Evictions and Alternative Accommodation in South Africa:
An Analysis of the Jurisprudence and Implications for Local Government

REPORT SUMMARY February 2014

Years of litigation and a host of progressive judgments of the South African courts have substantially contributed to the constitutional right of access to adequate housing. Despite this, municipalities are failing to fulfil their constitutional duties in relation to evictions and the provision of alternative accommodations to those rendered homeless by eviction in their jurisdiction. Neither property owners nor municipalities have fully come to terms with the significant paradigm shift in the law related to evictions. This report identifies the range of legal principles that should be upheld in eviction cases and the rights, duties and obligations of the various parties involved in eviction proceedings.

The constitutional right of access to adequate housing, enshrined in section 26 of the Constitution, is undoubtedly the most fiercely contested and frequently litigated socio-economic right in the South African context. Despite a range of measures adopted by the state, the constitutional provision promising “everyone” access to adequate housing continues to stand in stark contrast to the pervasive realities of significant housing backlogs, evictions and removals.

This is perhaps most evident in the City of Johannesburg’s continued failure to implement a coherent, proactive and programmatic response to evictions and, subsequent to the *Olivia Road and Blue Moonlight* judgments, to provide alternative accommodation to poor households rendered homeless due to evictions. From SERI’s research it is clear that the City of Johannesburg’s suggested response not only fails to provide an adequate solution to the issues raised by evictions but also fails to conform to the legal obligations laid down by the courts. This is also true across the country where municipalities respond to evictions in a largely uncoordinated *ad hoc* manner by providing alternative accommodation only after being ordered, sometimes several times, by courts to do so.

It is in this light that “Evictions and Alternative Accommodation in South Africa” seeks to provide a comprehensive analysis of the jurisprudence (case law) on evictions and alternative accommodation, and the contingent obligations on municipalities in respect of the provision of alternative accommodation. The report aims to guide activists, communities and public interest law practitioners caught up in eviction related struggles, as well as local government officials who are tasked with devising and implementing housing policy.
The report sets out the chronological development of the key South African housing and eviction cases, including Grootboom, Modderklip, PE Municipality, Olivia Road, Blue Moonlight, Skurweplaas, Mooiplaats, Mchunu and Hlophe. In unpacking the case law, the report tracks the development of the law in relation to housing and evictions and highlights what each of the cases has contributed to housing and eviction jurisprudence.

The report shows that the case law in relation to evictions and alternative accommodation has resulted in a progressive legal framework that is markedly different from the position at common law – a “new normality in property relations”. This new normality is characterised by the recognition of the housing rights of unlawful occupiers, the occasional limitation of rights of property owners and the obligation on the part of municipalities to provide alternative accommodation to poor households rendered homeless due to an eviction.

The report also addresses a number of common arguments raised by local government to justify their unwillingness, inability or delay in providing alternative accommodation to those rendered homeless due to an eviction. SERI has critically evaluated these arguments in the light of the pronouncements of the South African courts, which, in responding to the often legitimate concerns of municipalities, have set out carefully considered rules that aim to navigate and take account of these arguments while simultaneously giving expression to the right of access to adequate housing of impoverished occupiers. The courts’ rejection of commonly raised arguments bring into question whether municipalities would be able to rely on these arguments in future.

- Read the full report on the SERI website
  http://www.seri-sa.org/index.php/research-7/research-reports