



Relocating to Alternative Accommodation:

LEGAL AND PRACTICAL GUIDELINES

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SERI

socio-economic rights institute
of south africa

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Relocating to Alternative Accommodation:
Legal and Practical Guidelines



1

ABOUT THE GUIDELINES



Section 26 of the Constitution protects the right of access to adequate housing and provides that no one may be evicted from their home without a court order made after considering “all the relevant circumstances”.¹ The South African courts have found that these provisions require the government to provide alternative accommodation to unlawful occupiers who would become homeless as a result of an eviction.² This means that planning for relocations has become an important component of housing and eviction law, as well as the work of legal practitioners in non-governmental organisations (NGOs), community advice offices and law clinics.

Evictions or relocations should not be pursued by default. Various South African laws and policies create a strong preference for allowing occupiers to remain on the land or in the building that they occupy. These laws and policies provide that relocations should only be carried out as a last resort once other alternatives have been exhausted.³ When it is not possible for people to remain on the land they occupy or when a court orders the relocation of people to alternative accommodation, the relocation should be carefully planned and safeguards should be put in place to ensure that the affected community is better off, or at least, no worse off after the relocation.

The Socio-Economic Rights Institute of South Africa (SERI) developed these guidelines because the process of relocating people can be complex. Relocations have the potential to severely disrupt peoples’ lives and negatively impact their livelihoods, community relations and sense of security.⁴ To ensure this doesn’t happen, the relocation process should be carefully planned, well-run and participatory.

The purpose of these guidelines is to assist those involved in the relocation process to navigate the complexities involved in planning for and carrying out relocations. The guidelines offer practical guidance on how to ensure that relocations are carried out within the requirements of the law and in a way that respects the constitutional rights of the people being relocated.

The guidelines present an approach to relocations based on SERI's experience in planning for and managing relocations to alternative accommodation and draw on the experiences of international and national organisations and development agencies.

SERI hopes that these guidelines make a valuable contribution to how legal practitioners and housing officials approach, plan for and carry out relocations to alternative accommodation.

Who can use the guidelines?

The guidelines are a resource for legal practitioners in NGOs, community advice offices and law clinics who are involved in the relocation process.⁵ The aim is to assist these practitioners in planning for and carrying out relocations.

These guidelines may also be useful to government officials working in human settlements, in particular those involved in eviction proceedings, relocation planning and the provision of alternative accommodation in the wake of evictions or other emergencies. In addition, the guidelines could be used to inform national or local laws or policies related to evictions, relocations and the provision of temporary alternative accommodation.



Voluntary relocations and relocations in the wake of evictions

Relocations take place in different contexts. Some relocations are voluntary and others have been ordered by a court as part of eviction proceedings.

Voluntary relocations take place when the unlawful occupiers living on the property and the owner of the property agree that the occupiers will leave the property and move somewhere else. If a property owner puts undue pressure on the occupiers to leave the property, the relocation may not be voluntary. For example, if a property owner threatens occupiers with violence the relocation agreement would not be voluntary.

Relocations could also be ordered by a court as part of eviction proceedings. In these cases, the court could order that certain processes are followed and ensure that the relocation agreement reached is just and fair.

The guidelines can be used to plan voluntary relocations or relocations in the wake of evictions.

These guidelines may also be useful to community-based organisations (CBOs) or occupiers who are at risk of being evicted or relocated.

How were the guidelines developed?

The guidelines are informed by the experience of SERI attorneys, candidate attorneys and researchers in planning for and carrying out relocations to alternative accommodation. SERI has been involved in planning relocations to alternative accommodation in a variety of different contexts, including relocations from informal settlements and inner city buildings.⁶ In addition to SERI's expertise, the guidelines bring together learning from various other NGOs and legal practitioners engaged in relocation processes.⁷

These guidelines have also been drawn from two other sources:



1. Legal principles related to evictions, the provision of temporary alternative accommodation and relocation:

These guidelines rely heavily on the legally enforceable obligations laid out in laws and policies related to housing and evictions, including the Prevention of Illegal Eviction, and Unlawful Occupation of Land, Act 19 of 1998 (the PIE Act) and the Emergency Housing Programme (EHP). These principles are also pulled from various court judgments (specifically the judgments of the Constitutional Court and the Supreme Court of Appeal).⁸

2. International and regional experiences in planning for and implementing relocations:

The guidelines draw on the experiences of government authorities, development agencies and NGOs involved in planning for and carrying out relocations in the context of evacuations, development-forced displacements and evictions.⁹ These sources set out guidelines for how to approach relocations due to climate change, natural disasters or development-based evictions, but remain useful in the context of voluntary relocations or relocations in the wake of evictions.

STRUCTURE OF THIS GUIDE

SECTION TWO

Section two explains what legislation and policy says about relocations, and summarises the most important legal principles related to evictions, relocations and the provision of alternative accommodation as laid down in the decisions of the South African courts. Practitioners should be aware of these legal principles as they are legally enforceable in a court of law and may prove useful during negotiations with government officials.

SECTION THREE

Section three consists of practical guidelines on how to approach, plan for and carry out relocations to alternative accommodation. This section begins with some initial comments on how to approach a relocation and describes a number of important guiding principles that should underpin each stage of the relocation process. These guiding principles have been drawn from the experiences of international NGOs, government authorities and development agencies in implementing relocations and are generally considered essential for successful relocation processes. This section then describes each step of the ideal relocation process in detail, with case studies to illustrate some of the problems that may arise while planning for and carrying out a relocation to alternative accommodation.

SECTION FOUR

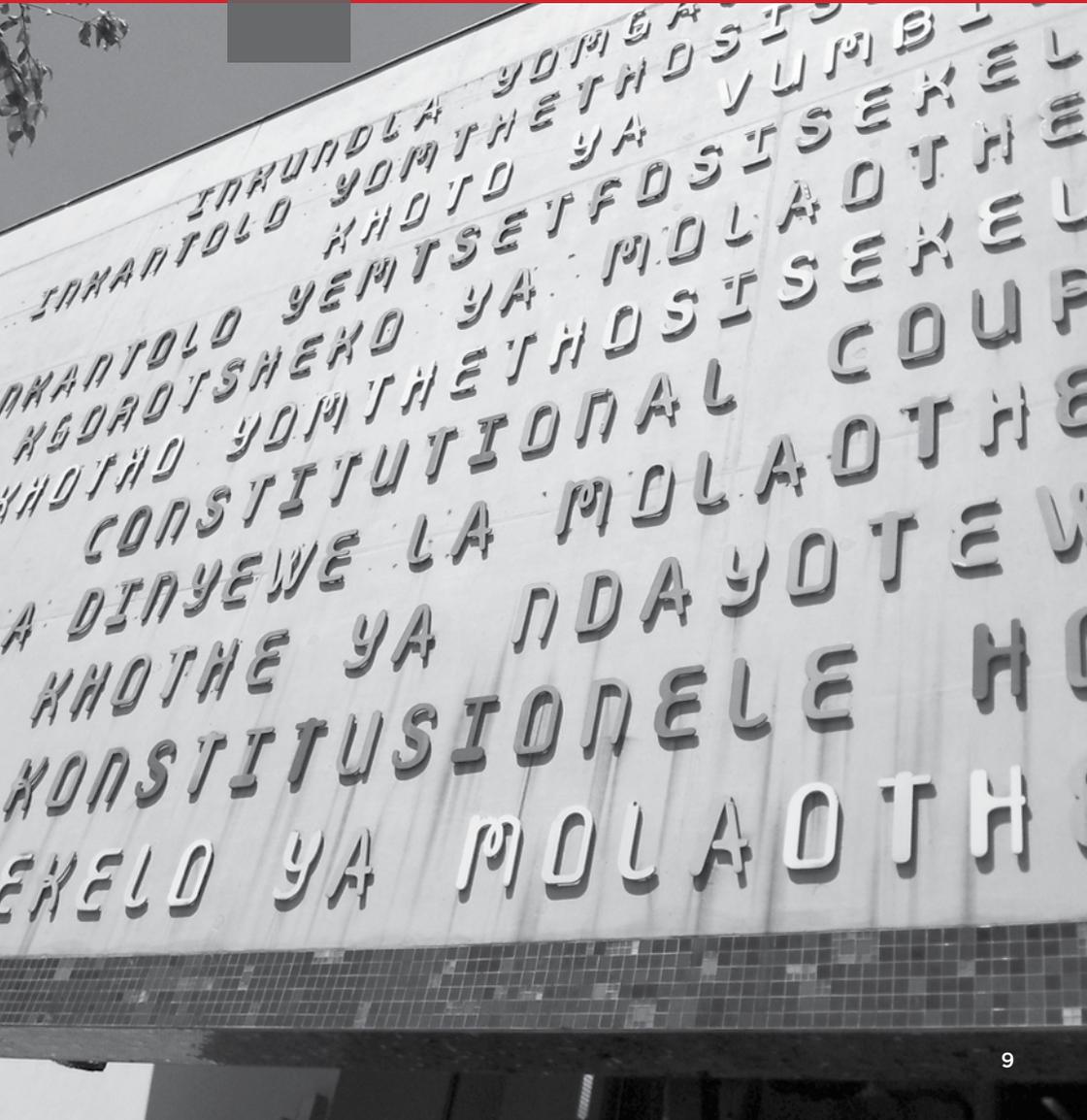
Section four gives more details about useful resources, including laws, policies, reports, guides, case studies and court cases.

Relocating to Alternative Accommodation:
Legal and Practical Guidelines



2

LEGAL PRINCIPLES



The South African Constitution and the law provide a number of important rights and protections to people facing eviction or relocation. These rights and protections are set out in legislation, housing policy and case law, and can be legally enforced in a court of law. This means that if government officials fail to comply with these rights and protections, they are in direct conflict with the Constitution.

The Constitution

The Constitution is the supreme law in South Africa.¹⁰ This means that it is the highest law in the country and everyone must respect, protect, promote and fulfil the rights set out in it.

The right of access to adequate housing is contained in section 26 of the Constitution. Section 26 has two parts: The first part – section 26(1) and 26(2) – provides that “everyone has the right to have access to adequate housing” and that the government must take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right”. The second part – section 26(3) – provides that no one may be evicted without obtaining a court order issued after considering “all the relevant circumstances”.

The right of access to adequate housing is closely related to a number of other fundamental rights contained in the Constitution. As a result, evictions – and relocations – do not only negatively affect the right to housing, but could also affect any number of other rights including the rights to human dignity,¹¹ security of the person,¹² privacy,¹³ and health.¹⁴

The PIE Act

The Prevention of Illegal Evictions and Unlawful Occupation of Land Act (the PIE Act) was passed to protect unlawful occupiers against arbitrary evictions.¹⁵ The Act sets out the legal process to be followed to obtain an eviction order and provides a number of legal protections to unlawful occupiers. The PIE Act

was passed to give effect to section 26(3) of the Constitution's requirement that a court consider all the relevant circumstances before granting an eviction order. Sections 4(6) and (7) of the PIE Act require that the eviction of an unlawful occupier should be "just and equitable" in the circumstances and lists a number of factors that a court must take into account when determining whether an eviction order should be granted. These factors include 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 or the state provision of alternative accommodation in instances where occupiers are unable to obtain accommodation without assistance.

Emergency Housing Programme (EHP)

The EHP is contained in Part 3 Volume 4 of the National Housing Code.¹⁶ This Programme makes provision for local government to apply for grants from provincial government to provide emergency housing to persons who find themselves in an "emergency housing situation".¹⁶ An eviction or the threat of imminent eviction is specifically listed in the policy as an emergency housing situation.¹⁷ The EHP makes provision for a broad range of possible emergency housing options, including various types of temporary and permanent accommodation options,¹⁸ and sets out the processes that local government officials should follow when providing emergency housing. For this reason, the EHP is an important policy instrument through which local government could provide emergency accommodation in the wake of evictions.

According to the Housing Act, the National Housing Code is delegated legislation which is binding on provincial and local government. This means that the Code should be treated the same as legislation. This principle has also been confirmed by the courts. The Constitutional Court has recognised that the Code was enacted to give effect to the right of access to adequate housing in section 26 of the Constitution.¹⁹ This enforces the notion that the Code, and the EHP, constitute concrete, legally enforceable legislative instruments.

Case law

The South African courts have also developed a number of important legal principles in relation to the right to housing, evictions and the provision of alternative accommodation through case law. Case law is the law as laid

These principles are:

- › **The nature of the duty to provide alternative accommodation:** The government is legally obliged to make alternative accommodation or alternative land available to occupiers who would otherwise become homeless as a result of eviction.²⁰ This principle is applicable whether the occupiers are being evicted from public²¹ or private land.²² The courts have also said that it would be “contrary to the public interest” to allow the state to evict unlawful occupiers if the state does not provide the evicted occupiers with alternative accommodation and secure tenure in that accommodation.²³ This suggests that occupiers should be allowed to remain in the alternative accommodation or on the alternative land provided until permanent housing is provided or the occupiers find alternative accommodation for themselves.
- › **Local government responsibility:** Local government (or municipalities) is the primary duty-bearer in relation to the provision of alternative accommodation in instances of eviction.²⁴ This is due to the fact that local government is best suited to “react to, engage with and prospectively plan around the needs of local communities”.²⁵
- › **Proactive local government planning and budgeting:** Local government is required to proactively plan and budget for the provision of alternative accommodation for those rendered homeless as a result of an eviction or relocation.²⁶
- › **Reasonable housing programme:** Local government must develop a reasonable housing programme that makes provision for permanent housing solutions, as well as the provision of temporary alternative accommodation in instances of eviction.²⁷

down by judges in court orders or judgments. These principles are legally enforceable and should be followed during relocation processes.



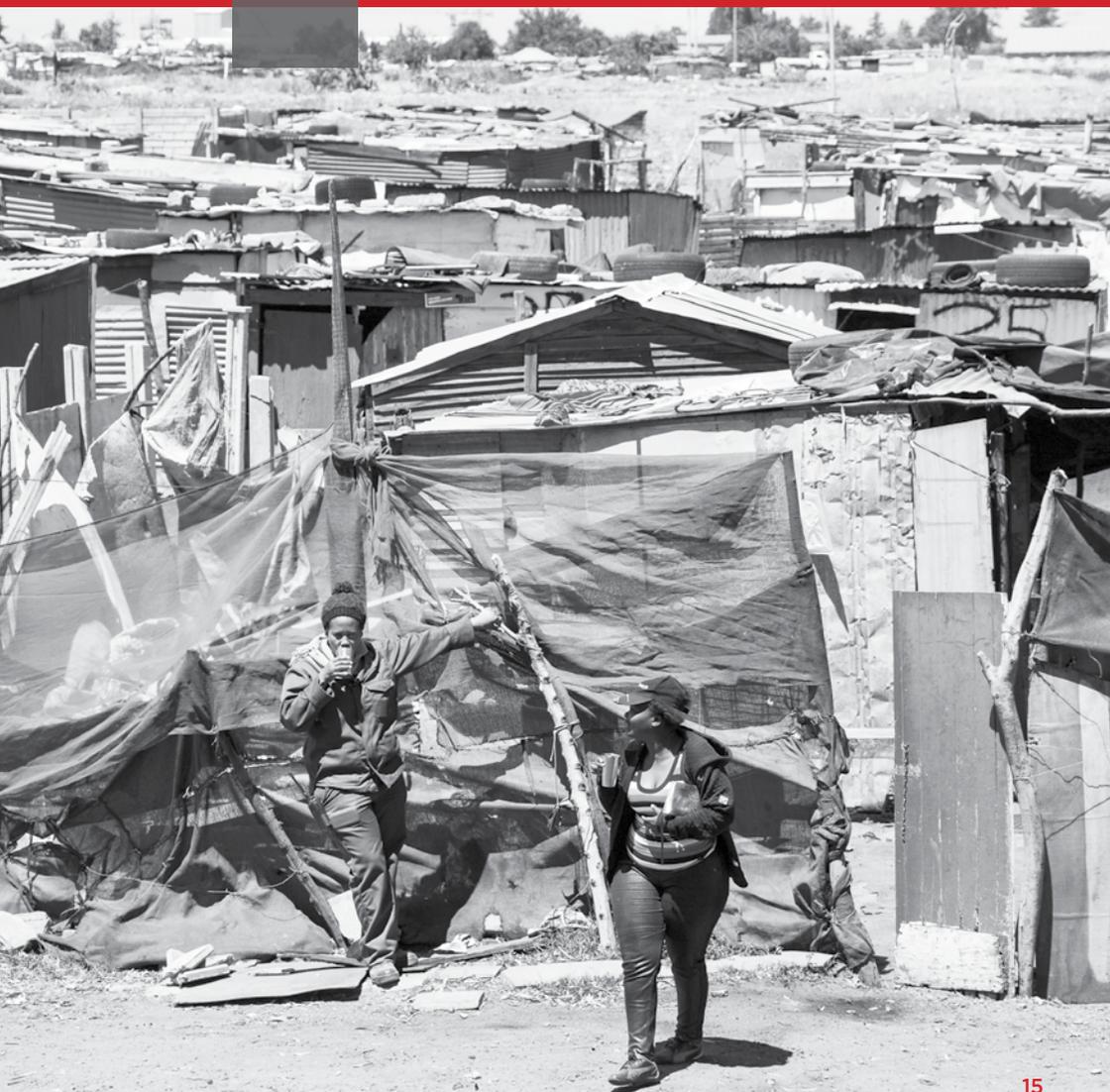
- › **Access to basic services:** The alternative accommodation provided by the municipality for resettlement should have access to basic services, including access to water, sanitation services, electricity and refuse removal.²⁸
- › **Tenure security:** Tenure should be secure in the alternative accommodation provided in the wake of an eviction. The courts have found that it would be unfair to evict occupiers only to render them at risk of being evicted again.²⁹ This means that, at the very least, occupiers should be granted a guarantee against eviction when they are moved to the alternative accommodation site.
- › **Proximity:** The alternative accommodation provided in the wake of an eviction should, overall, not be less favourable than the occupiers' previous accommodation.³⁰ This means that the alternative accommodation provided should be as close as reasonably possible to the location from where occupiers were evicted,³¹ and should be in close proximity to schools, social amenities and employment opportunities.³²
- › **Meaningful engagement:** Meaningful engagement requires the government (and government entities), property owners and unlawful occupiers to "meaningfully engage" with each other to make sure that the unlawful occupiers do not become homeless as a result of an eviction. The courts have described meaningful engagement as a two way process where those involved in eviction proceedings negotiate with each other in order to reach agreement about a number of important issues related to the eviction and the provision of alternative accommodation.³³ Meaningful engagement is discussed in more detail later in this guide.³⁴

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3

PRACTICAL GUIDELINES



Relocating to Alternative Accommodation: *Legal and Practical Guidelines*

The relocation of households or a community is not a single event but a process that needs to be carefully planned and well managed. The better planned a relocation is, the more successful the resettlement of the households or community that are being relocated is likely to be. These guidelines have been developed by SERI to assist practitioners involved in the relocation process to plan and implement relocations.

Unlike the legal principles detailed above, they are not legally required, but represent a good practice model based on SERI's experience in planning for and carrying out relocations.



APPROACHING RELOCATIONS

These guidelines provide several steps that make up the ideal relocation process. Each step will be discussed in more detail below.

STEPS IN THE RELOCATION PROCESS

A

Pre-Relocation

1. Assessing need
2. Registration
3. Forming a steering committee
4. Developing a relocation plan

B

Relocation

5. Site identification and assessment
6. Allocation
7. Inspection
8. Making representations
9. Negotiating rules, conditions and tenure rights at resettlement site
10. Clarifying accountability mechanisms, maintenance and management arrangements
11. Preparing for relocation
12. Relocating

C

Post-Relocation

13. Anticipating post-relocation issues

These steps make up an ideal relocation process. Ordinarily, all of these steps should be followed. However, relocations in the wake of evictions or emergency situations are context sensitive and may differ on a case-by-case basis.³⁶ For this reason, the guidelines should be flexibly applied to accommodate the specific circumstances of the relocation. Some contextual factors that may influence how the steps in the process are applied include:

- » how much pressure there is to relocate;
- » the timeframe within which the relocation needs to take place;
- » the scope for what can be done in relation to negotiating an agreement between the parties; and
- » how many people need to relocate.

Case study: Each relocation is different

Each relocation should be approached differently. This is clear from two relocations that SERI was involved in planning:

- In the relocation from San José to MBV 1, the relocation of over 300 unlawful occupiers to temporary alternative accommodation was meticulously planned and implemented over a period of eight months from the date that a settlement agreement was reached between the parties and was made an order of the Constitutional Court.³⁷ The process was well planned and carefully executed. The success of this relocation was partially due to the authority of the court order.
- In another case, the relocation of a group of 60 people from the MOTH building in inner-city Johannesburg (a building that had already been provided by the City of Johannesburg as temporary alternative accommodation) to the Linatex building was planned and implemented within a period of two weeks after a fire broke out on the top floor of the building, destroying the possessions of the occupiers living there and rendering them homeless.³⁸ In this case, the urgent nature of the relocation meant that there was limited room for negotiation about the adequacy of the new relocation site.

Lessons learnt

- When planning a relocation, practitioners should adopt a context sensitive approach. Practitioners will not always be able to follow all the steps in the ideal relocation process. Emergency situations, specifically, may require that a different approach be followed.

When planning a relocation, practitioners should make sure that there is sufficient capacity to plan and carry out the relocation. This includes ensuring that there are practitioners on the ground on a regular basis during the design, planning and implementation of the relocation. Practitioners should not rely on households, community members or their representatives seeking them out. Instead, they should be in regular contact with, and conduct frequent visits to, the affected community. This does not mean

that an attorney or senior official has to be on the ground during the entire relocation process. Candidate attorneys, community development workers, social workers, interns, university students and volunteers are examples of the kind of regular on the ground capacity that may be necessary. Attorneys and senior officials need to play an oversight and coordination role.

Practitioners should also work closely with representative community structures. Practitioners should rely on community structures for the completion of aspects of the work in a relocation process that are well suited to these structures. For example, community structures could play an important role in providing regular report backs to the households or community being relocated.

GUIDING PRINCIPLES

A number of guiding principles should underpin the relocation process. These principles are informed by the experiences of government authorities, development agencies and international human rights organisations in planning for and implementing relocations in the context of evacuations, development-based displacements and resettlement, the provision of housing and evictions. Some of these principles are legally required (engaging meaningfully, adopting a participatory approach, respecting constitutional rights and respecting the needs of vulnerable groups). Others may not be legally required, but are largely accepted as the foundational elements of a successful relocation process.

The guiding principles are:

- » Establishing and maintaining relationships with key stakeholders
- » Communicating effectively
- » Engaging meaningfully
- » Adopting a participatory approach
- » Adopting a settlement focus
- » Developing a permanent housing solution
- » Respecting constitutional rights
- » Focusing on the needs of vulnerable groups

» Stakeholder relationships

Practitioners should identify and establish relationships with the key stakeholders involved in planning and carrying out the relocation to alternative accommodation.³⁹ During this process, practitioners should consider whose rights and interests need to be taken into account during the relocation process and how these rights should be protected. It is also important to remain aware of the existing power relations between different stakeholders.



Stakeholders could include:

- › The affected households or community being relocated.
- › The government officials involved in the relocation (at municipal, provincial or national level). This should include the government's lawyers, the housing or municipal officials charged with providing alternative accommodation and any officials that will actually be involved in physically relocating the affected households or community.
- › Other civil society groups or NGOs involved in the relocation.
- › The existing or neighbouring community (if the affected households are being integrated into or moved into close proximity with existing communities).⁴⁰

If a relocation takes place after a court grants an eviction order, the stakeholders involved in a relocation would usually include the parties to the eviction proceedings.

Practitioners should try to cultivate good relationships and keep open lines of communication with the relevant stakeholders throughout the relocation process.⁴¹

» Communications

An important part of a successful relocation process is maintaining effective communication with key stakeholders throughout each stage of the relocation.⁴² Experience has shown that a failure to properly communicate could create misunderstandings or result in hostility between the households or community being relocated, government officials and legal representatives.

Ongoing information sharing is critical. Practitioners should develop communication strategies to ensure that all parties have accurate and up to date information regarding the relocation process. Practitioners should determine the most effective way to communicate with different stakeholders, bearing in mind that different stakeholders may require different means of communication. For example, when practitioners communicate with households or the community being relocated they should not limit their communication to the representative structure or committee elected by the community. Instead they should set up communication channels to ensure that they communicate with all persons who will be relocated. This can be done by organising community meetings, circulating pamphlets or information sheets and consulting with individual households. There are times during the relocation process when it will be important to communicate directly with individual households. The households or community being relocated should be given sufficient information about the relocation process and their legal rights:

- » in their home language or a language in which they are fluent; and
- » in accessible, simple, clear language that they understand.

Effective communication requires more than simply sharing information. To ensure that a relocation is successful, the households or community being relocated should be granted full due process guarantees.⁴³

This means that the households or community being relocated should be encouraged to provide meaningful inputs into the relocation process and should be involved in any decisions affecting them.⁴⁴ Specifically, the households being relocated should be provided the opportunity to give feedback or make representations in relation to every important aspect of the relocation. This would allow for a relocation to be tailored to the specific needs for the affected community. Government officials should consider any alternative plans proposed by the affected households or community.⁴⁵

It is important to remember that relocations can take place to a relocation site in or near well-established communities. Those communities will also be affected by the relocation. As a result, any communication strategy must provide for the existing or neighbouring community to be consulted and involved while planning and carrying out the relocation. If the existing or neighbouring community is not consulted during the relocation process, potential social conflicts could arise.⁴⁶

Case study: Establishing relationships with existing or neighbouring communities⁴⁷

When the court ordered the City of Johannesburg to provide alternative accommodation to residents that were being evicted from Taylor Road informal settlement, the City offered to accommodate the residents at Ruimsig informal settlement, an informal settlement earmarked for upgrading in terms of the Upgrading of Informal Settlement Programme (UISP). Before the residents could be relocated, it became clear that there were already people living at Ruimsig, including home owners and lessees. Some of the lessees were opposed to the Taylor Road residents being relocated to Ruimsig, claiming that no land should be made available to the Taylor Road residents until they were given access to land themselves.

After the relocation, the Taylor Road residents felt unwelcome and unsafe at Ruimsig. Reportedly the new residents were regularly targets of crime. Many were concerned for the safety of their families and their possessions.

Lessons learnt

- Practitioners should make sure that neighbouring communities are consulted in the relocation process. Some of the challenges described above could have been avoided if practitioners and government officials effectively communicated with the existing or neighbouring community in the relocation process. This would have allowed community members to voice their concerns and would have ensured that the community was not surprised by the relocation.

» Meaningful engagement

Closely linked to the need for effective communication, is the principle of meaningful engagement. In essence, this concept requires the government to “meaningfully engage” with people about the realisation of their right to housing. This obligation is legally required in housing and eviction cases in terms of the Constitution.⁴⁸

This principle has been developed in a number of court cases in the Constitutional Court.

The court began developing the concept of meaningful engagement in *Port Elizabeth Municipality v Various Occupiers (PE Municipality)*, where it found that parties in eviction cases should “engage with each other in a proactive and honest endeavour to find mutually acceptable solutions”.⁴⁹ The court held that an eviction would usually not be just and equitable unless the parties attempted “proper discussions, and where fitting, mediation”.⁵⁰

In *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg (Olivia Road)* the court expanded this concept by describing meaningful engagement as a “two-way process in which [the government] and those about to become homeless would talk to each other meaningfully” in order to reach agreement on a number of issues related to the eviction and the provision of alternative accommodation.⁵¹

This means that meaningful engagement can be seen as an honest and open discussion between government and the households or community being evicted about the consequences of the eviction and what steps can be taken to make sure that no one becomes homeless as a result of the eviction. While engaging, the parties should try to understand each other’s perspectives.⁵²

Meaningful engagement should take place individually and collectively.⁵³ This means that it is not enough for government to simply engage with the representative community structure or committee. Nor is it enough for government to engage with people individually. Meaningful engagement requires that government undertake both individual and collective engagement. It also requires government to react in a reasonable way to any contradictions or tensions that may arise between groups or individuals during evictions and the provision of alternative accommodation.⁵⁴

The Constitutional Court has specified that the parties involved in eviction proceedings should meaningfully engage on **all** aspects related to an eviction and the provision of alternative accommodation.⁵⁵ This means that the government is required to meaningfully engage with people during every stage of the relocation and resettlement process.

In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes (Joe Slovo)*, another eviction case before the Constitutional Court, the

court ordered the government to meaningfully engage on various issues related to the relocation of the residents.⁵⁶ The court required the government to:

- » Engage with occupiers about the time, manner and conditions of their relocation
- » Engage with occupiers about the provision of transport and movers for their relocation
- » Consult with occupiers as a group, at household level and individually about their personal circumstances
- » Provide information about where the occupiers are on the housing waiting list.⁵⁷

This list of issues illustrates some of the issues that government officials, legal representative and the households or community being relocated should engage on.

Finally, meaningful engagement during the relocation process may require government officials and occupiers to participate in mediation and conflict resolution before resorting to litigation.

» Participation

Relocation processes should be participatory. The households or community being relocated should be granted an opportunity to actively participate in the development of their relocation and resettlement plans.⁵⁸ This includes households playing a significant role in determining the actual logistics of the move, the location of the new settlement and the planning and design of the dwellings.⁵⁹ Special measures should be taken to enable vulnerable groups to actively participate in the decision-making process, including women, elderly persons, persons with disabilities or children.⁶⁰

A critical part of this principle is the need for strong, representative community structures.⁶¹ These structures are important because:

- » They can negotiate on behalf of the households or communities being relocated.
- » They can make sure that provision is made for everyone affected by the relocation.
- » They can oversee the move and physically be present during the relocation to address any challenges that may arise.⁶²

» Clear identification of roles and responsibilities

It is imperative that the roles, functions and responsibilities of different role-players involved in the planning and implementation of a relocation are clarified from the outset.⁶³ Uncertainty about the different role-players' responsibilities could delay the relocation process and lead to frustration for the households or community being relocated.

This is particularly important when dealing with government officials. Relocations may involve collaboration between different spheres of government, including local, provincial and even national government. For this reason it is crucial to determine which sphere of government is responsible for a particular area of work.

The Emergency Housing Programme (EHP) clarifies the roles and responsibilities of the different spheres of government in relation to projects for the provision of emergency housing initiated in terms of the programme.⁶⁴ The general principle provided for in the EHP is that "a role or function should be performed at the level most suitable for the circumstances".⁶⁵ In terms of the EHP local government is mainly responsible for the planning and implementation of emergency housing projects, while provincial and national governments are primarily responsible for funding and overseeing the implementation of emergency housing projects.



The Emergency Housing Programme provides that

Local government is responsible for:

- › Submitting applications for funding for emergency housing assistance in terms of the EHP
- › Implementing projects for emergency housing assistance in terms of the EHP
- › Managing, operating and maintaining settlement areas developed in terms of the EHP
- › Providing basic municipal services (including water, sanitation, refuse removal and other municipal services) at the relocation site⁶⁶
- › Keeping and maintaining a register of the persons or households who are provided emergency housing
- › Providing relocation assistance, including transportation
- › Planning and developing permanent housing solutions⁶⁷

Provincial government is responsible for:

- › Funding emergency housing assistance in terms of the EHP
- › Monitoring the implementation of emergency housing projects by municipalities⁶⁸

National government is responsible for:

- › Monitoring the implementation of the EHP (as a whole)
- › Negotiating the funding that should be allocated to the programme
- › Allocating these funds to provincial governments
- › Providing assistance with the release of state land for emergency housing purposes⁶⁹

These roles and responsibilities are for projects initiated in terms of the EHP. In cases where the provision of alternative accommodation is not funded in terms of the EHP, the distribution of roles, functions and responsibilities may differ. For example, if a municipality provides alternative accommodation to evictees from its own municipal funding, the municipality would usually be solely responsible for funding, planning for and implementing the provision of alternative accommodation. If practitioners are unclear about the roles of the different spheres of government, they could ask for the Memorandum of Understanding between the different government departments involved in the relocation.

Clearly identifying the roles and responsibilities of different stakeholders will also enable practitioners to more accurately assess the capacity needed to ensure a successful relocation takes place.

Settlement focus

The provision of temporary alternative accommodation in the wake of an eviction or emergency is often narrowly focused on the construction of temporary shelter. However, relocation processes entail more than ensuring that the relocated households have adequate shelter. Relocation processes should be about creating a safe and suitable environment for the people being relocated where they not only have access to safe and adequate shelter but also have access to essential services, critical infrastructure and livelihood opportunities.⁷⁰ When planning a relocation, it is important to consider all the aspects of community life that are affected by the relocation and how these fit together physically and functionally.⁷¹ In other words, practitioners should adopt a holistic approach to settlement planning.⁷²

Permanent housing solution

South African housing policy provides that the provision of alternative accommodation in the wake of an eviction or emergency should, wherever possible, be the first step in providing permanent housing. This principle is clearly laid out in the Emergency Housing Programme (EHP), which says that temporary alternative accommodation should wherever possible be “an initial phase towards a permanent housing solution”.⁷³ If this is not possible, the EHP says that temporary alternative accommodation should be provided “while steps are being taken to prepare and develop land for permanent settlement purposes in terms of the approved municipal IDP and development priorities”.⁷⁴

» Respect for constitutional rights

Evictions or relocations should not render those being relocated vulnerable to the violation of their constitutional or human rights.⁷⁵ This is why practitioners should adopt a right-based approach when planning for and carrying out relocations. This means that the relocation of people to alternative accommodation and the conditions at the alternative accommodation provided should respect, protect and fulfil the constitutional rights of those being relocated.

A range of constitutional rights may be affected by an eviction or relocation. The Constitution, as well as international law, provides that “everyone” has a right of access to adequate housing, a right to be protected against arbitrary and unlawful evictions, a right to human dignity, a right to privacy, a right to not be unfairly discriminated against and a right to family life.⁷⁶

If relocations are not designed, planned and implemented with a rights-based approach in mind, it “risks having too narrow a focus, and not all the basic needs of the [households or community being relocated] will be integrated into a holistic planning and delivery process”.⁷⁷

» Special focus on the needs of vulnerable groups

The rights and needs of vulnerable groups should be given specific attention, including the needs of women, children, the elderly, persons with disabilities and other vulnerable groups. While the exact nature of this focus will vary depending on the circumstances, the needs of vulnerable groups should always be considered in meaningful engagement (above) and needs assessments (below).

THE RELOCATION PROCESS



Pre-Relocation

1. Assessing need

Before beginning with the planning of the relocation, best practice models recommend that practitioners should conduct a needs assessment to determine the needs of the community being relocated.⁷⁸ This is necessary to ensure that the alternative accommodation meets the needs of the affected community and to avoid any unintended consequences that the relocation may cause. Although information about the needs of the households or community being relocated may have been collected during the eviction proceedings or during the negotiations preceding a voluntary relocation, a needs assessment prior to the relocation will enable practitioners to advocate for a relocation plan and alternative accommodation that best suits the needs of those being relocated.

The needs assessment should take into account the immediate, interim and long-term needs of the households or community being relocated.⁷⁹ The needs assessment should be gender sensitive, should carefully consider the needs of vulnerable groups (including children, the elderly, persons with disabilities and others), should take into account the income generating activities of the households or community being relocated, should take into account the transportation needs of the households or community being relocated, should take into account the need to be located close to schools, hospitals, clinics and other social amenities, and should identify the services that will be required by the households or community at the relocation site.⁸⁰

A. Pre-relocation



As part of the needs assessment, practitioners should assess the capacity of schools, medical facilities, transport systems and check whether residents will have access to income generating activities or employment opportunities at the relocation site. Generally, practitioners should be satisfied that the new location can accommodate the diverse needs of those being relocated.

Conduct a household survey

As part of the needs assessment, practitioners should conduct household surveys of the families being relocated. This step overlaps slightly with the registration step discussed in more detail below.⁸¹ The household survey is important because it is necessary to gather information about the households that will be relocated, their living conditions and the needs that need to be met at the new location. The household survey should gather information on the number of people in the household, their living arrangements, their specific needs, and their income. Gathering information about the incomes of residents is important for the determination of rental amounts payable at the relocation site.⁸²

Case study: Ensuring that relocated families can continue to earn an income

A relocation can have a severely negative impact on the income generating activities of the households or community being relocated. The location of the alternative accommodation may be too far away from economic opportunities or inaccessible by public transportation. In other cases, the alternative accommodation provided may have limited land uses which prevent households or community members from conducting their income generating activities at the new location.

When a group of occupiers were moved from San José to MBV 1 in inner city Johannesburg, they were unable to continue their income generating activities as cushion makers.⁸³ This was because MBV 1, the building where residents had been accommodated after their eviction, was designated for residential use. The City of Johannesburg thus considered these income generating activities to be at odds with the residential nature of the building.⁸⁴ This left many poor households, particularly women, unable to earn an income.

This example shows that relocations can have dire consequences for the livelihoods of households or communities being relocated.

Lessons learnt

- An appropriate needs assessment could highlight the need to retain households' means of earning an income and enable practitioners to advocate for households to be granted the opportunity to continue with their income generating activities at the new location.
- Practitioners should try to ensure that residents are able to continue earning an income at the new location.

Case study: Why needs assessments are important

When residents were relocated from Marie Louise informal settlement to the Rugby Club, a vacant piece of land owned by the City of Johannesburg located a kilometre away from the original location, they faced a number of challenges.⁸⁵ At the relocation site, households were provided with small single room corrugated iron shelters with minimal yard space. These shelters were often too small for larger families or households who were living together, presenting challenges in relation to bathing and privacy. The situation was worsened by the fact that the City of Johannesburg restricted the residents from building onto their shacks or erecting new shacks. This prohibition also meant that residents were unable to establish spaza shops at the relocation site, thereby inconveniencing residents and preventing a number of residents from generating an income.⁸⁶

Residents accepted these conditions because they believed that the relocation would only be temporary and that they would be moved to permanent housing in the near future. However, the longer the residents waited for permanent housing the more difficult the conditions became.

Lessons learnt

- When assessing the relocation site or the design for the shelters at the relocation site, practitioners should ensure that the site and shelters meet the needs of the households being relocated. This could mean advocating for larger dwellings or for a more flexible approach for larger families or households living together.
- A needs analysis should not only take into account whether the new location is adequate to accommodate the affected community in the immediate future, but should also try to ensure that the new location is suitable in the longer term. This is particularly important as residents may spend months or even years in temporary alternative accommodation before they gain access to permanent housing.



Some key issues to keep in mind when assessing the needs of the affected community:

- › Is the temporary shelter adequate for the households to live in for the next two to three years? Will the shelter accommodate the family sizes and rise in family numbers?
- › Have households been split up when being moved to alternative accommodation?
- › Do the households prefer to be resettled with people from their original community? If so, practitioners should work towards ensuring that the community is resettled as a group.
- › Will the relocated households have access to basic services, including water, sanitation, healthcare and education? Is the necessary infrastructure in place for these services? And if this infrastructure is in place, is it durable?
- › Does the existing infrastructure at the relocation site have to be upgraded to accommodate the relocated households?
- › Is the alternative accommodation safe and secure?
- › Is there sufficient privacy? Do people have personal space?
- › Will the relocated households have access to income generating activities?
- › Is the alternative accommodation well located? Does it offer the relocated households access to public transport, clinics, markets, schools and other social amenities?
- › Has the existing or neighbouring community been consulted about the relocation? How does the existing or neighbouring community feel about the relocation? What can be done to ensure that the relocated households are integrated into the existing or neighbouring community?
- › Are the site plans and the shelter designs complimentary to the needs of the households being relocated?

2. Registration

Practitioners should compile a list of all the individuals and households being relocated. During this process important personal information should be collected, including:⁸⁷

- » Personal details (including identification numbers and names of family members);
- » Household composition (including whether there are vulnerable persons in the household and what their specific needs are);
- » Inventory of personal assets;
- » Photos of the existing house or structure;
- » Floor plan of the house or structure;
- » Marking of each structure during the survey process; and
- » Monthly household income.

In most cases after an eviction order has been granted, the individuals and households that will be relocated have already been identified (a list of these individuals or households is usually attached to the court order).

Once the register has been compiled, it is important to make it available to the representative community structures and to the boarder community for verification. This works as a screening tool, as well as a way to ensure that there is “buy in” from the households or community being relocated. The register should also be shared with government officials.

The list should be maintained and updated with any changes in the number of people occupying the land or building. Where possible, practitioners should try to negotiate for a flexible approach in relation to the list of individuals to be relocated.



TAKE NOTE

Experience shows that government officials may try to limit the number of people who can access temporary alternative accommodation in various ways. Government officials may do this by making the provision of temporary alternative accommodation dependent on occupiers registering for social assistance or a housing subsidy.

The officials then introduce qualification criteria that limit the number of people permitted to register in the course of those registration processes. In these cases, practitioners should negotiate to ensure that alternative accommodation is offered to all occupiers who are at risk of becoming homeless as a result of an eviction, whatever the conditions the government attempts to impose during the registration process.

The government is, of course, entitled to place reasonable conditions on the provision of alternative accommodation, including a registration process. However, those processes should not be so cumbersome and onerous that they effectively disqualify those in genuine need of accommodation. Housing policy supports a more inclusive approach.

For example, the Emergency Housing Policy (EHP) provides that the ordinary qualifying criteria for permanent housing do not apply in relation to occupiers who require emergency housing.⁸⁸ All that matters is that a person will be homeless without alternative accommodation. This means that the EHP can be used to provide temporary alternative accommodation to any person affected by an eviction or emergency (the policy says it can be used to benefit “all affected persons”), even if they would not normally qualify for assistance under the government’s other housing programmes.⁸⁹

Case study: How government sometimes tries to limit the number of people who are provided alternative accommodation

In *City of Johannesburg v Changing Tides 74 (Pty) Ltd (Changing Tides)*⁹⁰ the City of Johannesburg argued that it would only provide temporary alternative accommodation to occupiers who registered on the City's Expanded Social Package programme (ESP), a municipal programme designed to assist poor households in accessing basic services at reduced rates. The Supreme Court of Appeal said that requiring the occupiers to register for the City's ESP could "set in train a bureaucratic process that would inevitably involve delay" even though the need for alternative accommodation was urgent.⁹¹ In the meantime the occupiers were facing the risk of becoming homeless. As a result, the court held that the City was not entitled to make the provision of alternative accommodation subject to registration on the ESP from the outset, although it could conduct a registration process once the relocation had taken place, and seek to exclude those who were not in genuine need.⁹²

Lessons learnt

- Government officials may sometimes attempt to limit the number of people who should be granted access to temporary alternative accommodation. Practitioners should advocate to ensure that accommodation is provided for **all** the occupiers who are at risk of becoming homeless as a result of an eviction.

3. Forming a steering committee

A steering committee should be formed as a formal mechanism for parties to plan for and implement the relocation to alternative accommodation.⁹³ Housing policy provides for steering committees to be established to plan emergency housing projects. The EHP provides for the creation of a “local level steering committee” to manage the planning and implementation of emergency housing projects.⁹⁴ In terms of the EHP, local level steering committees are responsible for communications, negotiations, dispute resolution, developing plans for the provision of emergency accommodation and decision-making related to all the elements of the emergency housing project.⁹⁵

In addition, the steering committee is responsible for assessing “all available options relating to available land ... municipal services, and/or shelter, including the temporary or permanent nature thereof and the need for relocation”.⁹⁶ When planning a relocation a similar committee should be created to devise a relocation plan and ensure the provision of temporary alternative accommodation.⁹⁷

This steering committee should include government officials (housing officials, municipal officials and the officials that will actually be involved in the physical relocation),⁹⁸ individuals or households being relocated, duly elected representatives of the community (if applicable), legal representatives and other technical advisors. The steering committee should allow for the households or community being relocated to be actively involved in all material decisions that affect them. Mechanisms should therefore be put in place to ensure that the committee’s decisions reflect the needs of those being relocated.

All the meetings held, decisions taken, documents and reports submitted, and agreements reached by the steering committee should, where possible, be recorded in writing. This is important to ensure that the steering committee can be held accountable for its work. Steering committee meetings should be chaired by a neutral party.

4. Developing a relocation plan

The committee should develop a detailed relocation plan to make provision for:

- » Realistic time frames within which the various steps in the relocation process will be completed,
- » Logistical arrangements, such as the organisation of transportation on the day of the relocation and storage of the personal assets of the households being relocated (if needed),
- » Site identification, assessment and allocation,
- » The management functions and responsibilities of practitioners, government officials and community representative structures,
- » The provision of services,
- » The provision of adequate shelter and
- » Communication to affected individuals, households and communities.

The plan should be presented to the households or community being relocated in an accessible manner and in a language understood by the majority of those present. Wherever possible models and layout plans should be provided to help affected individuals visualise the temporary alternative accommodation with which they will be provided and allow these individuals to provide useful feedback. The feedback of households or the community being relocated should be incorporated into the plan to the greatest extent possible.

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5. Site identification and assessment

It is the responsibility of government officials to identify and allocate suitable land or buildings for the provision of temporary alternative accommodation. However, practitioners should be willing to advocate strongly for a relocation site that suits the needs of the households or community being relocated.⁹⁹ If a relocation site is not suitable, it should be rejected.

In most cases, government officials will try to identify vacant government-owned land or buildings to serve as temporary alternative accommodation. The government officials charged with the identification of a suitable relocation site will usually have regard to:

- » The suitability of the land for residential purposes.
- » Whether the land is earmarked for a specific land use (or whether the land can easily be rezoned).
- » The physical characteristics of the land (for example, whether it is prone to flooding or other hazards).
- » The location of the land (for example, is the land located close to the site from which the affected community is being relocated).

If suitable government-owned land can't be identified, the government should purchase or expropriate suitable private land.

Experience has shown that sometimes government officials may choose relocation sites that are not suitable.¹⁰⁰ Fortunately, the South African courts have laid down certain broad legal requirements that the provision of alternative accommodation must comply with. In the *Blue Moonlight*

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case, the Constitutional Court made clear that the location of the alternative accommodation provided is very important. This was clear from the court's insistence that alternative accommodation should be provided "as close as reasonably possible" to the property where the occupiers were evicted from.¹⁰¹ The courts have also indicated that, when providing alternative accommodation, local government should make sure that the alternative accommodation is close to the relocated households' places of employment or employment opportunities, schools, healthcare services, childcare centres and other social facilities.¹⁰²

Some key issues to keep in mind when assessing the relocation site:



- › Is the relocation site relatively close to the place where the households or community were evicted from?
- › Is the relocation site free from natural dangers and hazards? Is it safe? For example, is the relocation site prone to flooding or sink holes?
- › Are the residents' previous places of employment or income generating activities easily accessible from the relocation site? If not, does the site offer new income generating opportunities?
- › Is the relocation site accessible by roads and/or public transport? In particular, is the site accessible by emergency vehicles?
- › Does the relocation site have on-site services or could services readily be installed? Specifically, will the relocated households have access to water, energy for cooking, heating and lighting, sanitation and washing facilities, refuse removal and site drainage?
- › Can the relocation site be upgraded and, ideally, can it be upgraded to permanent housing for the households or community being relocated?
- › Is the relocation site located in a receptive existing or neighbouring community who will be accepting and integrate well with the households or community being relocated?

Once a site has been identified by government officials, practitioners should conduct an initial site visit and assess whether the site is suitable given the needs of the households or community being relocated. The initial site visit will also allow practitioners to see what type of development is possible at the site.

6. Allocation

When a potential relocation site has been identified, practitioners and any technical advisors should conduct an initial site visit to establish what is possible given the layout of the land or the physical configuration of the building. Practitioners should obtain layout plans from government officials and should verify the plans on site to correct them *in situ*.

Before allocating rooms (if the site is a building) or stands (if the site is vacant land), practitioners should ensure that the households or community being relocated agree to a set of principles to guide the allocation process. This can be done by facilitating a series of workshops with the representative community structures and broader community. During this process practitioners should be careful to pay sufficient attention to issues of vulnerability, in particular the issues facing women, children, the elderly, persons with disabilities and other vulnerable groups.

Practitioners should attempt to understand the expectations that members of the community may have. If they remain implicit residents may end up feeling resentful or unsatisfied. For example, some older residents may tacitly feel that they are entitled to better sites or rooms based on their age.

Once the principles guiding the allocation of rooms or stands has been agreed, the rooms or stands should be numbered. Practitioners should use the plans and the register of the households to set up allocation lists. The rooms or stands should be allocated in accordance with the agreed upon principles.

Once the rooms or sites have been allocated, the proposed allocation should be discussed with the representative community structures to determine whether they consider the allocation to be appropriate and fair.

7. Inspection

After rooms or sites have been allocated, practitioners should arrange for the households or community being relocated to visit the relocation site. These “go and see” visits allow the households being relocated to inspect the relocation site, including their room, site or temporary shelter and any communal facilities. These inspections should be allowed for a period of two or more days and the households being relocated should be given sufficient notice of these inspections.

It is critical to have capacity “on the ground” during these inspections to ensure that the households being relocated are shown which rooms, sites or structures are allocated to them, to answer any questions in relation to the allocation or relocation process, and to keep records of who came to inspect the relocation site. These functions do not have to be performed by attorneys or senior officials but can be performed by candidate attorneys, researchers or volunteers.

8. Making representations

After the households being relocated have inspected the building or land which will serve as the site for temporary alternative accommodation, they should be afforded the opportunity to make representations about the relocation site and the rooms or sites that they have been allocated. It is important for individuals to be allowed to make representations about various aspects of the alternative accommodation that they may be unsatisfied with, including the communal facilities, the access to or lack of access to services, or any other concerns.

If individuals or households are unsatisfied with the rooms or sites they were allocated, practitioners should provide for the possibility of adjudication or provide for grievance mechanisms.

Provided that their demands are reasonable, the demands of individuals or households should be accommodated.

9. Negotiating rules, conditions and tenure rights at the relocation site

A crucial step in the relocation process, is negotiating with government officials about the rules, conditions and tenure arrangements at the alternative accommodation. These negotiations are important because they will directly affect how much freedom and security the residents have at the alternative accommodation after the relocation. It is important to remember that these negotiations should be conducted with both government officials and the government's lawyers.¹⁰³

Tenure arrangements

Different tenure arrangements could be made available to occupiers who are being relocated, including private ownership (if the person qualifies for housing assistance in terms of the National Housing Code and is granted permanent housing), or rental arrangements in the cases where occupiers are provided temporary alternative accommodation.

Ordinarily, the municipality provides alternative accommodation and requires the individuals or households being relocated to conclude lease agreements and pay rental on a monthly basis. The amount of rental charged is usually dependent on the type of accommodation provided and people's income. Practitioners should negotiate with the municipality to ensure that monthly rental payments do not exceed 25% of people's monthly incomes. If the monthly rental exceeds this percentage, individuals are likely to be under severe financial strain and may be unable to afford basic necessities. Practitioners should also try to negotiate for flexibility in relation to means testing, especially in instances where people's circumstances could change.

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The lease agreement should provide for a number of important procedural issues related to the maintenance and management of the relocation site. In particular, lease agreements should provide for accountability mechanisms to allow occupiers to hold non-performing building management or service providers accountable, set out who occupiers should approach with problems or complaints, and establish clear lines of accountability between the community, site officials and government officials.

House rules

The lease agreements may also require that the households or community being relocated adhere to certain house rules at the relocation site. If this is the case, these house rules should be clearly explained to the households or community being relocated. Any problems should be discussed with the government officials and practitioners should advocate for changes to be made to the rules based on the feedback from the households or community being relocated.

Livelihood strategies

Practitioners should also advocate for some continuity regarding the livelihood strategies that the households or community being relocated depend on. This means that practitioners should attempt to negotiate with the municipality to allow individuals or households to continue with their livelihood strategies in instances where the house rules or the conditions of the relocation site prohibit or otherwise limit such activities.

Case study: Negotiating rental amounts

When residents were evicted and relocated from San José, a building in inner-city Johannesburg, to MBV 1, a refurbished military hospital managed by the City of Johannesburg's housing department, the residents signed lease agreements.¹⁰⁴ However, the City and residents did not come to an agreement about how much the monthly rental would be. Although the City agreed that the monthly rental should not exceed 25% of households' incomes, the City and residents disagreed about what the households' incomes were.¹⁰⁵ This was partially due to City officials believing that the residents lied in a social survey about how poor they were.¹⁰⁶ As a result, the rental amounts were not settled.

For months, the City and residents continued to negotiate about the rental amounts. In late 2009, the City and the residents agreed that the residents should pay different rental amounts based on their incomes. For people earning less than R500 a month, the monthly rental would be R25 per bed. For people earning between R500 and R1000 a month, the monthly rental would be R50 per bed. For people earning more than R1000 a month, the monthly rental would be R100 per bed.¹⁰⁷

However, while these negotiations were still ongoing, the City's lawyers sent letters of demand to the residents for payment of rental of R600 a month as well as amounts for property rates, waste management, electricity and water. The residents were threatened with eviction if they did not pay. This was in conflict with the agreement that was reached between the residents' lawyers and housing officials. The City later recognised that its lawyers had made a mistake. In the end, the City and residents agreed that residents would start paying the negotiated rental amounts from February 2010 (the date that the agreement on rental was reached).

Lessons learnt

- Practitioners should negotiate the rental amounts before the relocation takes place. These negotiations should include discussions about the rental amount and any additional expenses for rates or services.
- Many residents are poor and struggle to earn a regular income. This is why the agreement on rental amounts should be based on the household incomes of residents. Wherever possible, the agreement on rental amounts should make provision for the possibility of residents' circumstances changing (for example, if a resident loses their job).
- The idea that “a culture of non-payment of rent” exists is misleading. The case study shows that there are a number of more complex factors that contribute to residents not paying rent. If rents are fair and affordable, residents are willing to pay.

10. Clarifying lines of accountability, maintenance and management arrangements

It is important to clarify the expectations of municipal officials involved in managing the alternative accommodation prior to the relocation. This could include building managers, security guards, cleaners or service providers. It is important that that households know who to approach or where to go in instances of non-performance.

Practitioners should negotiate for the households being relocated to play a role in aspects of building or settlement maintenance. Some of the functions they could perform include cleaning, maintenance activities or providing security. Practitioners may even be able to negotiate a meaningful skills development programme to assist the households being relocated to perform these roles themselves and consider off-setting rental against these contributions.

11. Preparing for relocation

In most cases, the living arrangements of households will differ after they are relocated. Some may struggle with this transition if they are not prepared for the changes. For this reason, it is important to familiarise the households or community being relocated with the changes that they can anticipate. This can be done through workshops with the households being relocated and government officials to clarify the rights, obligations and lines of authority prior to the relocation. These workshops could assist households in adapting to their new living arrangements. The households being relocated should be given guidance on what to expect practically and psychologically.

Some key issues to ensure that households are prepared for their new living arrangements:

- » The tenure arrangements at the relocation site may differ from the tenure arrangements prior to relocation. For example, residents may be required to pay rental at the alternative accommodation or residents could be granted ownership of a state subsidised house. The implications of the change in tenure arrangements should be clearly explained to the households being relocated. In particular, households should be informed of their rights, responsibilities, maintenance obligations and any financial implications that the change in tenure arrangements may have.
- » Payment for the use of basic services and sharing and use of communal spaces may also be issues that residents should be prepared for.
- » Residents should also be given information about how any housing subsidy is being used if the alternative accommodation has been funded by grants received from one or more of the national housing programmes. Any questions or concerns individuals may have should preferably be addressed by government officials.
- » If the living conditions at the alternative accommodation differ dramatically from those prior to relocation, these differences should be pointed out and discussed with the households being relocated. For example, there

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may be differences in where people will be allowed to prepare food or whether there will be communal areas.

Case study: Preparing households for life after the relocation

When the court ordered the City of Johannesburg to provide alternative accommodation to residents that were being evicted from Taylor Road informal settlement, the City offered to accommodate the residents that qualified in terms of the national housing programme to permanent housing at Fleurhof, a formal housing development.¹⁰⁸ These households were the lawful owners of their new homes and were issued with housing allocation documents.

Since their relocation, the residents experienced serious issues in relation to the maintenance of their homes. They experienced blocked toilets, leaking taps and broken windows. Initially, the residents were told to report any issues to the municipality. Some residents were assisted by the municipality, while others were not. The residents were, however, under the impression that they could not fix these issues themselves, because the buildings belonged to the municipality.

This suggests that the residents may not have been fully aware that they were the owners of the new houses and had very specific rights and obligations relating to maintenance and repairs. While the state does provide a warranty against construction defects in subsidised permanent housing, that does not mean that some problems – i.e. those not related to faulty construction – could not be addressed by the new owner.

Lessons learnt

- Households being relocated should be prepared for the living arrangements at their new accommodation. This should include information about the rights and obligations they have in relation to their new accommodation.

It is not only the households being relocated that need to be prepared for the living arrangements post-relocation. The government officials involved in managing the alternative accommodation, as well as any support staff (building management, security staff or service providers), should also participate in workshops or seminars to be prepared for their functions. This should include information on the rights of residents and the accountability mechanisms.

12. Relocating

The steering committee should develop a simple plan for the actual relocation to the alternative accommodation. The plan should make provision for the dates on which the relocation will take place and provide for the logistics of the move. The information about the relocation should be shared with the residents in advance of the move. It is important to give residents sufficient time to prepare and plan for the date of the relocation.

Ideally, the relocation should take place over several days. Transportation should be provided for the residents being relocated and their possessions. The relocation should take place in an organised manner. For example, residents in a building could be relocated floor by floor. While logistical support may be necessary to assist residents during the move (including movers), it is important to ensure that residents do not feel threatened or unsafe during the relocation.

For this reason, relocations to alternative accommodation should not make use of removal companies that are associated with carrying out evictions. For example, the Red Ants should not ordinarily be used to assist in relocations.

It is important to maintain communication with the households being relocated during this phase of the relocation. This is to ensure that households are available and ready to be moved to their new accommodation.

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Practitioners, government officials and community representatives should be present “on the ground” during the relocation period. This is important in case the residents have any questions or fears about the relocation.

Case study: Problems with relocating

When residents were relocated from Marie Louise informal settlement to the Rugby Club, a piece of vacant land owned by the City of Johannesburg, the relocation was preceded by numerous delays and problems.¹⁰⁹ The City failed to keep the residents informed of the date of the relocation and had to delay the relocation on multiple occasions. The numerous delays affected the residents negatively. Any relocation requires residents to take time off work to be present during the relocation. The delays in the relocation process meant that some residents lost their wages on days they could have gone to work.

When the relocation eventually did take place, it took place in phases (in spite of the residents’ requests to be relocated together). About 50 households were relocated over several days in September 2015, but over 100 residents remained behind at Marie Louise informal settlement. The residents who remained at Marie Louise were concerned about their safety after the initial residents were relocated and formed community patrols.

Lessons learnt

- Government officials should properly communicate with residents about the date and logistics for the relocation.
- The relocation should be carefully planned and carried out on the date agreed upon with residents.
- Wherever possible, communities should be relocated together to ensure that the social networks and community structures they have established can be maintained.



Post-Relocation

13. Anticipating post-relocation issues

After a relocation to temporary alternative accommodation, the relationship between practitioners and the households or community being relocated continues to exist. Practitioners should therefore be aware that they will need to allocate time and capacity to deal with post-relocation issues.

Representative community structure

Representative community structures (including building committees) play a critical role in the planning for and carrying out a relocation. Community structures perform essential functions, such as mobilising the households or community being relocated and communicating information to those affected.

For this reason, community structures are a strong resource to advocate for the provision of permanent solutions. For example, community structures could advocate for the upgrading of the relocation site or for the provision of permanent accommodation. Community structures could also have an important part to play in ensuring that the building management becomes or remains functional. This is because these structures can assist in getting residents to perform some of the building or site management functions like cleaning or security. As a result, practitioners should try to sustain and support these structures, and should also make use of them after the relocation.

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However, after a relocation community structures often struggle to maintain legitimacy and support. This is partially due to the fact that the initial threat of eviction - a unifying threat - has passed. There may also be various conflicting interests that may emerge among newly relocated communities. Practitioners should be aware of the possible conflicts that may arise. Practitioners should decide how best to assist the community in resolving these conflicts, while being careful not to inadvertently become involved in community level disputes. This is a sensitive balance to strike as access to practitioners may be the subject of some community level disputes.

To ensure that the community structures remain legitimate, the relocated community should hold regular elections and the community structure should be representative of the broader community.

Sustained communication

After the relocation takes place, the work of legal practitioners is not done. Practitioners should maintain regular communication with the relocated households or community. This is important to make sure that the conditions at the temporary alternative accommodation are adequate and to negotiate for permanent solutions.

While it is important for practitioners to remain available to the households or community being relocated post-relocation, practitioners should also clearly discuss their time and capacity limitations. This is important to ensure that residents do not have unrealistic expectations.

Case study: Some issues to anticipate post-relocation

In 2008, the Constitutional Court ordered the City of Johannesburg to provide temporary alternative accommodation for 332 people it sought to evict from an unsafe building in the inner city called San José.¹¹⁰ The City provided the occupants of San José with alternative accommodation in a converted military hospital called MBV 1. MBV 1 was managed by the municipal housing department. However, after the relocation the residents experienced a number of problems with their new accommodation:¹¹¹

- The building had not been properly refurbished. Water leaks, blocked pipes and other structural issues were common. Without proper maintenance from the City, conditions at the building declined rapidly.
- The relationship between the residents and the caretaker of the building was strained. The first caretaker tried to unlawfully let out storerooms to outsiders and when he was removed, no one was hired as a replacement for a long period of time.
- The cleaners failed to properly clean the building. This was made worse by the lack of a building caretaker to manage the cleaners.
- There were problems with the security at the building when the biometric fingerprint system broke down and was not repaired. The security guards failed to check people in and out of the building and strangers easily accessed it.

The residents tried to raise these complaints with the City's housing officials but, without the threat of litigation, the City became increasingly unresponsive. The City failed to address the vast majority of the residents' complaints despite the residents' attempts to bring these issues to the City's attention. The unwillingness to address their concerns became an ongoing cause of frustration for the residents. To get things done, the residents resorted to the threat of litigation by instructing their lawyers to engage the City in writing.¹¹²

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The residents spent years attempting to engage the City to get it to effectively manage the building. As their frustrations grew, the relationship between the residents, the building manager and housing officials became increasingly strained. The tenants committee (a representative body that played a critical role in mobilising the community prior to the relocation) struggled to hold the building manager and housing officials to account. As a result, some of the residents began to withdraw their support for the committee, threatening its legitimacy and its ability to effect change.¹¹³

In an attempt to improve conditions at the building the committee proposed, and the residents agreed, to take over the responsibility of cleaning the building. The residents did not expect payment for this work but asked the City to provide cleaning implements and materials. However, the City failed to provide these materials.¹¹⁴ It was only when the Executive Director of Housing in the City inspected the building at the end of 2015 that some changes came about. He was appalled at the conditions of the building and ensured that cleaning implements and materials were immediately delivered to the building.¹¹⁵

After nearly eight years in the temporary alternative accommodation, the residents still had no clarity about how and when they would obtain permanent accommodation. The temporary accommodation had become a permanent reality for the residents.

Lessons learnt

- Practitioners should make sure that clear lines of communication and accountability are established to ensure that service providers, cleaners, security guards, caretakers and building or site managers can be held accountable for the failure to perform their duties. The relationship between these officials and senior housing or municipal officials should be clarified and be set out in the residents' lease agreements.
- The courts and the possibility of renewed litigation played an important role in the struggle to improve conditions at the temporary alternative accommodation. It is also useful to get high-level government officials involved if there are sustained disagreements.

- Representative community structures often struggle to maintain legitimacy and support when the initial threat of the eviction has passed. However, these structures remain important vehicles to advocate for better conditions at the relocation site and for the provision of permanent housing. As a result, practitioners should try to sustain and support these structures.
- The case study shows that there may be new ways to address many of the challenges that may arise post-relocation. An example is getting residents to share some of the building or site management functions such as cleaning or security. It may even be useful to off set some of these functions against the residents' rental payments.
- People may have to live in temporary alternative accommodation for months or even years while waiting for permanent housing. It is important to emphasise to the relocated community that the process of accessing permanent housing may require further negotiation and mobilisation and may take a long time.

Alternative accommodation must be consistent with constitutional rights

After the relocation, practitioners should carefully analyse the house rules or conditions at the new location to make sure that the rules and conditions are consistent with the constitutional rights of the households or community being relocated. In particular, practitioners should check that the residents' rights to dignity, privacy, freedom and security of the person, and family life are respected at the new location.

If practitioners believe that the house rules or conditions at the alternative accommodation unjustifiably infringe the rights of the residents, they should try to negotiate with the government officials to have these rules changed. However, if the government officials are unwilling to change these rules, practitioners may need to approach the courts.

Case study: House rules should respect the residents' constitutional rights¹¹⁶

In 2010, in accordance with an order of the Constitutional Court,¹¹⁷ the City of Johannesburg provided 30 unlawful occupiers living in a commercial building on Saratoga Avenue in Johannesburg's inner-city alternative accommodation at Ekuthuleni, a shelter.¹¹⁸ Ekuthuleni was managed by the Metropolitan Evangelical Services (MES), a Christian organisation that provides various social services to homeless people, and operated according to MES' "managed care model".¹¹⁹ The accommodation at Ekuthuleni was conditional on residents adhering to MES's controversial house rules.

These house rules included (among others):

- **Day-time lock out:** The residents were locked out of the shelter during the day and were allowed to reenter between 5:30 in the afternoon and 8 o'clock at night. This rule was applied strictly. This had negative implications for people who worked the night shift, who were sick or who had to take care of their children. For residents to be allowed to remain in the shelter during the day they had to ask permission from the caretaker, who had a wide discretionary power to decide whether to enforce the rules in a specific case.
- **Families were not allowed to live together:** The residents lived in gender segregated dormitory style rooms, which meant that married couples and life partners were separated from each other. It also meant that small children had to sleep with one of their parents. This placed significant strain on the personal and emotional relationships of these residents as they were physically prevented from having family-related discussions with each other and were prevented from being physically intimate. One resident said this rule felt "like a divorce".¹²⁰
- **No personal space:** The residents had no personal space and were not allowed to keep their own furniture or sizeable belongings in their rooms, but had to place them in storage.

The residents were unhappy with these rules and had their lawyers write a letter to the City placing their objections to the rules on the record. Despite this, the City and MES refused to engage on the rules. As a result, the residents challenged the house rules in court, claiming that the rules infringed their constitutional rights to dignity, freedom and security of the person, privacy, property and their children's rights to family life.

In 2014, the High Court agreed with the residents. The court found that the day-time lockout rule was an unjustifiable infringement of the residents' constitutional rights to dignity, freedom and security of person, and privacy, and found that the rule preventing spouses or permanent life partners to stay together infringed their constitutional rights to dignity and privacy.¹²¹ As a result, the court ordered that these rules were unlawful and unconstitutional. At the time of writing this guide the case was before the Constitutional Court, which will finally decide on the constitutionality of these house rules.

Lessons learnt

- This case study shows that any alternative accommodation that is provided to people in the wake of an eviction must be respectful of their constitutional rights. Specifically, any conditions that are imposed on residents post-relocation have to be consistent with their rights to dignity, privacy, and freedom and security of the person.

4

RESOURCES



Legal assistance and advice

- *Centre for Applied Legal Studies (CALS)*
University of Witwatersrand, Johannesburg
Tel: 011 717 8600 <http://www.wits.ac.za/cals>
- *Legal Resources Centre (LRC)*
Johannesburg, Cape Town, Durban and Grahamstown
Tel: 011 8369831 (National Office) <http://www.lrc.org.za>
- *Probono.Org*
Johannesburg and Durban
Tel: 011 836 9831 <http://www.probono.org.za>
- *Socio-Economic Rights Institute of South Africa (SERI)*
Johannesburg
Tel: 011 356 5860 <http://www.seri-sa.org>

Legislation

- » Constitution of the Republic of South Africa, 1996 (Constitution)
<http://www.justice.gov.za/legislation/constitution/index.html>
- » Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998 (PIE Act) http://www2.saflii.org/za/legis/consol_act.DEL/poiefauoola1998627.pdf

Policies

- » Emergency Housing Programme (EHP) Part 3, Volume 4 of the National Housing Code (2009) <http://www.seri-sa.org/images/2%20Volume%204%20Emergency%20Housing%20Programme.pdf>
- » Upgrading of Informal Settlement Programme (UISP) Part 3, Volume 4 of the National Housing Code (2009) http://www.seri-sa.org/images/5_Volume_4_Upgrading_Infroma Settlement.pdf

Reports

- » Socio-Economic Rights Institute of South Africa (SERI), Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the Jurisprudence and Implications for Local Government (2016)
http://seri-sa.org/images/Jurisprudence__Revised_2016_Final_to_print.pdf

Guides

- » Community Law Centre (CLC) and Socio-Economic Rights Institute of South Africa (SERI), Engaging Meaningfully with Government in the Realisation of Socio-Economic Rights in South Africa: A Focus on the Right to Housing (2010) http://www.seri-sa.org/images/Meaningful_engagement.pdf
- » Inter Agency Standing Committee (IASC), IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disaster (2011) http://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines_IDP.pdf
- » International Federation of Red Cross and Red Crescent Societies (IFRC), Post-Disaster Settlement Planning Guidelines (2012) http://www.ifrc.org/PageFiles/71111/PostDisaster_Settlement_Guidelines.pdf
- » Socio-Economic Rights Institute of South Africa (SERI), Resisting Evictions in South Africa: A Legal and Practical Guide (2015) http://seri-sa.org/images/SERI_Dear_Mandela_Evictions_Guide_FINAL_FOR_WEB2.pdf
- » United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Basic Principles and Guidelines on Development Based Evictions and Displacement (2007) http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

Case studies

- » Socio-Economic Rights Institute of South Africa (SERI), “From San Jose to MBV 1”, SERI Community Practice Notes: Johannesburg Inner-City Alternative Accommodation Series (2016) http://seri-sa.org/images/San_Jose_Practice_notes_FOR_WEB3.pdf
- » Socio-Economic Rights Institute of South Africa (SERI), “From Carr Street to MOTH”, SERI Community Practice Notes: Johannesburg Inner-City Alternative Accommodation Series (2016) http://seri-sa.org/images/Carr_Street_Practice_notes_FOR_WEB.pdf
- » Socio-Economic Rights Institute of South Africa (SERI), “From Saratoga Avenue to MBV 2 and Ekuthuleni”, SERI Community Practice Notes: Johannesburg Inner-City Alternative Accommodation Series (2016) http://seri-sa.org/images/Saratoga_Practice_notes_FOR_WEB.pdf
- » Socio-Economic Rights Institute of South Africa (SERI), “From Marie Louise to ‘Rugby Club’”, SERI Community Practice Notes: Informal Settlement Relocation Series (2016) http://seri-sa.org/images/Series_3_Marie_Louise_practice_notes_FINAL_FOR_WEB.pdf

- » Socio-Economic Rights Institute of South Africa (SERI), “From Taylor Road to Ruimsig and Fleurhof”, SERI Community Practice Notes: Informal Settlement Relocation Series (2016) http://seri-sa.org/images/SERI_CPN_Taylor_Road_FINAL_FOR_WEB.pdf

Court cases

- » Abahlali baseMjondolo Movement SA and Another v Premier of KwaZulu Natal and Others 2010 (2) BCLR 99 (CC) <http://www.saflii.org/za/cases/ZACC/2009/31.html>
- » City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Pty) Ltd 2012 (2) SA 104 (CC) <http://www.saflii.org/za/cases/ZACC/2011/33.html>
- » City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA (SCA) <http://www.saflii.org/za/cases/ZASCA/2012/116.html>
- » City of Johannesburg v Rand Properties 2007 (6) SA 417 (SCA) <http://www.saflii.org/za/cases/ZASCA/2012/116.html>
- » Dladla and Others v City of Johannesburg Metropolitan Municipality 2014 (6) SA 516 (SGJ) <http://www.saflii.org/za/cases/ZAGPJHC/2014/211.html>
- » Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others 2010 (4) BCLR 312 (CC) <http://www.saflii.org/za/cases/ZACC/2009/33.html>
- » Modder East Squatters and Another v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd 2004 (3) All SA 169 (SCA) <http://www.saflii.org/za/cases/ZASCA/2004/47.html>
- » Occupiers of Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg 2008 (3) 208 (CC) <http://www.saflii.org/za/cases/ZACC/2008/1.html>
- » Occupiers of Portion R25 of the Farm Mooiplaats v Golden Thread 2012 (2) SA 337 (CC) <http://www.saflii.org/za/cases/ZACC/2011/35.html>
- » Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries 2012 (4) BCLR 382 (CC) <http://www.saflii.org/za/cases/ZACC/2011/36.html>
- » Port Elizabeth Municipality v Various Occupiers 2005 (1) SA (CC) <http://www.saflii.org/za/cases/ZACC/2004/7.html>
- » Residents of Joe Slovo Community, Western Cape v Thubelisha Homes 2010 (3) SA 454 (CC) <http://www.saflii.org/za/cases/ZACC/2009/16.html>

5

ENDNOTES



- ¹ Section 26 of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides:
“ (1) Everyone has the right to have access to adequate housing.
 (2) The state must take reasonable measures, within available resources, to achieve the progressive realisation of this right.
 (3) 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. No legislation may permit arbitrary evictions.”
- ² See Stuart Wilson, “Breaking the Tie: Evictions from Private Land Homelessness and the New Normality”, *South African Law Journal*, 126(2) (2009), p. 289. See also *Modder East Squatters and Another v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd* 2004 (3) All SA 169 (SCA) (*Modderklip*); *Occupiers of Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg* 2008 (3) 208 (CC) (*Olivia Road*); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA (CC) (*PE Municipality*); *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Pty) Ltd* 2012 (2) SA 104 (CC) (*Blue Moonlight*); *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries* 2012 (4) BCLR 382 (CC) (*Skurweplaas*); and *Occupiers of Portion R25 of the Farm Mooiplaats v Golden Thread* 2012 (2) SA 337 (CC) (*Mooiplaats*).
- ³ This principle is clearly laid out in the Emergency Housing Programme (EHP) and the Upgrading of Informal Settlements Programme (UISP), and has been affirmed by the Constitutional Court in the case of *Abahlali baseMjondolo Movement SA and Another v Premier of KwaZulu Natal and Others* 2010 (2) BCLR 99 (CC) (*Abahlali*). See Department of Human Settlements (DHS), “Emergency Housing Programme”, Part 3, Volume 4 of the National Housing Code (2004), p. 37; DHS, “Upgrading of Informal Settlements Programme”, Part 3, Volume 4 of the National Housing Code (2004), p. 32; and *Abahlali*, paras. 114 and 126.
- ⁴ Shelter Cluster Philippines, “HLP Guidance Note on Relocation for Shelter Partners” (2014), p. 1. See also World Bank, *Hazards of Nature, Risks to Development: An IEG Evaluation of World Bank Assistance for Natural Disasters* (2006), p. 46; and Alice Thomas, “Resettlement in the Wake of Typhoon Haiyan in the Philippines: A Strategy to Mitigate Risk or a Risky Strategy?”, Brookings Institution Research Report (2015), p. 1.
- ⁵ Throughout the guidelines, any reference to “practitioners” includes attorneys, candidate attorneys, paralegals, community advice officers or researchers involved in the relocation process.
- ⁶ For more information on SERI’s work in relation to relocation processes, see SERI’s Community Practice Notes on Johannesburg Inner-City Alternative Accommodation and Informal Settlement Relocations. In an inner-city context, see SERI, “From San Jose to MBV 1”, SERI Community Practice Notes: Johannesburg Inner-City Alternative Accommodation Series (2016); SERI, “From Carr Street to MOTH”, SERI Community Practice Notes: Johannesburg Inner-City Alternative Accommodation Series (2016); SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”, SERI Community Practice Notes: Johannesburg Inner-City Alternative

- Accommodation Series (2016). In an informal settlement context, see SERI, “From Marie Louise to ‘Rugby Club’”, SERI Community Practice Notes: Informal Settlement Relocation Series (2016); and SERI, “From Taylor Road to Ruimsig and Fleurhof”, SERI Community Practice Notes: Informal Settlement Relocation Series (2016).
- ⁷ In June 2014, SERI and Probono.Org hosted a soundboard workshop on the development of guidelines to the implementation of large-scale relocations in eviction cases and instances of voluntary relocations. The workshop was attended by representatives from various civil society organisations and legal NGOs and provided an opportunity for SERI to present its draft guidelines to the group and obtain invaluable feedback.
- ⁸ For a detailed description of these cases see SERI, *Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the Jurisprudence and Implications for Local Government*, SERI Research Report (March 2016): http://www.seri-sa.org/images/Evictions_Jurisprudence_Nov13.pdf. An executive summary of the report is also available: http://www.seri-sa.org/images/Jurisprudence_summary_web.pdf.
- ⁹ See, for example, UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement* (2007), UN Doc A/HRC/4/18 (Annex 1 to the Report of the Special Rapporteur on Adequate Housing); and the Inter-Agency Standing Committee (IASC), *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disaster* (January 2011).
- ¹⁰ Section 2 of the Constitution provides:
“The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”
- ¹¹ Section 10 of the Constitution.
- ¹² Section 12 of the Constitution.
- ¹³ Section 14 of the Constitution.
- ¹⁴ Section 27 of the Constitution.
- ¹⁵ An unlawful occupier is someone who occupies a property without the consent from the owner or person in charge of the property or any other legal right to occupy. See *Ndlovu v Ngcobo; Bekker v Jika* 2003 (1) SA 113 (SCA).
- ¹⁶ See Department of Human Settlements (DHS), “Emergency Housing Programme”, Part 3, Volume 4 of the National Housing Code (2004).
- ¹⁷ See DHS, “Emergency Housing Programme”, pp. 9 and 15-16.
- ¹⁸ See DHS, “Emergency Housing Programme”, pp. 9 and 15.
- ¹⁹ See DHS, “Emergency Housing Programme”, pp. 31-37.
- ²⁰ See *Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others* 2010 (4) BCLR 312 (CC) (*Nokotyana*), paras. 48-49.
- ²¹ See *PE Municipality*, para. 29; and *Blue Moonlight*, para. 40. See also SERI, *Evictions and Alternative Accommodation in South Africa 2000-2016*, p. 25.
- ²² *PE Municipality*, para. 29.

- ²³ *Blue Moonlight*, paras. 37 and 40.
- ²⁴ *Baartman v Port Elizabeth Municipality* 2004 (1) SA 560 (SCA) (*Baartman*), para. 18. Although the courts have not clarified exactly what alternative accommodation should include or for how long it should be provided, the Supreme Court of Appeal in *Baartman* indicated that it would be contrary to the public interest to evict the occupiers only for them to be rendered subject to eviction once again. This means that alternative accommodation should, at the very least, include a guarantee against eviction.
- ²⁵ See *Blue Moonlight*, paras. 57 and 66; *Skurweplaas*, para. 14; and *Mooiplaats*, para. 16. See also SERI, *Evictions and Alternative Accommodation in South Africa 2000-2016*, pp. 36-39.
- ²⁶ *Blue Moonlight*, para. 57.
- ²⁷ *Blue Moonlight*, para. 66.
- ²⁸ *Blue Moonlight*, para. 66.
- ²⁹ See *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC) (*Joe Slovo*), paras. 5 and 7.
- ³⁰ *Baartman*, para. 18.
- ³¹ See, for example, the definition of “suitable alternative accommodation” in section 1 of the Extension of Security of Tenure Act 62 of 1997 (ESTA).
- ³² *Blue Moonlight*, para. 104(c)(iv). See also SERI, *Evictions and Alternative Accommodation in South Africa 2000-2016*, p. 39.
- ³³ *Joe Slovo*, paras. 249, 254 and 256; *City of Johannesburg v Rand Properties* 2007 (6) SA 417 (SCA) (*Rand Properties*), para. 44. See also SERI, *Evictions and Alternative Accommodation in South Africa 2000-2016*, p. 39.
- ³⁴ *Olivia Road*, paras. 14 and 18.
- ³⁵ Read more about meaningful engagement at pp. 23-25.
- ³⁶ Alice Thomas, “Resettlement in the Wake of Typhoon Haiyan”, p. 1.
- ³⁷ See generally SERI, “From San Jose to MBV 1”.
- ³⁸ See SERI, “From Carr Street to MOTH”, p. 8.
- ³⁹ See the International Federation of the Red Cross and Red Crescent Societies (IFRC), *Post-Disaster Settlement Planning and Guidelines* (2012), p. 48.
- ⁴⁰ IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 48.
- ⁴¹ Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁴² IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 51. Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁴³ Shelter Cluster Philippines, “Guidance Note on Relocation”, p. 2.
- ⁴⁴ Alice Thomas, “Resettlement in the Wake of Typhoon Haiyan”, p. 21.
- ⁴⁵ UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, para. 56.
- ⁴⁶ Interview with Nkosinathi Sithole, Attorney at SERI (Johannesburg, 6 February 2017); Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁴⁷ For a more detailed discussion of this relocation, see SERI, “From Taylor Road to Ruimsig and Fleurhof”.

- ⁴⁸ *Olivia Road*, paras. 17 and 18.
- ⁴⁹ *PE Municipality*, para. 39.
- ⁵⁰ *PE Municipality*, para. 43.
- ⁵¹ *Olivia Road*, para. 14.
- ⁵² Socio-Economic Rights Institute of South Africa (SERI) and Community Law Centre (CLC), “Engaging Meaningfully with Government on Socio-Economic Rights: A Focus on the Right to Housing” (2010), p. 9.
- ⁵³ *Olivia Road*, para. 13.
- ⁵⁴ SERI and CLC, “Engaging Meaningfully with Government”, p. 9.
- ⁵⁵ *Olivia Road*, paras. 14 and 18.
- ⁵⁶ *Joe Slovo*, para. 7.
- ⁵⁷ *Joe Slovo*, para. 7.
- ⁵⁸ Read more about the relocation plan at p. 39.
- ⁵⁹ Sheela Patel, Celine d’Cruz and Sundar Purra, “Beyond Eviction in a Global City: People Managed Settlement in Mumbai”, *Environment & Urbanization*, 14(1) (2002), p. 170.
- ⁶⁰ UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, para. 56.
- ⁶¹ Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁶² IFRC, *Post-Disaster Settlement Planning and Guidelines*, pp. 73-74.
- ⁶³ IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 52.
- ⁶⁴ See DHS, “Emergency Housing Programme”, pp. 20-23.
- ⁶⁵ See DHS, “Emergency Housing Programme”, p. 20.
- ⁶⁶ See DHS, “Emergency Housing Programme”, p. 20.
- ⁶⁷ See DHS, “Emergency Housing Programme”, pp. 20-21.
- ⁶⁸ See DHS, “Emergency Housing Programme”, p. 22.
- ⁶⁹ See DHS, “Emergency Housing Programme”, p. 23.
- ⁷⁰ See IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 7; and Shelter Cluster Philippines, “Guidance Note on Relocation”, p. 1.
- ⁷¹ IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 7.
- ⁷² IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 7.
- ⁷³ See DHS, “Emergency Housing Programme”, pp. 14, 31 and 38.
- ⁷⁴ See DHS, “Emergency Housing Programme”, pp. 14, 31 and 38.
- ⁷⁵ Shelter Cluster Philippines, “Guidance Note on Relocation”, p. 3.
- ⁷⁶ See sections 9 and 26 of the Constitution. See also UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, paras. 11-20; and, generally, IASC, *Operational Guidelines on the Protection of Persons in Situations of Natural Disaster*.
- ⁷⁷ IASC, *Operational Guidelines on the Protection of Persons in Situations of Natural Disaster*, p. 3.
- ⁷⁸ IFRC, *Post-Disaster Settlement Planning and Guidelines*, pp. 68-71; Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁷⁹ IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 68.
- ⁸⁰ IFRC, *Post-Disaster Settlement Planning and Guidelines*, pp. 68-69.
- ⁸¹ Read more about the registration step at pp. 35-37.

- ⁸² In the majority of circumstances, information about household income would be collected during the eviction proceedings and should therefore be readily available.
- ⁸³ For a full description of the relocation, see SERI, “From San Jose to MBV 1”.
- ⁸⁴ Interview with Edward Molopi, Community Research and Advocacy Officer at SERI (Johannesburg, 8 December 2016). See SERI, “From San Jose to MBV 1”.
- ⁸⁵ For a full description of this relocation, see SERI, “From Marie Louise to ‘Rugby Club’”.
- ⁸⁶ Interview with Edward Molopi, Community Research and Advocacy Officer at SERI (Johannesburg, 8 December 2016); Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017). See also SERI, “From Marie Louise to ‘Rugby Club’”, p. 8.
- ⁸⁷ See DHS, “Emergency Housing Programme”, pp. 92-93.
- ⁸⁸ DHS, “Emergency Housing Programme”, p. 16.
- ⁸⁹ DHS, “Emergency Housing Programme”, p. 16.
- ⁹⁰ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA (SCA) (Changing Tides)*.
- ⁹¹ *Changing Tides*, para. 50.
- ⁹² *Changing Tides*, paras. 49-53.
- ⁹³ Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁹⁴ DHS, “Emergency Housing Programme”, p. 91.
- ⁹⁵ DHS, “Emergency Housing Programme”, p. 91.
- ⁹⁶ DHS, “Emergency Housing Programme”, p. 91.
- ⁹⁷ Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁹⁸ Experience shows that it is important to include the government officials who are responsible for physically relocating the households or community in all negotiations and discussions about the relocations. Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017).
- ⁹⁹ See IFRC, *Post-Disaster Settlement Planning and Guidelines*, pp. 88-94; and Shelter Cluster Philippines, “Guidance Note on Relocation”, pp. 4-7.
- ¹⁰⁰ IFRC, *Post-Disaster Settlement Planning and Guidelines*, p. 89.
- ¹⁰¹ *Blue Moonlight*, para. 104(c)(iv).
- ¹⁰² See *Joe Slovo*, paras. 249, 254 and 256; and *Rand Properties (SCA)*, para. 44. See also *Joe Slovo*, paras. 241, 249 and 254-258.
- ¹⁰³ Interview with Lwazi Mtshiyi, Candidate Attorney at SERI (Johannesburg, 14 February 2017); Interview with Nkosinathi Sithole, Attorney at SERI (Johannesburg, 6 February 2017).
- ¹⁰⁴ For a full description of this relocation, see SERI, “From San Jose to MBV 1”.
- ¹⁰⁵ SERI, “From San Jose to MBV 1”, p. 7.
- ¹⁰⁶ SERI, “From San Jose to MBV 1”, p. 18.
- ¹⁰⁷ SERI, “From San Jose to MBV 1”, p. 9.
- ¹⁰⁸ For a more detailed discussion of this relocation, see SERI, “From Taylor Road to Ruimsig and Fleurhof”.

- ¹⁰⁹ For a full description of the relocation, see SERI, “From Marie Louise to ‘Rugby Club’”.
- ¹¹⁰ For more information on this relocation, see SERI, “From San Jose to MBV 1”.
- ¹¹¹ SERI, “From San Jose to MBV 1”, pp. 8-12.
- ¹¹² SERI, “From San Jose to MBV 1”, p. 14.
- ¹¹³ SERI, “From San Jose to MBV 1”, p. 11.
- ¹¹⁴ SERI, “From San Jose to MBV 1”, p. 12.
- ¹¹⁵ SERI, “From San Jose to MBV 1”, p. 12.
- ¹¹⁶ See, generally, SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”.
- ¹¹⁷ See the *Blue Moonlight* case. See, generally, SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”.
- ¹¹⁸ Over 100 people were relocated from Saratoga Avenue. The City of Johannesburg provided alternative accommodation to these occupiers at two locations, namely MBV 2 (a converted military hospital) and Ekuthuleni (a shelter). The City used the income of occupiers to determine where occupiers would receive alternative accommodation. The occupiers who could afford to pay a monthly rental of R600 were relocated to MBV 2, while those who were unable to afford a monthly rental of R600 were relocated to Ekuthuleni. See SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”, pp. 7-8
- ¹¹⁹ The model promoted a transitional ideal in terms of which, after a short six to twelve month programme of intervention, residents are supposedly able to leave and find accommodation for themselves. The model required residents to participate in the interventions in order to “improve their station in life”. Some have criticised the programme for relying on a paternalistic approach which fails to acknowledge the fundamental issues which got people into informal accommodation in the first place, such as the structure of the urban housing market and the entrenched nature of poverty. See SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”, p. 7.
- ¹²⁰ SERI, “From Saratoga Avenue to MBV 2 and Ekuthuleni”, p. 16.
- ¹²¹ See *Dladla and Others v City of Johannesburg Metropolitan Municipality and Another* 2014 (6) SA 516 (SGJ) (*Dladla*).

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