *Emergency Housing Response Fund* – which is a shift from Temporary Residential Units (TRUs) for disaster-affected households, to a permanent solution through alternative building technology (ABT), particularly in rural areas. Other measures will include:
  - Provision of vouchers for affected households to enable them to build their homes, but this time with the alternative of using new technology instead of only brick and mortar.
  - Provision of building material for residents in informal settlements to rebuild in the same location or to relocate to safer land working alongside social facilitators.
  - Provision of Transitional Emergency Accommodation (TEA), which could include using various identified vacant government buildings across the country.

## 6.4 Oversight Areas Previously Raised by Parliament

- At an oversight meeting of the PC on Human Settlements hosted on 8 February 2023 the issue of transforming Apartheid spatial design featured on the agenda. Key issues raised include how the property market could be transformed into one that enabled access to urban areas and therefore, social integration. The view held was that the property market should promote access to urban opportunities and social integration through access to well-located and affordable housing and decent shelters. It was suggested that this could be achieved by revising the urban fragmentation and highly inefficient sprawl.<sup>118</sup>
- In the same meeting challenges were identified with the *Priority Human Settlements and Housing Development Areas* (PHSHDAs) as a strategy to disrupt Apartheid spatial patterns. It was suggested that many PHSHDAs were not located in areas that would achieve spatial transformation and integration, and that some, in fact perpetuated urban sprawl.

<sup>118</sup> Ibid.

- A key issue identified was the extent to which greenfield land development would continue to entrench Apartheid spatial features, and how the Department of Human Settlements would respond to this. A question raised was whether the Department would communicate to provinces and metros to discourage urban sprawl and to what extent it may refuse to approve greenfield land developments in order to fully achieve the spatial transformation agenda.<sup>119</sup>

## 6.5 Possible Issues for Investigation with Province

- Details of the emergency accommodation of households affected by the Marshalltown building fire:
  - How many persons were relocated?
  - How far from the Marshalltown building is the emergency accommodation located (within a 5 km radius as recommended)?
  - How many of these were foreign nationals?
  - Were there any foreign migrants who refused relocation to emergency housing (as reported in the media)?
  - What is the physical set-up of the emergency housing?
  - For how long will emergency housing be provided?
  - What are the projected cost implications of the relocation and emergency housing?
- What is the extent of the housing backlog in Gauteng, particularly in the City of Johannesburg?
- What is the urban regeneration strategy of the City of Johannesburg, and does it include reference to inner-city housing or low-cost rental housing for poor households?
- How many inner-city buildings are currently occupied by unlawful occupants, and how many of these are owned by state entities (including the City) and how many are privately owned?
- Does the City have a profile of unlawful occupants of inner-city buildings?
- To what extent has attempts been made to trace occupants of abandoned inner-city buildings?
- Are there any lessons that may be shared with evictions from abandoned inner-city buildings and what recommendations can be made to with respect to the PIE Act?
- Has the City considered converting inner-city high-rise buildings to rental accommodation, and if yes, what is the progress in this regard?

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<sup>119</sup> Ibid.

## 7. SOCIAL DEVELOPMENT

### 7.1 Overview

#### *Social Development mandate for disaster relief*

The national Department of Social Development is charged with responding to the humanitarian aid requirements of vulnerable groups in the wake of calamities or disasters like floods, droughts, and fires. For example, the Department and its provincial equivalents were at the forefront in the wake of 2022 floods that engulfed provinces of KwaZulu Natal, Eastern Cape, and the Northern Cape.



Natural disasters or human induced emergencies may result in human misery due to the damage they bring to infrastructure, personal property, and human life. Moreover, individuals and families are often displaced due to people losing their shelter, which can be complicated further by shortages of food and drinking water.

The national Department of Social Development (DSD) is also responsible for managing and regulating social security, which includes programmes for social assistance and social insurance that are intended to fend off and lessen poverty in the event of life-cycle risks like loss of income from unemployment, disability, old age, or death, as well as in times of emergency.

South Africa is party to several United Nations (UN) human rights instruments and is therefore obligated to abide by the prescripts of these instruments. Article 25 (1) of the United Nations Declaration of Human Rights (UNDHR) provides that *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”*.

#### *Social Relief of Distress*

In the aftermath of disasters or emergencies such as the fire that engulfed the Marshalltown buildings in Johannesburg, the DSD is expected to provide support in the form of the Social Relief of Distress (SRD) grant to affected persons, through the South African Social Security Agency (SASSA). The provincial departments of social development are tasked with ensuring that disaster management plans, and other programmes are operational. However, the provincial departments require support from other government agencies to help ensure that there are appropriate responses to mitigate the impact of disaster situations on vulnerable communities.

The Social Relief of Distress benefit is to support qualifying families’ basic needs for up to three months, during a crisis of a temporary nature. To qualify, applicants, or their household must not be recipients of any other grants or assistance such as food vouchers or food parcels.

## *Homelessness*

In South Africa, the DSD is one of the lead departments responsible for the mitigation of homelessness by providing psychosocial support services, reunification, and reintegration programmes to the homeless.<sup>120</sup> The DSD is tasked with providing alternative care to homeless children and older person in terms of both the Children's Act (No. 38 of 2005) and the Older Persons Act (No. 13 of 2006). The DSD has initiated the development of a Policy for Homelessness. To this end, the Department is in a process of finalising the rapid assessment and a diagnostic study on homelessness, which will be used as a basis for the development of this Policy.

According to the 2022 Census, a total of 55 719 homeless persons were counted in South Africa. The majority of the homeless were roofless (79.9%), while 20.1% were living in shelters. The province which attracted the majority of homeless persons is Gauteng. Figure 1 below depicts the proportion of homeless persons per province. Of these 55 719 homeless persons, 45.6% lived in Gauteng, 17.5% in the Western Cape and 13.9% in KwaZulu-Natal.<sup>121</sup> Almost 75% of all homeless persons lived in metropolitan areas. The highest percentage of homeless persons were counted in the City of Tshwane (18.1%), followed by City of Johannesburg (15.6%), and the City of Cape Town Metro (11.9%).

## **7.2 Policy implications**

### *Coordinated, national framework for homelessness*

At present, South Africa does not have a national policy on homelessness. While metros such as the City of Cape Town, the City of Johannesburg, and the City of Tshwane have developed policies to address homelessness, these do not offer a coordinated national response. It is understood that homelessness is a cross-cutting issue which requires a collaborative effort in addressing it. In the absence of a national policy, each province is meant to have systems and interventions in place to address the plight of homeless people. For example, Gauteng and the Western Cape have dedicated shelters and budgets to respond to homelessness. They also have guidelines and norms and standards for the operation of shelters. However, other provinces do not have dedicated shelters and budget, but have repurposed existing structures to address the issues of homeless people.

### *Foreign migrants' non-eligibility for social assistance*

Access to the Social Relief of Distress (SRD) grant is only applicable to South African citizens, and non-citizens who have been granted permanent residence or refugee status. As of September 2022, there were 133 582 asylum-seeker appeal backlogs in the country.<sup>122</sup> To address the backlogs on 8 March 2021, the Department of Home Affairs, the United Nations High Commissioner for Refugees (UNHCR), and the Refugee Appeals Authority of South Africa (RAASA), signed a multi-year

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<sup>120</sup> (Du Toit, 2010)

<sup>121</sup> StatsSA (2023a)

<sup>122</sup> "Plans to address backlogs in Immigration (permitting section), refugee and civic services; with Deputy Minister" from PMG (2023)

partnership agreement.<sup>123</sup> The partnership is aimed at addressing the asylum and refugee appeal backlogs in South Africa.

However, it is reported that most of the persons who occupied the Marshalltown building that caught alight on 31 August 2023 were foreign migrants, which means that they will likely have to forgo access to the SRD grant which is intended to assist those affected by a disaster.

### 7.3. Oversight imperatives for Parliament

Parliament should use its monitoring and oversight function to oversee the following:

- At present, none of the national departments are tasked with responsibility for tackling homelessness, meaning there is no action plan or coordinated funding at national level. Municipalities including the City of Cape Town, the City of Johannesburg and the City of Tshwane have developed policies to deal with homelessness, but a coordinated framework on dealing with the issue on a national scale does not exist. Therefore, Parliament should follow up with the national Department of Social Development regarding progress on the national policy on homelessness in the country.
- In 2021, the Department of Social Development indicated that policy development on homelessness was still in its early stages and that, alongside consultations with the Presidency, it engaged with several provinces and municipalities that already had policies for dealing with homelessness. What was the outcome of the consultation with the relevant stakeholders on the issue of homelessness in the country?
- The Department of Social Development commissioned a rapid assessment study to collect data on the extent of the national homelessness problem and has assembled a task team with provincial social development departments that would eventually include other relevant government departments. The outcome of the rapid assessment should be presented to Parliament.
- The policies of the City of Johannesburg, City of Cape Town, and City of Tshwane do not address the procedures to assist any person who has just been removed from their permanent formal accommodation on account of a natural disaster, legal eviction, or any large-scale disruption of public order. This policy will only impact the groups in situations where disruption of their informal shelter situation drives them to reside on the street. This exclusion is stated here on the assumption that specific policies detailing the approach to dealing with these specific populations will be developed and in force as soon as reasonably possible. In this regard, Parliament should follow up with the DSD on the progress of the national policy on homelessness in the country.

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<sup>123</sup> Ibid.

## 7.4 Oversight Areas Previously Raised by Parliament

In 2021, a question relating to homelessness in South Africa was raised by a Member of Parliament in the National Assembly. Given that in 2020 it was found that no national government policy and/or legislation exists which speaks to homelessness in the country, which leaves the specified group of individuals vulnerable:

- What progress has been made by the DSD regarding the specified gap in government policy and legislation?
- By what date will relevant policy and/or legislation be available to present to Parliament and for public input?
- What is the responsibility of the DSD in the daily plight of homeless individuals; and
- Has there been areas of co-operation between the DSD and (i) provinces and (ii) municipalities in this regard?

## 7.5 Possible Issues for Investigation with National and Province

The following key questions relate to the national and provincial departments of social development:

- What are the immediate interventions required by the homeless and destitute families in the aftermath of disasters or emergencies? Do immigrants (whether legal or illegal) qualify for such interventions?
- What are the root causes of homelessness in South Africa?
- Are there any government policies and legislation/guidelines on homelessness? Is there alignment between these policies and legislation?
- What are the existing government services provided to the homeless aligned to the various life cycle stages?
- What are the institutional arrangements in place for planning and management of these services?
- What are the roles and responsibilities of different stakeholders?
- What are the current funding models to address homelessness? And what are the current public and private partnership models?
- What evidence from other countries exists on solutions that are working? Are there lessons that can be learned from these countries to develop workable solutions?
- The impact of the lack of a national policy on homelessness is reflected in many challenges, particularly related to service delivery gaps, uncoordinated response and inconsistent or inadequate funding.

## 8. SAFETY AND SECURITY

### 8.1. Overview

#### *Inter-governmental safety hierarchy*<sup>124</sup>

All levels of government are responsible for community safety, albeit the different roles, responsibilities, and **resources to support these functions are not always clear**. Section 41(1) of the Constitution “emphasises the interdependent and interrelated nature of government and stipulates that all organs of state within each sphere must “preserve the peace” and “secure the well-being of the people of the Republic”.<sup>125</sup> The inter-governmental safety hierarchy can be summarised as follow:

**National Government** has responsibility for national safety and security through the South African Police SAPS; setting standards; and national crime prevention initiatives. This refers to the traditional role of SAPS in fighting crime and crime prevention through *inter alia* visible policing; carrying out arrests and processing suspects in the criminal justice system; detecting and investigating crime through detective services and specialised teams like the Directorate for Priority Crimes (the Hawks) that investigate serious and commercial crime, including those perpetrated by crime syndicates. The SAPS is also obligated in terms of legislation to provide victim friendly rooms and support to victims of crime, especially sexual offences, and gender-based violence (GBV).

The SAPS has raised language barriers as one of the challenges affecting the policing of foreign migrants in particular, and the reluctance of victims to report crimes to the police, due to a deep mistrust in the police and fear of being deported. Nevertheless, the SAPS is obligated to provide the full range of policing services to everyone within our borders, including persons occupying abandoned or derelict buildings. This goes beyond carrying out raids on such buildings and arresting undocumented persons. Foreign nationals are part of the community and should be encouraged to participate in and attend community police forums (CPFs) in their respective sectors. Where the police are aware of crimes being committed in abandoned buildings, they should proactively address this, through crime prevention and crime fighting strategies.

**Provincial government** is responsible for police oversight and priority setting and provincial crime prevention initiatives. The MEC for Community Safety and the Department of Community Safety in the province exercises civilian oversight over the police, including the SAPS. The Department reports to the provincial legislature on its budget, oversight mandate and activities.

**Local Government** is responsible for municipal policing and by-law enforcement; local crime prevention programmes; and participation in community/policing and safety forums. The enforcement of by-laws includes those applicable to owners and occupants of abandoned buildings. Like SAPS, the municipal / metropolitan police (“metro police”) are involved in visible policing and crime prevention and respond to emergencies where the commission of crimes are in process. The provision of services such as lighting, roads, and infrastructure, and factoring in crime hotspots in

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<sup>124</sup> Urban Safety Reference Group (2016).

<sup>125</sup> Urban Safety Reference Group (2016).

planning and infrastructure development, also contribute to crime prevention. It also allows opportunities for local governments to (a) invest in their own social crime prevention projects and (b) coordinate local safety and crime prevention services.<sup>126</sup>

Over the years there have been calls for more policing powers to devolve to municipalities.<sup>127</sup> The centrality of municipalities in community policing, is evident from policy documents like the White Paper on Safety and Security, the 2016 White Paper on Policing, the 2030 National Development Plan (Chapter 12), and the Integrated Urban Development Framework (IUDF). Local councillors typically attend and represent their various constituencies on Community Police Forums (CPFs) and in terms of the 2016 White Paper on Safety and Security (“White Paper”) local governments could possibly take the lead in establishing systems of coordination for local stakeholders in respect of crime prevention. Should municipalities, however, take on more policing responsibilities not assigned to them by legislation this could lead to what the IUDF describes as unintended consequences, in this instance “unfunded mandates”. According to the IUDF, an “unfunded (or underfunded) mandate arises when municipalities carry out functions that do not form part of those allocated to them by the Constitution or legislation”.<sup>128</sup> However, the equitable share to provinces from the National Budget does not take unfunded mandates into account when assigning resources to provinces, and further down to local government. This is a policy area that possibly needs review.

The question whether national and provincial government have a role in supporting local government, including financially, in respect of safety and security “remains somewhat ambiguous”.<sup>129</sup> This is because the 2016 White Paper on Safety and Security<sup>130</sup> states that national and provincial governments are legally obligated to equip municipalities with the resources and the capacity to plan, implement and monitor their services, whereas the White Paper on Policing provides that “[e]ach municipality is responsible for promoting a safe and healthy environment within its financial and administrative capacity and in line with national and provincial priorities”.<sup>131</sup>

### *Intergovernmental cooperation between the SAPS and Local Government*<sup>132</sup>

Section 41(1) of the Constitution sets out the principles of co-operative government and intergovernmental relations; read with the Intergovernmental Relations Framework Act, 2005. In terms hereof, all spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and good faith by fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on, matters of common interest; coordinating their actions and legislation with one another; adhering to agreed procedures; and avoiding legal proceedings against one another.

In respect of crime, “the main objective of alliance between Local Government and the SAPS should be to determine, through consultation, community needs and policing priorities, whereby parties

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<sup>126</sup> Urban Safety Reference Group (2016).

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Urban Safety Reference Group (2016).

<sup>130</sup> p6

<sup>131</sup> p40

<sup>132</sup> Pheiffer, D (2013).

involved can benefit by reaching their crime preventative goals as set out in their IDP document and Strategic Plan. The partnership between these two government entities should consist of facilitating cooperation between local law enforcements and the communities they serve to cultivate a common vision of crime prevention, both specifically indigenous and globally informed. Local Government electives and the SAPS officials reside in communities where the need for safety is essential”.<sup>133</sup>

### *SAPS Strategies to address organised crime*<sup>134</sup>

In terms of the SAPS 2023/24 strategic indicators, it will focus on prioritised crime threats including organised crime, gangsterism, illicit drugs, the trio crimes, aggravated robbery, kidnapping, extortion, crimes related to critical/essential infrastructure and illegal firearms. Organised Crime Investigation specialised task teams in provinces are also investigating serious crimes related to drugs and drug trafficking, ATM bombings, gang-related crimes, ferrous and non-ferrous metals and selected high-profile cases. The DPCI’s Serious Organised Crime Investigations unit renders specialised investigations focusing on national priority offences, like kidnapping and illegal mining and extortion. The SAPS’ Visible Policing capability will also conduct proactive crime combating and prevention operations using the five-pillar approach, to stabilise the identified hotspots in a multidisciplinary and integrated approach.

According to StatsSA, Gauteng, KwaZulu-Natal, the Eastern Cape and the Western Cape are the most densely populated provinces in South Africa, attracting migrant workers from within South Africa and neighbouring countries, as well refugees and undocumented persons from other parts of Africa.<sup>135</sup> The shortage of housing has created opportunities for **slumlords and syndicates** to “hijack” dilapidated and abandoned buildings, the floorspaces of which are then subdivided and “rented out” to those desperate for housing, the vast majority of which are foreigners or undocumented persons. Reportedly, more than 200 families were housed in the 80 Albert Street Building<sup>136</sup>, which is synonymous with conditions in other unlawfully occupied buildings in especially Gauteng, KwaZulu-Natal, and the Western Cape. The living conditions in these unlawfully occupied buildings are “deplorable, often lacking basic amenities and safety measures”.<sup>137</sup> It is not unusual to find up to 10 people crammed into a one-bedroom flat.<sup>138</sup> Over the years, attempts to address the issue faltered in the face of the extent of the problem and the “**intricate web of corruption and crime** [that] have made solutions elusive”.<sup>139</sup>

During the **Taking Parliament to the People (TPOTP)** pre-visits to the Johannesburg Central and Kempton Park Police Stations on 26 June 2018, Parliamentary Researchers accompanied police on visits to a few unlawfully occupied buildings in the CBD, to see first-hand the living conditions inside these buildings and the challenges facing police. In the buildings visited, hundreds of families and individuals, mostly foreign nationals, were cramped into spaces the size of an average office cubicle, which were “rented out” by slumlords or syndicates.

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<sup>133</sup> Pheiffer, D (2013). p76

<sup>134</sup> SAPS (2023).

<sup>135</sup> StatsSA (2023). Population Census 2016.

<sup>136</sup> Nicholson, G and Simelane, B (2018).

<sup>137</sup> Rondganger, L (2023).

<sup>138</sup> Rondganger, L (2023).

<sup>139</sup> Rondganger, L (2023).

“Housing units” often had locked gates and/or doors to safeguard the belongings of occupants. While the buildings were mostly dark, illegal electricity connections could be seen everywhere, the exposed wires dangerously crisscrossing between “housing units”. This was similar to reports about the Usindiso Building on 80 Albert Street, Marshalltown. The floor spaces of this building were subdivided and boarded up, and housing structures had been built inside the unlawfully occupied building, resembling a township on every floor.<sup>140</sup> The building was **reportedly raided** in October 2019 by police officers and law enforcement officials of the City of Johannesburg’s Group Forensics and Investigation Services during which more than 140 foreign nationals were arrested, “mostly on immigration violations, but they did not relocate the remaining several hundred residents”.<sup>141</sup> According to the Johannesburg City Manager, “a suspect was incarcerated and charged for illegally collecting rental from tenants at the building. The case is with SAPS and no update is immediately available at this stage”.<sup>142</sup>

Where there is an influx of people, **crime increased** in these areas, especially contact crimes like murder, robbery, hijackings, kidnapping, gender-based violence (GBV), sexual offences and economic crimes. Between **April and June 2022**, Gauteng recorded 293 more murder incidents, representing an increase of 24.5%. All five districts showed an increase in murder totals, with the biggest increases in the West Rand (35.8%), followed by Sedibeng (21.5%). Although there were decreases in Common Robbery, Common Assault, Assault GBH and Sexual Offences in 2022/23, these categories increased in 2023/24. The latest Crime Statistics for the **2023/24 First Quarter** which covers the period April 2023 to June 2023, shows high numbers for contact crimes like murder, robbery, kidnapping and gender-based violence (GBV). Assault GBH increased by 7.8% in Gauteng, while robbery with aggravating circumstances increased by 9.9%. Gauteng contributed the highest number (33.8 per cent) to the national total in this crime category. Gauteng had an increase of 6 per cent in contact crime in the first Quarter of 2023/24 and contributed the most (28.5 per cent) to the national total.

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**The crime rate in Cape Town remains consistently higher than the national and metro average rates**

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The crime rate in Cape Town remains consistently higher than the national and metro average rates.<sup>143</sup> The murder rate in Cape Town increased from 59 murders per 100 000 population in 2016/17 to 67 murders per 100 000 population in 2020/21 (despite a decrease during the Covid-19 lockdown). During the First Quarter of 2023/24,<sup>144</sup> the Western Cape experienced increases in robbery with aggravating circumstances (1.9%) which contributed 21.2 per cent to the national total. Despite its 0.5 percent decrease in contact crimes, the Western Cape contributed the third highest total (16.7 per cent) to the national total in this category.

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<sup>140</sup> Eligon, J et al (2023).

<sup>141</sup> Eligon, J et al (2023).

<sup>142</sup> GCIS (2023a).

<sup>143</sup> City of Cape Town (2023).

<sup>144</sup> SAPS (2023).

## 8.2 Policy implications for safety and security sector

- *Unreliable Population data:* For SAPS, the challenge in policing people where the population is not static due to the large number of migrant workers, means that the population size is often much higher than official census statistics. This negatively affects resource allocation to police stations as SAPS policy utilises official population data when determining resource allocation to police stations.
- *Undocumented foreign nationals:* Due to the court case against the Department of Home Affairs (DHA), that allows undocumented suspects to challenge in court DHA decisions to deport them after serving sentences for crimes, the SAPS has 40 to 50 persons at any given time in the cells. They stay at the station until DHA verifies their details / deportation order. This places tremendous strain on SAPS resources as they must be taken to hospital if sick, to court, etcetera.
- *Holistic support to undocumented foreign nationals:* When the police and other bodies raid and arrest undocumented foreign nationals for immigration violations, they often leave the rest of the situation or people untouched, i.e. do not relocate them or people refuse to be relocated. The lack of a holistic, integrated approach when dealing with abandoned buildings and its occupants, points to a policy gap. A multisectoral approach may be desirable, spanning immigration and home affairs services (to provide missing or lost documentation), SAPS and social development (to provide support services to victims of crime and children in need of care), as well as housing / relocation services to the occupants.
- *Delineation of SAPS versus other role-players:* The lack of a clear delineation of roles and responsibilities in respect of security provision for abandoned buildings and occupants.

## 8.3 Oversight imperatives for Parliament

Parliament should use its monitoring and oversight function to oversee:

- The Committees in Parliament responsible for policing could consider calling the SAPS and other relevant role-players in to discuss and enquire on a number of issues concerning the security and policing of **abandoned buildings**, including:
  - The possible policy and legislative gaps in the policing responsibilities of SAPS in respect of such buildings and occupants, which is tied up with SAPS's mandate to ensure the safety of community.
  - Whether the SAPS should design and implement a strategy specifically to police occupants in unlawfully occupied or abandoned buildings.
  - In light of the Commission of Inquiry that has been established in Gauteng, other provinces, together with the SAPS, should proactively (a) start identifying metros in which unlawfully occupied or abandoned buildings are becoming or have become prevalent, and the impact this has had on crime in those areas and (b) devise appropriate, holistic strategies, including crime prevention, involving all stakeholders to address the situation.
  - The SAPS should do an audit of the (a) number of "unlawfully occupied" or abandoned buildings within affected inner-city precincts, (b) whether the SAPS have conducted raids in these buildings and (c) whether any illegal activities, firearms or substances were found on these premises and persons were arrested in this regard.

- Whether the SAPS is aware of any syndicates operating in or extracting money from occupants of in the identified unlawfully occupied or abandoned buildings. If so, SAPS should indicate what (a) policing strategy is being implemented to deal with such syndicates and (b) successes and (c) challenges the SAPS have encountered in this regard.
- The Parliamentary Committees overseeing the SAPS and the Department of Home Affairs should engage these departments on:
  - The establishment and funding of a **database**. One of policing challenges when it comes to “unlawfully occupied” buildings and the mostly foreign nationals who occupy them, concerns the fact that South Africa does not have a searchable database for SAPS to check criminal records and fingerprints of suspects who are foreign nationals. In addition, many suspects move around from place to place under different names.
  - Whether there are any solutions to the unintended consequences that arise by the fact that undocumented suspects can challenge DHA decisions to deport them after they served sentences for crimes. According to SAPS, this is the reason why especially the Johannesburg Central and Kempton Park police stations have between 40 and 50 persons in police cells at any given time. These persons remain at the police station until DHA verifies their details or deportation order, which places tremendous strain on SAPS resources as they must be taken to hospital if sick, to court, etcetera.<sup>145</sup>
  - Whether the SAPS is ensuring that foreign nationals receive the full range of policing services which should be available to everyone within the country.
- The Parliamentary Committees overseeing the SAPS and PSIRA should engage the departments’ strategies to root out **unregistered security firms** employing foreign nationals without verifying criminal records and licences to carry firearms.
- The Parliamentary Committees overseeing Eskom, COGTA and the Department of Public Works, should investigate:
  - The extent to which employees and/or contractors are involved in **corruption in connection with making illegal electrical connections** and those who cypher electricity in this way.
  - Perpetrators should be identified and referred to the SAPS and NPA for the purpose of bringing criminal charges. The Committees in the Justice and Security sector should request regular feedback/updates in this regard.

According to SAPS, Eskom workers were allegedly paid by occupants or slumlord to make illegal electricity connections for a fee.<sup>146</sup> The theft of electricity has major costs implications for Eskom and stakeholder departments, as thousands of people are using electricity for which they are not paying. In addition, illegal electrical connections contribute to grid instability and electrical outages, whether through loadshedding or electrical faults.

### *Specific issues*

Gauteng Premier Panyaza Lesufi has appointed a three-panel Commission of Inquiry<sup>147</sup> led by Justice Sisi Khampepe, into the fire in Marshalltown, Johannesburg. The Commission will investigate (a) the prevalence of unlawfully occupied buildings in Johannesburg, (b) what caused the fire and (c) who must be held responsible for the tragedy. The Commission’s terms of reference are expected to be

<sup>145</sup> Parliament of South Africa (2018) and SAPS (2018).

<sup>146</sup> SAPS (2018).

<sup>147</sup> GCIS (2023b).

Gazetted in the near future. Affected communities and organisations to make submissions and assist with the Commission's work.

- Parliamentary Committee's overseeing COGTA and Public Works should engage the respective departments:
  - On the findings and recommendations of the **Commission** when the report is finalised.
- The Parliamentary Committees overseeing Justice and Police should follow up with the National Prosecuting Authority (NPA) and the SAPS:
  - Regarding any **arrests, prosecutions and convictions** that may emanate from the Commission's report.
  - Any **lessons** emanating from the Gauteng Commission Report which may be of value to addressing the problem in other parts of the country and which may have policy implications for the SAPS, in particular.
  - Receive an **update from the NPA and the SAPS** regarding (a) the suspect that was incarcerated and charged for illegally collecting rental from tenants at the building during the raid by City Officials and the SAPS in October 2019, and (b) any subsequent arrests and charges of other subjects for the same crime.

## 8.4 Oversight Areas Previously Raised by Parliament

Issues raised during the TPTTP Gauteng pre-visits in 2018, and feedback sessions with the Executive in 2020 include the following:

- The official population figure for the precinct does not consider the influx of migrants, which impacts negatively on the formula used by the national SAPS to determine the personnel strength for the police station.
- Overpopulation puts tremendous strain on infrastructure.
- SAPS had trouble in tracing migrant suspects after arrest, as they frequently change addresses and often occupy buildings that are not suitable for human habitation.
- Language barriers and unavailability of victims to attend court.
- Victims were often reluctant to go to court, while others did not have fixed addresses.
- There is no searchable database for SAPS to check criminal records and fingerprints of suspects who are foreign nationals.
- Many suspects also move around from place to place under different names.
- Due to the court case against DHA, that allows undocumented suspects to challenge in court DHA decisions to deport them after serving sentences for crimes, the SAPS has 40 to 50 persons at any given time in the cells. They stay at the station until DHA verifies their details / deportation order. This places tremendous strain on SAPS resources as they must be taken to hospital if sick, to court, etc.
- Spaza shops were not properly regulated. Some were open 24 hrs per day, 7 days a week, meaning the shopkeepers eat and sleep in the shop. This attracted criminals and become generators of crime.
- The distance of certain policing precincts from the courts placed tremendous strain on manpower to process 250 persons per day for the different courts, starting at 5am in the morning with searches.

- Trucks used to transport persons to court were insufficient, slow, and not durable enough as they could be broken by suspects from the inside.
- Insufficient vehicles to service both sectors and courts.
- Unregistered security firms employ foreign nationals who have been involved in crime and arm them with legal guns.

## 8.5 Possible Issues for Investigation with the National Commissioner of Police / Province

- Whether criminality or criminal negligence has been ruled out as a cause of the fire on 31 August 2023 in the Johannesburg CBD? If yes, why? If not, whether any persons have been arrested in this regard?
- In light of the influx of people to urban and larger metropolitan areas, what is the SAPS policing strategy to police densely populated, urban areas and central business districts?
- Do the SAPS have a strategy specifically to police occupants in “unlawfully occupied” or abandoned buildings? If so, kindly provide details in this regard (including successes and challenges in implementing the strategy. If not, (a) why not and (b) when such a strategy will be developed and implemented?
- In which provinces and metros are the issue of “unlawfully occupied” or abandoned buildings more prevalent?
- How many “unlawfully occupied” or abandoned buildings are within these affected inner-city precincts and (b) whether the SAPS have conducted raids in these buildings and if so, (i) whether any illegal activities, firearms or substances were found on these premises and persons arrested in this regard?
- Whether the SAPS is aware of any syndicates operating in or extracting money from occupants in the identified unlawfully occupied or abandoned buildings? If so, what (a) policing strategy is being implemented to deal with such syndicates and (b) successes and (c) challenges has the SAPS encountered in this regard?

## 9. ARTS AND CULTURE: HERITAGE BUILDINGS

### 9.1 No. 80 Albert Street, Johannesburg: History

According to cultural preservationist Sipho Sithole the building in Marshalltown served as a gateway for African migrants into the City of Johannesburg.<sup>148</sup> It was established in 1927 to house the headquarters of the Non-European Affairs Department. Thus, the dreaded dompas that arbitrarily determined whether black people would be allowed to live in Johannesburg or deported back to the villages was issued in Marshalltown building. The Heritage Portal describes it as an “infamous checkpoint of the influx control system”.<sup>149</sup> The building was the property of the Central government until 1953 when the City of Johannesburg was authorised by the Bantu Authorities Act passed in 1951 to regulate the affairs of blacks. By then, the Pass office had issued more than 280 000

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<sup>148</sup> Sithole, S. (2023)

<sup>149</sup> Pass-office-80-albert-street.

dompas.<sup>150</sup> The increasing number of Africans arriving in Johannesburg to seek employment in the mines, factories and other employers necessitated that more staff must be employed to process them. As such, more offices and sections were added, and the extensions were completed in July 1954.

According to the Municipal Manager of the COJ No. 80 Albert Street is a declared heritage site it embodies cultural significance.<sup>151</sup> It is a place where black migrants experienced oppressive laws of the apartheid system diligently enforced not by the military but by the Afrikaner civil servants.<sup>152</sup> Dompas controlled the movement of blacks in the city. It was illegal for blacks to be without passes which contained their photos, place of birth, employer, criminal record, and evidence of tax compliance. Those who were found without it (and there were millions) were arrested and liable to a fine or prison term. Unfortunately, although No. 8 Albert Street is an epitome of an oppressive regime because of its history that impacted on the lives of migrants from all corners of the country and the continent, it is not graded as a national estate. Section 7 (1) of the National Heritage Resources Act (NHRA) 25 of 1999 stipulates the following categories:<sup>153</sup>

- Grade I: Heritage resources with qualities so exceptional that they are of special national significance.
- Grade II. Heritage resources which, although they are part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region.
- Grade III. Other heritage resources worthy of consideration, and which prescribes heritage resources assessment criteria, consistent with criteria set out in section 3 (3), which must be used by a heritage resources authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of section 8.

No. 8 Albert Street was declared under Grade III and is thus under the jurisdiction of the COJ which converted it to a women's hostel in 1994 and renamed it Usindiso Women's Shelter. Such an arrangement, although noble, increased risk and threatened the preservation of an important heritage that memorializes the recent history of apartheid and dehumanization of blacks in South Africa.

SAHRA is empowered by sections 45 and 46 of the NHRA to initiate a process of mitigation to foster preservation. The two sections authorise SAHRA to compel owners- private and public- to repair heritage sites under their ownership.

**Section 46 of the National heritage Resources Act allows for the expropriation of the heritage site for the purpose of public interest.**

<sup>150</sup> Ibid

<sup>151</sup> Sunday Times, 3 September 2023

<sup>152</sup> Sithole, S. (2023)

<sup>153</sup> National Heritage Resources Act 25 of 1999.

Moreover, section 46 allows for the expropriation of the heritage site for the purpose of public interest. This is done in consultation with the Minister of Finance in order to decide on compensation of the owner. However, heritage authorities (SAHRA) do not seem to inspect and where necessary issue compulsory order repair or expropriate as the NHRA obliges<sup>154</sup>. Section 45 of the Public Finance Management Act directs that an official of the department, entity or constitutional institution must be responsible for the management including the safeguarding of a public asset. However, the act does not provide a recourse in case of negligence. This should be considered to ensure compliance.

## 9.2 Oversight imperatives for Parliament

- Informed by the history of the building which has a national and continental footprint, how did SAHRA conclude on Grade III?
- Does the COJ have other properties under its ownership that have a national footprint? Are they declared?
- Are there other buildings with similar history under private ownership and in despair?
- Owners of declared buildings together with heritage authorities need to keep an inventory of heritages with detailed information including usage and condition.
- Legal agreements between owners and occupying organisations need to be scrutinised.
- Oversight by owners and heritage authorities need to be conducted to identify and troubleshoot threats as soon as they manifest.

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<sup>154</sup> Ibid

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The Research Unit offers research support to individual Members of Parliament, to Committees and to the Houses. Researchers proactively provide:

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- ✓ Comparative studies and international best practices
- ✓ Briefing papers to prepare for oversight visits and on-site oversight visit support
- ✓ Papers in support of House debates

On request, researchers will provide briefings and presentations to Committees, as well as research support to individual Members of Parliament.

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