

ICLD

Learning Case



Securing the Right to Housing and Services in eThekweni's Informal Settlements

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1. Learning Objectives

Primary Objectives:

- Examine municipalities' role in providing housing
- Identify the human rights that are connected to housing
- Consider the needs and experiences of people living in informal settlements
- Consider what consultation is necessary to develop an effective housing plan

Secondary Objectives:

- Consider the inputs and impact of incremental versus one-step plans
- Consider the inputs and impact of “optimal” versus “basic” housing and service provision
- Examine the meaning of “adequate housing”

2. Case Description

Dilemma

With 3.4 million people in 2011, the eThekweni Metropolitan Municipality is the most populous municipality in South Africa's province of KwaZulu-Natal and home to the city of Durban. This vibrant, diverse city on the Indian Ocean was growing rapidly and had an inadequate housing supply for the many people coming in from rural areas and neighbouring countries. Many of these new residents found shelter in informal settlements. Indeed, “[t]he city says there are about 300,000 shacks in Durban, each home to an average of four people, which means over 30 percent of Durban residents live in a shack” (Arde 2014). Such communities could be incredibly densely populated, with the Kennedy Road settlement, for example, containing an estimated 6000 dwellings in a mere 10 hectares (Mbanga 2020).

Some eThekweni residents were concerned by the growth and persistence of these informal settlements, with city reports noting that each year, the problem continued growing: “[n]ationally, household formation grows at about 3% annually. eThekweni is also seeing the rapid influx of people from rural areas, few of whom have the means to build or buy formal houses in the city” (eThekweni Municipality, “Human Settlements” n.d.). The municipality had several units and initiatives with the aim of providing housing and services. These included a Human Settlements Unit, which endeavoured to create a “quality living environment” by building new fully subsidized homes, renting and selling older housing stock, and upgrading and refurbishing existing housing (eThekweni Municipality, “Human Settlements” n.d.). The municipality, however, was struggling to keep up with the growing number of people needing housing, and the often precarious locations they chose to build homes, amid very limited options, complicated the problem.

eThekweni was also the birthplace of the country’s most active organization for the rights of residents of informal settlements. Abahlali baseMjondolo was formed in 2005 as a response to eThekweni’s attempt to clear and relocate an informal settlement. The organisation, whose name means “the people of the shacks” in Zulu, was highly politically active on housing and service provision. Using the tagline “land, housing, dignity,” the group often employed direct action techniques, including land occupations and road blockades, and has also taken the government to court (Abahlali baseMjondolo n.d.). By 2021 the group had more than 80 branches spanning much of South Africa and claims upwards of 100,000 members (Abahlali baseMjondolo 2021). A second group in the sector was the South African Shack Dwellers Association, a national affiliate of Cape Town-based Slum Dwellers International (SDI). SDI described itself as “a network of community-based organisations of the urban poor in 32 countries and hundreds of cities and towns across Africa, Asia and Latin America” (SDI, “Who is SDI” n.d.). The group took a partnership approach, actively “engag[ing] with governments, international organisations, academia and other institutions wherever possible to create relationships that benefit the urban poor” (SDI, “Our practices for change” n.d.). However, Abahlali baseMjondolo and SDI did not work together.

Your Role

You are an employee of eThekweni Municipality who has been approached by the city council and asked to draft a proposal of how to address the growing need for quality housing and adequate access to services for residents of informal settlements. Who do you consult, what options do you consider and what do you recommend?

Background

Apartheid’s Impact on Settlement Patterns

In 2022, the legacy of apartheid’s racial segregation still had a significant impact on settlement patterns, housing and access to land in contemporary South Africa. Historically, several pieces of legislation were passed that limited primarily black people’s access to land and to central urban areas where services and employment were concentrated. These included the Native Land Act (1913), which left the majority black population with access to only 13% of the country’s land (South African History Online, “Native Land Act” 2021), and the Group Areas Act (1950), which established “homelands” or “bantustans” in largely remote, rural areas and declared them to be separate countries (South African History Online, “Group Areas Act” 2021). Black South Africans were then restricted to particular areas, often distant from employment opportunities, based on their race, culture and language (South African History

Online, “Group Areas Act” 2021). The impact of these repealed laws could still be felt through spatial inequality (Marais 2011, Kenyon and Madlingozi 2022), racial separation in residential areas, and the ongoing and growing presence of informal settlements adjacent to cities. Linked to the spatial legacies of apartheid, Mbanga (2020) also identifies the desire to live nearer to urban services and amenities such as health and education, and an impetus to force land redistribution through occupation as critical ‘push’ factors for the development of informal settlements.

What are Informal Settlements?



Description: An informal settlement in Durban where people now have access to community ablution blocks

Photo Credit: Sustainable Sanitation Alliance (SuSanA) Secretariat

Link: <https://www.flickr.com/photos/23116228@N07/8152040443>

Since the end of legislated apartheid in the mid-1990’s, informal settlements had been a common feature of eThekweni’s rapid urbanization and lack of urban housing (Department of Human Settlements 2009). These unauthorised residential communities were often built on undeveloped municipal land. Such communities were often characterised by extreme poverty, undesirable locations (e.g., precarious locations adjacent to waterways, railways, and landfill sites or built on floodplains), social and economic vulnerability, informal dwellings (e.g., built with ad hoc materials and a lack of building codes), and the absence of formal infrastructure (e.g., water, electricity, and sewage) (Socio-Economic Rights Institute of South Africa 2018, pp. 5-6).

In 2020, about one billion people lived in informal settlements in the world, and this number was expected to increase (Mbanga 2020). In South Africa, the number of informal settlements grew from 300 in 2002 to an estimated 3200 in 2020 (Mbanga 2020). It was estimated that between 2.9 and 3.6 million people in South Africa lived in informal settlements, including more than 28% of South Africa’s urban population, the vast majority of whom are black (World Bank Open Data). Most households in informal settlements lived in informal structures (Socio-Economic Rights Institute of South Africa 2018, pp. 5-6). Structures were typically small, closely spaced, and sometimes had overlapping construction, meaning that fires and communicable diseases could easily devastate a community, spreading quickly from home to home (Dawood 2021). These households included children and people with disabilities, two groups particularly disadvantaged by the lack of access to infrastructure and critical services (Socio-Economic Rights Institute of South Africa 2018, p. 7).

Life in an informal settlement could not only involve a lack of access to adequate housing and shelter, it could also entail an increased risk of disease, accident and threats to physical safety (relating to the right to health [UDHR Article 25], the right to safety and security of the person [Article 3]), conditions of such inadequate sanitation that they impugn the right to dignity (Article 1), and difficulties in accessing the right to education (Article 26) and work (Article 23) (Universal Declaration of Human Rights (UDHR), United Nations General Assembly 1948). People in informal settlements also could face police harassment and brutality, corruption and extortion, both from the state in the context of forced removals, and from criminal elements and alternative governance structures within their communities.

Still, informal settlements were people's homes and communities. Many settlements, despite their "informal" nature, had existed for decades and had well-developed community structures, family and social networks and systems of leadership. In summary, they were real communities to which many people had significant social ties.

How Do Informal Settlements Affect the Wider Community?



Description: Abahlali baseMjondolo Protest the Slums Act at the Constitutional Court in Joannesburg, South Africa

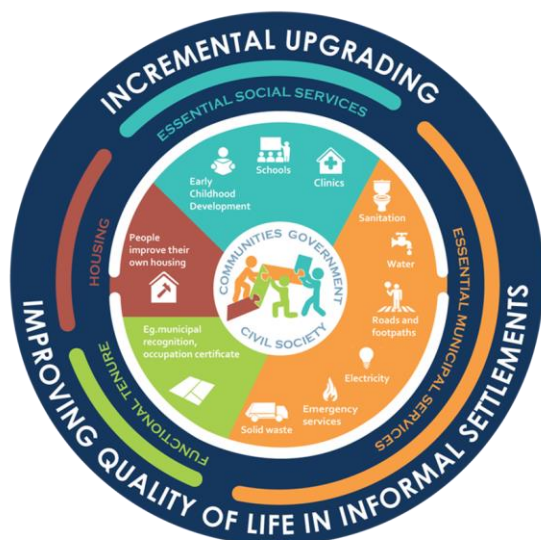
Photo Credit: Sekwanele 2

Link: https://en.wikipedia.org/wiki/File:Abahlali_baseMjondolo_Protest_the_Slums_Act_at_the_Constitutional_Court.jpg

The inadequate and often inhumane conditions in informal settlements primarily affected those who lived there. However, they also placed pressures on infrastructure and surrounding communities. Out of necessity, people in informal settlements created their own waste and sanitation systems and developed their own ways of accessing heat and fuel. These makeshift systems could involve using waterways as dumps and sewers and employing formal or informal pit toilets, which increased the risk of disease locally, as well as in surrounding areas, and contributed to environmental degradation. People in informal settlements sometimes spliced electricity from power lines adjacent to their communities in order to electrify their homes – an unsafe practice that brings with it the risk of fire and electrocution and may also damage electrical infrastructure and negatively impact other users. Using fire to destroy refuse, provide heat, and cook, could lead to negative health impacts from smoke inhalation, out of control fires due to small dwellings in close quarters, and air pollution. The COVID-19 pandemic highlighted in 2020 - 2022 how close quarters were ideal for the quick spread of respiratory illnesses as isolation, namely because distancing and adequate ventilation were not possible. Once introduced,

illnesses could quickly engulf an informal community, and those in that community would be forced by poverty to continue leaving the community to work, ensuring further spread.

Is There A Right to Housing?



Description: Infographic developed as part of the iQhaza Lethu project, illustrating the incremental and partnership-based approach to informal settlement upgrading

Photo Credit: eThekweni Municipality

Link: https://www.durban.gov.za/City_Services/housing/Pages/Incremental-Informal-Settlement-Upgrading.aspx

Article 11 of the International Covenant on Economic, Social and Cultural Rights, to which South Africa has been bound since 2015, refers to the “right of everyone to an adequate standard of living [...] including adequate food, clothing and housing” (United Nations General Assembly 1966). This right also was reflected in Article 25 of the Universal Declaration of Human Rights (United Nations 1948). In South Africa, the importance of this right was even made clearer, as section 26(2) of the nation’s constitution affirmed, “everyone has the right to have access to adequate housing” (Government of South Africa 1996). The South African Constitutional Court spelled out what this provision meant in practice, stating, “for a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling” (Government of South Africa v Grootboom). The court also affirmed that the state held a duty to provide housing to more and more people over time, but also, that, while waiting for housing, the state must abide by section 26(3) of the constitution, which stated that “no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances” (Fish Hodgson 2020). People could not be removed from their homes, even when their homes were not considered “adequate” or did not “constitute a home in the everyday, colloquial sense” (quoted in Fish Hodgson 2020), unless they were provided an acceptable alternative.

As the Constitutional Court explained in 2004 in Port Elizabeth Municipality v Various Occupiers:

“...a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquility in what (for poor people in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that has established itself on a site that has become its familiar habitat” (quoted in Socio-Economic Rights Institute of South Africa n.d.).

In 2004, a national housing policy was inaugurated, titled the “Breaking New Ground” strategy, which aimed to upgrade informal settlements by providing them with basic services, with a view to eliminating informal settlements by 2014. The policy was hampered by inadequate consultation and participation of affected communities, supply-chain issues, inadequate resources and corruption (Mbanga 2020).

In 2007, the KwaZulu-Natal provincial government passed the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act. The purpose of the act was to eliminate inadequate housing, placing an obligation on municipalities and landowners to prevent informal settlements and evict unlawful occupiers (KwaZulu-Natal Department of Human Settlements 2021). Abahlali baseMjondolo took the government to court, ultimately appealing to the Constitutional Court. The Constitutional Court found the law to be unconstitutional because it could allow large numbers of people to be evicted without alternative housing.

A new housing strategy came about in 2009 (“National Upgrading Support Program,” as part of the National Housing Code), aiming to provide support and capacity-building to municipalities to assist them in upgrading informal settlements. The program also aimed to prevent unauthorised land occupation. The number and population of informal settlements, however, kept growing.

3. Instructions

- **What are eThekweni’s options?**
 - **Move people from their current locations?**
 - How does this impact community cohesion? Ability to access services and employment?
 - Where would they be moved to?
 - Is this a short-term or a long-term solution?
 - **Continue building new homes**
 - Can the municipality build homes at a rate that can keep up with demand?
 - Is this a short-term or a long-term solution?
 - **Upgrade current informal settlements**
 - What if current settlements are in unsafe locations?
 - Is this a short-term or a long-term solution?
 - **Identify existing under-utilized buildings in the municipality and refurbish them¹**
 - What factors should be considered when identifying a building?
 - Is this a short-term or a long-term solution?
 - **Other options?**
- **The Constitution protects the right to “adequate housing.” What does adequate housing look like?**
- **Is “perfect the enemy of the good”? Is there a satisfactory solution that would not meet all targets but would provide meaningful improvement?**
- **How should municipalities consider cost when addressing human rights issues?**
 - Should plans be made first based solely on human rights considerations and then cost addressed subsequently? Or, should all policy-making, even with respect to human rights be guided, from the outset, by cost considerations?

¹ See also: Arde, G., 2014. “Durban Moves Its Slum-Dwellers into Converted Office Buildings,” 17 March 2014, *Next City*, <https://nextcity.org/urbanist-news/durban-moves-its-slum-dwellers-into-converted-office-buildings>

- **Are there any other actors who might be able to contribute tangible or intangible resources to this policy development?**
- **Is it reasonable for housing to be the responsibility of the municipality? Why, or why not? If so, what challenges do you foresee? If not, who should be responsible for acting in this area?**
- **Who should be consulted in developing a new housing plan for residents of informal settlements?**
 - Who are the experts on informal housing?
 - Of these groups, do you anticipate any conflicts, or groups or populations who would have difficulty working together?

4. The Real Case Ending

Although eThekweni had in the past attempted removals, relocation and full-scale community upgrades, the municipality found that with a “large informal population whose housing needs outpace[d] the ability of the public sector to provide shelter,” there was a need for a new strategy (Metropolis 2019). Between 1994 and 2019, the municipality’s Human Settlements Department had built 200,000 fully subsidized houses, but as Human Settlements Officer Sarah Watson reported: “This hasn’t really touched our housing backlog or the informal settlements due to the rapid pace of urbanization” (quoted in Metropolis 2019).

The eThekweni municipality’s Human Settlements Unit chose to change its strategy and undertake an “incremental informal settlement upgrading” program, which included the provision of services such as access to communal water taps and communal sanitation blocks, provision for emergency access and removal of solid waste, basic road and pedestrian access, pre-paid electricity, and improved drainage (eThekweni Municipality, “Incremental” n.d.). The municipality estimated that this more cost-effective model could assist more people, and as for the cost of one house, the municipality of eThekweni could provide public services to 10-15 families (Metropolis 2019). Watson explained:

“With this initiative, we are changing the model of service delivery from one which offers a Rolls Royce of development to only a few people to a model which aims to address a range of health, safety, and living condition challenges, but that will reach far more people within the same budget.” (quoted in Metropolis 2019).

With this model, the municipality did not provide housing, instead focusing on providing services and relying on residents to construct and repair their homes.

Additionally, the municipality brought a variety of critical social services to informal communities including Early Childhood Development Centres and improving schools and clinics. Municipal leaders recognized that quality engagement with informal settlements’ residents was crucial and obtained funding from the European Union for a partnership-based model called iQhaza Lethu (“Our Participation”), which “aims to mobilize communities to participate in upgrading, and to create cross-sector institutional arrangements to roll out services and improve living conditions in informal settlements” (eThekweni Municipality, “Incremental” n.d.). eThekweni municipality also engaged with SDI’s local affiliate, the South African Shack Dwellers International Alliance with the aim of collaboration and mutual support towards community-engaged improvements of living conditions in informal settlements.

Not everyone, however, would benefit from the program of incremental improvements and access to services. Some settlements, due to their precarious or unsafe location, were deemed to be in areas that were “unsuitable for development”, and these communities were slated for relocation (eThekweni Municipality, “Incremental” n.d.).

Reflection Questions

- Do you find this solution acceptable?
- Can you identify any gaps in consultation, process or outcome?
- Is access to services more basic than access to housing?
- Does this intervention meet the requirements of South Africa's human rights obligations under the constitution and international treaties?
- Who has the obligation to assist when municipalities do not have adequate resources to meet the needs of their populations?
- Do you anticipate this program would have any unintended negative effects?
- What elements of this case are unique to eThekweni's context and history? What elements are relevant to and applicable to other contexts as well?

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