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annual review
2015/2016
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SERI has been driven, not by its own sense of what is right or wrong for our clients, but by our clients’ own needs and aspirations, and the agendas for change they have set for themselves. We have also made clear that we stay with our clients for the long-haul, from the moment they approach us for advice and support, for as long as it takes to ensure that a remedy is obtained and implemented.
Executive Director’s Message

The struggle for free education has set the tone for rights-based protest and activism in the last year. The #FeesMustFall Movement was perhaps the most unexpected yet rapidly successful formation of post-Apartheid social justice activism. SERI was at the forefront of action to support and protect the #FeesMustFall Movement in its work to achieve equitable access to higher education for the poorest students.

SERI provided strategic support across the country to students who were arrested, detained, threatened with eviction from their residences, or prevented from protesting, during their attempts to campaign against fee increases in South Africa’s major Universities. SERI directly provided or arranged for representation in 232 cases of arrest and detention of students, almost always securing the students’ release within 24 hours, often by paying or arranging bail on the students’ behalf. We also arranged for students who were under threat of eviction from two residences – in Cape Town and Mahikeng – to successfully oppose their removal.

SERI’s work with the #FeesMustFall movement is a prime example of how SERI seeks to target its support at the point where socio-economic rights are enforced through community-based mobilisation and action. That is the central theme of our work: support and respect for poor people’s agency, and the conviction that it is ordinary men and women themselves that can and must formulate their own strategies for change. This theme continued to shape SERI’s activities throughout the last year.

In August 2015, SERI, acting on behalf of Abahlali baseMjondolo, and working together with the Legal Resources Centre, obtained judgment in MEC for Public Works and Human Settlements v eThekwini Municipality. In that case, the High Court set aside a wide ranging court interdict that authorised the eviction of people living on 1568 properties across Durban, without giving them an opportunity to be heard. In February 2016, the Constitutional Court ruled in the matter of Nkata v FirstRand Bank Ltd. The Court accepted SERI’s argument that section 129 (3) of the National Credit Act provides distressed consumers with an automatic right to revive their loan agreements by paying the outstanding arrears, rather than the full amount claimed by the lender.

In Melani v City of Johannesburg SERI assisted the 10 000 residents of Slovo Park to compel the City of Johannesburg to make good on its twenty year-old promise to upgrade the informal settlement for formal housing.
SERI has continued to seek redress for the victims of the Marikana massacre, and hopes soon to be able to reach a settlement on the damages claims we have instituted against the state on their behalf.

In all of these cases, SERI has been driven, not by its own sense of what is right or wrong for our clients, but by our clients’ own needs and aspirations, and the agendas for change they have set for themselves. We have also made clear that we stay with our clients for the long-haul, from the moment they approach us for advice and support, for as long as it takes to ensure that a remedy is obtained and implemented. This approach, in my view, places SERI amongst the most effective human rights organisations anywhere in the world.

Similarly, our research and advocacy work has provided a number of much-needed resources for communities seeking to stand on their rights. Our ground-breaking research on the regulation of informal trade, published as “The End of the Street?” in September 2015, was a vital resource for our clients in their attempts to stave off the City of Johannesburg’s plans to restrict or prohibit informal trade in the inner city. After an intensive period of evidence-based advocacy, undertaken by SERI and the South African Informal Traders Forum, it now appears that those plans have been shelved.

Our resource guide on preventing unlawful sales in execution has quickly become an important reference point for mortgagors at risk of losing their homes, and the paralegals and lawyers who act for them.

Our unique series of community practice notes has been significantly expanded this year, to profile community-based struggles in the inner city and informal settlements in Johannesburg. Our new series of policy briefs has started by addressing the acute need for affordable public rental housing to be part of the solution to South Africa’s ongoing housing crisis.

In short, SERI remains a thriving, productive community of human rights lawyers, researchers and activists, committed to attaining the constitutional vision of a just, equal and free society, in which all are treated with dignity and have access to the means of self-realisation. I am proud of what 27 lawyers, researchers and support staff have achieved this year. I hope that, in reading the pages that follow, you will be as engaged by our work as I have been.
SERI's capacity has grown impressively over the last year, and the organisation can now count successes in areas of labour law and criminal defence among its well established and continuing work in housing and evictions, basic services in urban and rural areas, and the expansion of political space. SERI remains responsive to South Africa's immediate socio-political environment, and has supported students arrested at university campuses around the country during #FeesMustFall, the biggest and most sustained student movement since the 1976 Soweto Uprising.

SERI’s grounded research and advocacy continues to nuance the relationships between the state and society in South Africa, pushing for the realisation of basic socio-economic rights by empowering social movements, communities, civil society organisations and government through rigorous and applied policy, legal and social research. The research and advocacy team has produced a range of notable publications over the past year, and it continues to engage with the state on a range of platforms as well as co-ordinate community-based advocacy.

Research highlights from the last year include the publication of ‘The End of the Street?’ Informal Traders’ Experiences of Rights and Regulations in Inner City Johannesburg, and Informal Settlement Upgrading: Incrementally upgrading tenure under customary administration. The former documents in depth the realities of informal trade in Joburg’s inner city in the aftermath of Operation Clean Sweep, both in terms of management practices and informal traders’ experiences of making a living. The latter is a research report undertaken for the Housing Development Agency (HDA) on securing tenure in informal settlements on customary land, identifying, among other things, an acute lack of awareness about I PILRA rights (the Interim Protection of Informal Land Rights Act) among key stakeholders.

The litigation team’s tireless work in Johannesburg’s inner city, and elsewhere around the country, has set and raised the standard
for pro-poor litigation in resisting evictions, meaningful engagement, and the provision of alternative accommodation. Such efforts have been recognised internationally, referenced in the first decision in an individual complaint taken by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in the Special Rapporteur on the Right of Access to Adequate Housing’s most recent report.

A litigation highlight was a victory in the Gauteng Local Division of the High Court, which promises to fundamentally change local government’s response to the in situ upgrading of informal settlements. After more than two-decades of struggle for upgrading, the Slovo Park community succeeded in their attempts to bind the City of Johannesburg to the Upgrading of Informal Settlements Programme (UISP), a crucial tool in shifting the informal settlement agenda from eviction and relocation towards upgrading people where they live.

SERI continues to attract talented and driven personnel, and both the litigation and research and advocacy teams have welcomed exciting new members. Over the past year, SERI has appointed a new receptionist, three candidate attorneys, a researcher, a research fellow, and three litigation fellows. I feel sure that these appointments will consolidate and advance SERI’s agenda, and push the limits of socio-economic justice work in South Africa even further.

During 2015, SERI was also delighted to welcome our patron, Justice Zak Yacoob, to our board of directors. Zak wrote many ground breaking judgments during his time on the Constitutional Court bench, and has provided invaluable guidance (and a wicked sense of humour) to SERI.

I am extremely proud to serve as the Chairperson of SERI’s Board and would like to warmly thank SERI’s Executive Director, Stuart Wilson, and SERI staff members for their extraordinary work in advancing socio-economic rights over the past year.
ABOUT SERI
SERI has a Board of Directors which comprises the following people:

**Prof Jackie Dugard** Associate Professor of Law and Director of the Gender Equity Unit, University of the Witwatersrand (Chairperson of the Board)

**Prof Lilian Chenwi** Associate Professor of Law, University of the Witwatersrand

**Prof Jonathan Klaaren** Professor of Law, University of the Witwatersrand

**Prof Sandra Liebenberg** H. F. Oppenheimer Chair in Human Rights Law, and Distinguished Professor, University of Stellenbosch

**Prof Noor Nieftagodien** NRF Chair in Local Histories and Present Realities, University of the Witwatersrand

**Adv Dumisa Ntsebeza SC** Advocate at the Johannesburg Bar

**Adv Stuart Wilson** Executive Director, SERI

**Justice Zak Yacoob** Patron, SERI
SERI comprises 24 staff members and a part-time financial consultant.

**staff**

**Stuart Wilson**  Executive Director  
**Lauren Royston**  Director of Research and Advocacy  
**Nomzamo Zondo**  Director of Litigation  
**Sanele Garane**  Operations Manager  
**Mbekezeli Martin Benjamin**  Candidate Attorney  
**Josh Budlender**  Research Fellow  
**Irene De Vos**  Senior Legal Researcher and General Counsel  
**Tiffany Ebrahim**  Researcher  

**Portia Khuselewa Dyantyi**  Candidate Attorney  
**Mami Molefe**  Operations Assistant  
**Edward Molopi**  Community Research and Advocacy Officer  
**Pinkie Moremi**  Cleaner  
**Mmoloki Martin Mosweu**  Candidate Attorney  
**Lindokuhle Mdabe**  Litigation Fellow  
**Ofentse Motlhasedi**  Litigation Fellow  
**Lwazi Mtshiyo**  Candidate Attorney  

**Naadira Munshi**  Research Fellow  
**Tshanga Zwonaka Netshifulani**  Candidate Attorney  
**Princess Makhosazana Nkuna**  Receptionist  
**Dasantha Pillay**  Candidate Attorney  
**Bhavna Ramji**  Attorney  
**Nkosinathi Sithole**  Litigation Fellow  
**Keamogetswe Thobakgale**  Attorney  
**Dennis Webster**  Researcher  

In 2016, SERI bade farewell to Grace Gomba, who is currently completing her LLB through UNISA, and Kathleen Hardy, who joined the South African Human Rights Commission as a Senior Legal Officer in the Legal Services Unit.

**interns**

SERI welcomes interns and volunteers to assist with research, advocacy and litigation throughout the year. Over the past year we hosted the following interns:

**Liesl Olivier**  June to July 2016 (Litigation Intern)  
**Matshediso Moilwa**  Research Intern (March to April 2016)  
**Mwila Saini**  Social Work Intern (February to October 2016)  

**Sandile Tshabalala**  Research Intern (November to December 2015)  
**Ayanda Collins**  Research Intern (June to August 2015)

SERI also provides opportunities for LLB students from the University of the Witwatersrand’s School of Law to work on a part-time basis conducting field research. The initiative is supported and funded by the Law School’s Bram Fischer Human Rights Programme.
SERI has also established a series of special project funds to undertake defined work over a limited period of time. These include an advocacy training fund, which is supported by the Bertha Foundation; a documentary film fund, also supported by the Bertha Foundation; and a fund to support our Marikana civil claims work, which is supported by the Bertha Foundation and the Open Society Initiative for Southern Africa.

SERI is grateful for the donations from Webber Wentzel Attorneys and John Dugard towards setting up the SERI law library. We are also grateful to Bell Dewar Attorneys for pro bono legal assistance on SERI management issues.

SERI’s Law Clinic takes on more work than can reasonably be performed by its own attorneys and counsel. This is made possible because attorneys and counsel outside SERI regularly accept instructions from its Law Clinic pro bono, for a contingency fee or for a reduced fee. We are grateful to the following individuals and firms who have accepted instructions from us on this basis: Daniel Berger SC, Tim Bruinders SC, Geoff Budlender SC, Matthew Chaskalson SC, Wim Trengove SC, Anna Marie de Vos SC, Andrea Gabriel SC, Paul Kennedy SC, Dumisa Ntsebeza SC, Gift Shakoane SC, Heidi Barnes, Apla Bodlani, Steven Budlender, Berning Buthelezi, Adrian Friedman, Nkosikhona Gama, Anthony Gotz, Kate Hofmeyr, James Howse, Elsa van Huyssteen, Sekgothadi Kabelo, Sha’ista Kazee, Michelle le Roux, Buhle D Lekokotla, Nicole Lewis, Zweli Makgalemele, Tebogo Manchu, Joey Moses, Teboho Mosikili, Tholoana Motloeny, Nyoko Muvangua, Tembeka Ngcukaitobi, Deon Pool, Mkhululi Stubbs, Howard Varney, Bowman Gilfillan Attorneys, Ryan Ismail Attorneys, Mosweu Monyi Attorneys, Mate Attorneys, Madala Komape Attorneys, S.N. Mnguni Attorneys, Haffegee Roskam Savage Attorneys, Manson Tobin Attorneys, Matsepes Inc and Mathewson Gess Inc.

SERI administers a bail fund generously made available by the Bertha Foundation. The fund was a direct response to the #FeesMustFall student uprising, and is aimed at providing students with legal representation and bail money when arrested and charged during protest action in relation to university fee increments.

SERI is wholly dependent on donor funding and is grateful to all our funders for their support. Our current funders are:

The Constitutionalism Fund
The Bertha Foundation
The Ford Foundation
MISEREOR

The Open Society Foundation
The RAITH Foundation
The Sigrid Rausing Trust
**METHODOLOGY**

Driven by community issues, SERI aims to address local problems in structural ways through a close interweaving of research, policy and community advocacy and public interest litigation. This approach seeks to match problems on the ground with resolutions, whether in the form of engagement with government, formation of civil society advocacy networks, or the uptake of strategic litigation. SERI facilitates interaction between communities and the government and communities and courts on a range of social and economic rights-related issues. This will advance the realisation of socio-economic rights and contribute to participatory democracy and public accountability in South Africa.

**THEMATIC AREAS**

This year SERI reorganised its work under the following thematic areas:

- **Securing a Home**
- **Making a Living**
- **Expanding Political Space**

**Securing a Home**

SERI works to ensure that poor and vulnerable people have access to secure tenure and adequate housing, water, electricity and sanitation. SERI has been at the forefront of efforts to prevent evictions which lead to homelessness, to press for the *in situ* upgrading of informal settlements, and to prevent unfair water and electricity disconnections.

SERI also works to protect the rights of residential tenants, and to prevent unfair banking practices which may result in the loss of a home.

**Making a Living**

South Africa’s high unemployment rates mean that many poor and vulnerable people work in part-time, low-paid and insecure employment. Many others engage in self-made informal livelihood strategies, and small businesses.

SERI protects the rights of workers at the very lowest rung of the formal labour market to organise free from the threat of unfair dismissal or eviction. SERI also works with informal traders to improve their access to economic infrastructure and markets, and to protect them from unfair removal and seizure of their stock.

**Expanding Political Space**

Poor people often peacefully assemble and demonstrate in service delivery protests. They also criticise employers, universities, landlords and the state for unfair and often unlawful practices in the workplace, in delivering services and/or in response to abuses in the landlord-tenant relationship.

SERI seeks to protect and expand the political spaces within which communities can peacefully assemble, demonstrate, articulate and campaign for the advancement of their socio-economic rights.
Informal Settlements

Despite South Africa’s progressive national housing policy, which prioritises the in situ upgrading of informal settlements, millions of people continue to live without security of tenure and access to basic services.

The de facto approach by the state to informal settlements has been one of relocation, eviction and demolition. The state has focused predominantly on fully formalised state-subsidised housing as the preferred model for housing provision to the poor. Formal housing - often provided on far flung peri-urban land - undermines the aspiration of spatial justice, keeping people far from the jobs opportunities and services required to sustain their livelihoods and entrenching the legacies of apartheid’s racial urban planning. This has led to the increased use of courts by communities to challenge state action.

Some examples of SERI’s work on informal settlements include the case of Mchunu, where 37 residents were successfully relocated to state housing close to their current temporary re-settlement area, after litigation to prevent them being relocated over 50km away from their current homes. In the Slovo Park case, after a 20 year battle to access basic services and housing, the High Court ordered the City of Johannesburg to apply for a grant from the Provincial Department of Human Settlements in terms of the Upgrading of Informal Settlements Programme (UISP) to upgrade the Slovo Park informal settlement in situ.

The Fischer property located in Philippi in Cape Town is another example of SERI’s proactive litigation. SERI will be arguing for the City of Cape Town expropriate the property, and then to upgrade the informal settlement that has developed on the property. The lack of available and serviced land for housing, as well as affordable rental housing has led to the growth of informal settlements across the country.

SERI’s research unit has produced a third series of Community Practice Notes, titled the Informal Settlement Relocation Series, which responds to the growing number of informal settlement relocations, reflecting on the lessons that can be drawn from the experiences of communities. SERI is in the process of developing Relocation Guidelines for communities, paralegals and state officials to facilitate dignified relocation projects.

SERI worked with the Housing Development Agency on a research project titled Tenure Security in Informal Settlements on Customary Land. The report found that there is a need for much greater awareness of the rights and remedies accorded to customary law occupiers by the Interim Protection of Informal Land Rights Act (IPILRA). In the Rula Techno case, SERI dealt with the question of tenure for clients protected under the Extension of Security of Tenure Act (ESTA). The court dismissed an eviction application that would have left 80 people homeless.

SERI continues to work in informal settlements across the country, and continues its successful and long standing relationship with the shack-dwellers movement, Abahlali baseMjondolo.
Research

Tenure Security in Informal Settlements on Customary Land (December 2015)

SERI worked with the Housing Development Agency (HDA) in the course of 2015 on a research project on securing tenure in informal settlements located on customary land. It involved in-depth research in four informal settlements in four provinces and culminated in a set of recommendations for the HDA and other role players. One of the key issues identified in the research is lack of awareness about IPIRLA rights.

Community Practice Notes: Informal Settlement Relocation Series (June 2016)

The right of access to adequate housing, enshrined in section 26 of the Constitution, is fiercely contested and frequently litigated in South Africa. When it comes to informal settlements, South Africa’s housing policy, in the Upgrading of Informal Settlements Programme of the National Housing Code, requires that in situ upgrading be prioritised and relocation be pursued only as an option of last resort. However, policy provides little direction about the relocation process. SERI’s third set of Community Practice Notes focuses on informal settlement relocation. It highlights community struggles for access to adequate housing and how people experience the relocations that follow court processes regarding the provision of alternative accommodation. It explores the residents’ experiences of relocation From Marie Louise to “Rugby Club” and From Taylor Road to Ruimsig and Fleurhof.
Litigation

Melani and the Further Residents of Slovo Park Informal Settlement v City of Johannesburg and Others (Slovo Park)

SERI represents approximately 10,000 people living in 3,709 households at the Slovo Park informal settlement who have been promised formal services and housing for over 20 years.

In an application to the Gauteng Local Division of the High Court, the residents sought to review the City of Johannesburg’s failure to take a decision to apply to the Gauteng Provincial Government for funding to upgrade Slovo Park in terms of the UISP.

The City contended that it had made a policy decision to provide housing on land 11 km from Slovo Park to qualifying applicants and that the court could not interfere with this decision.

On 5 April 2016 Acting Justice Strauss found that the UISP is binding on the City, and that the City’s decision “to completely ignore” the policy in favour of its own plan to evict and relocate the Slovo Park residents was “unreasonable”, “not inclusive” and in breach of section 26 (2) of the Constitution and the Housing Act 107 of 1997. The Judge also found that the decision was taken without any consultation, and “flies in the face of established constitutional jurisprudence regard the need [for] meaningful engagement in instances where the right to adequate housing is concerned.”

The judgment effectively set aside the City’s plan to relocate the residents, and directed the City to make the appropriate application to the provincial Minister for Human Settlements for a grant to upgrade the Slovo Park Informal Settlement in situ.

SERI op-eds

- **Shack upgrades gain some foundation**, Stuart Wilson, Business Day (25 April 2016).

Media

- **Sanco welcomes judgment on Slovo Park upgrades**, Jabulile S. Ngwenya, IOL (6 April 2016).
- **Houses for 10 000 Slovo Park settlers**, Anna Cox, The Star (6 April 2016).
- **Court orders municipality to better Slovo Park**, Roxanne Henderson, Times LIVE (5 April 2016).
- **City of Joburg acted unlawfully on Slovo Park - High Court**, Naledi Shange, News24 (5 April 2016).
- **Joe Slovo Park residents hopeful service delivery will improve**, Govan Whittles, EWN (5 April 2016).
- **Slovo residents win 20 year court battle over residential upgrade**, Wisani Makhubele, SABC News (5 April 2016).
- **Court orders Slovo Park upgrade**, Naledi Shange, News24 (5 April 2016).
Fischer v Unlawful Occupiers, Erf 150, Philippi & Others (Fischer)

A landowner instituted an application for the eviction of residents from her property in Philippi, Cape Town, in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. SERI has represented the residents since the institution of these proceedings. The number of residents on the property and on neighbouring properties has grown over the years, and the City of Cape Town estimates that there are over 6,000 households living in the settlement, which has been dubbed the “Marikana settlement” by residents.

On 25 January 2016, the landowner amended her notice of motion seeking, in the alternative to the eviction of the residents, two part relief:

- a declaration that the City violated her constitutional property rights by failing to secure her land against occupation and
- an order compelling the City, and the provincial and national housing departments if necessary, to purchase her land.

The owner requests that the purchase price be calculated as though the land was not occupied – that is, ignoring the presence of the residents.

In February 2016, it was decided by the Western Cape High Court that the case will be heard with similar applications by owners of neighbouring properties against the residents on those properties.

In March 2016, SERI brought a counter-application on behalf of the residents, requesting that the court order the state to expropriate the land.

Zulu and 389 Others v eThekwini Municipality and Others (Zulu)

In this matter Abahlali baseMjondolo, represented by SERI, challenged the validity of an interim order which authorised the eviction of thousands of people living on 1568 properties across the eThekwini Municipality.

On 20 August 2015 the High Court set aside the interim order. This was a substantial victory for Abahlali baseMjondolo and 390 occupiers living on property in Lamontville, known as Madlala Village. The case is likely to have a far-reaching national impact, as so-called land occupation interdicts are regularly used to circumvent anti-eviction legislation across South Africa.

The MEC for Human Settlements applied for leave to appeal in the KwaZulu-Natal Local Division. On 19 October 2015, the court dismissed the MEC’s application with costs. It found that the appeal had no prospects for success in large part because of the broad scope of the order and its failure to notify the vast majority of individuals who would face eviction.

Media

- Victory for KZN shackdwellers, Sowetan (20 October 2015).

RulaTecno Park (Pty) Ltd vs Moses Khuzwayo Mahlangu and Others (‘RulaTecno’)

SERI represents a group of about 80 people living in Honeydew. Many of the residents have lived on the property since the 1990s and were paying rent to the property’s previous owner.
The new owner of the property brought an application for the eviction of all of the residents in terms of the Extension of Security of Tenure Act.

ESTA grants significant protections to residents of rural or peri-urban land, but also provides for their eviction in limited instances.

The owner alleged that it had terminated the rights of all residents to reside on the property by giving notice in terms of fixed-term lease agreements. It alleged further that the eviction would be just and equitable on the basis that it required the property for “business purposes”; that there was plenty of residential accommodation available in the area; and that some of the residents were in breach of ESTA by conducting illegal businesses on the property or erecting illegal dwellings.

On 29 October 2015, the Roodepoort Magistrate’s Court handed down an order for the eviction of all of the residents. The execution of the eviction order was suspended pending the automatic review of the Magistrate’s Court decision by the Land Claims Court.

On 23 November 2015, the Land Claims Court set aside the order of the Magistrate and substituted it with an order dismissing the eviction application.

The owner served SERI with an application for leave to appeal against the judgment of the Land Claims Court. The application was argued on 5 April 2016, and on 12 April 2016 the Land Claims Court refused the owner leave to appeal.

**Mchunu and Others v Executive Mayor of eThekwini and Others (Mchunu)**

In this matter, Abahlali baseMjondolo and 37 residents of the Richmond Farm Transit Camp in KwaMashu sought an order against the Executive Mayor of eThekwini, together with two other senior officials in their personal capacities, compelling them to take all the steps necessary to implement a prior court order requiring housing to be provided to the residents.

The occupiers were evicted from the Siyanda informal settlement in March 2009. One of the conditions of the eviction order was that the occupiers would be provided with permanent housing nearby within a year. Nothing had been done to comply with the order by the time the deadline for doing so expired.

The municipality then proposed that the occupiers would be relocated to yet-to-be-constructed houses 50km away from their current homes. The occupiers rejected this proposal as not consistent with the previous court order.

The ensuing litigation was heard in the KwaZulu-Natal Local Division on 20 February 2015, where an order was agreed by consent, with the municipality offering houses at an acceptable location within 16 months. All residents were subsequently registered for houses at the nearby Cornubia Housing Project. On 30 November 2015 a relocation plan was adopted by the municipality. The relocation process commenced on 15 December 2015 and was concluded on 20 December 2015.
Advocacy

Conferences and Events

• On 2 September 2015, SERI conducted a Dear Mandela screening and evictions presentation for the Housing policy development and management class at Wits School of Governance.

• On 11 September 2015, SERI was on a panel at the Gauteng Title Deeds Indaba, organised by the provincial government and the HDA. This was part of a series of workshops held with the HDA nationally.

• On 30 September 2015, SERI presented an article on community struggles for informal settlement upgrading to a municipal roundtable organised by the Good Governance Learning Network.

• On 29 October 2015, SERI presented on the findings of SERI’s research project with the HDA to the housing policy development and management class at the Wits School of Governance.

• On 2 November 2015, SERI presented on the findings of SERI’s research project with the HDA to the Wits housing policy course.

• On 7 and 8 March 2016, SERI attended the Habitat III Thematic Meeting on Informal Settlements in Pretoria.

• On 21 June 2016, SERI presented to the housing policy development and management class at the Wits School of Governance. The presentations covered the UISP, informal settlement upgrading and evictions.

• On 28 June 2016, SERI presented to the housing policy development and management class offered by the Wits School of Governance to housing officials in the KwaZulu-Natal Province. The presentations covered the UISP, informal settlement upgrading and evictions.

Opinions

• Afesis-corplan contracted SERI to write a legal opinion as part of a bigger project with the HDA on ‘managing and curbing land invasions’. SERI’s legal opinion is titled Ex Parte Housing Development Agency: In re Managing Unlawful Land Occupations.

• SERI submitted a legal opinion titled Response By The Socio-Economic Rights Institute of South Africa (Seri) To The Opinion Of The Department Of The Premier, Western Cape Government Chief Directorate: Legal Services’ Opinion On Contested Transfers on 9 September 2015. This was part of a project with the HDA.
HOW TO RESIST an eviction

what is an eviction?
An eviction is the removal of someone from their home against his or her will.
Evictions can be lawful or unlawful, depending on the process followed.

resisting an unlawful/illegal eviction

10 things you can do to prevent an unlawful eviction

1 Show that you know your rights and the law
2 Ask for a copy of the court order
3 Collect as much information as possible
4 Take photos and videos
5 Call a lawyer
6 Alert the police
7 Call the sheriff
8 Contact journalists and politicians
9 Get help from neighbours and community members
10 Go to court to get an urgent interdict or spoliation order
Inner City Evictions and Access to Alternative Accommodation

At the core of SERI's inner city housing work is the need to combat the displacement of Johannesburg’s urban poor by compelling the state to provide housing to those evicted or displaced by regeneration and gentrification. The City of Johannesburg does not have a proactive, coherent or programmatic response to the provision of temporary alternative accommodation in cases of eviction from so-called ‘bad buildings’. This is itself a symptom of a deeper problem of structural poverty, which goes to the heart of why people live in ‘bad buildings’ in the first place. SERI’s report *Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the Jurisprudence and Implications for Local Government* explores the development of housing jurisprudence and the City’s failure to come to terms with the significant pro-poor paradigm shift in the law relating to evictions and urban regeneration.

When the city does provide housing, the conditions are often untenable. In the *Dladla* matter, SERI is challenging the paternalistic and undignified rules imposed on clients who were provided alternative accommodation in a shelter. *Dladla* is just one of many cases in which SERI has been involved dealing with the interpretation of the right to adequate housing and the municipal provision of alternative accommodation.

In the *Hlophe* matter, SERI secured the relocation of clients who were evicted numerous times to alternative and decent accommodation. SERI has documented three of our inner city relocation cases in our second series of Community Practice Notes titled *Johannesburg Inner City Alternative Accommodation Series*.

One solution to the inner city housing backlog, is the provision of affordable public rental accommodation by the City. SERI has actively advocated for this, and we have produced our first policy brief, *Affordable Public Rental Housing Policy Brief*, focused on this issue.

SERI has been central to developing relations between its inner city clients in what has developed into the Inner City Federation. The Federation has been instrumental to building solidarity networks, and creating a space for engagement with the City.
Research

Evictions and Alternative Accommodation in South Africa 2000-2016: An Analysis of the Jurisprudence and Implications for Local Government (March 2016)

In March 2016 SERI published a second edition of a 2013 report which looks at the latest developments in the law relating to housing rights and evictions and aims to highlight its contribution towards South Africa’s housing and evictions jurisprudence. The report responds to the fact that neither property owners nor municipalities have fully come to terms with the paradigm shift in the law relating to evictions and urban regeneration. Despite years of litigation and a host of progressive court judgments, which have contributed substantially to the constitutional right of access to adequate housing, municipalities like the City of Johannesburg are still failing to fulfil their duties in relation to evictions and the provision of alternative accommodation.

Affordable Public Rental Housing Policy Brief (June 2016)

The Affordable Public Rental Housing Policy Brief advocates for a public rental housing programme to bridge the gap between the demand and supply of affordable, formal rental accommodation in high density urban centres. No long-term solution currently exists for rental accommodation for households earning below R3500 per month in Johannesburg’s inner city. The policy brief proposes four main principles to shape the public rental programme. These include enabling affordable rental charges to households earning below R3 500 per month, securing rental tenure, ensuring public ownership of rental stock, and providing a range of accommodation types that cater for single people, couples, families, single parents and children living with relatives.
Community Practice Notes:
Johannesburg Inner City Alternative Accommodation Series (June 2016)

SERI’s second set of Community Practice Notes focuses on struggles for access to adequate housing in inner city Johannesburg. They highlight the histories of resisting evictions and the ongoing challenges faced by people in the relocation sites where alternative accommodation has been provided by the City of Johannesburg. Municipal provision of alternative accommodation where an eviction would otherwise result in homelessness is one of the key legal principles that has been developed through litigation on the right of access to adequate housing. The courts have not, however, given content to what constitutes adequate temporary alternative accommodation. The practice is more a matter of hastily complying with a court order than a planned response that proactively addresses the right to housing. This series documents how communities who lived in “bad” buildings in the inner city were involved in litigation in defence of their housing rights. It explores their experiences of the alternative accommodation provided by the City of Johannesburg. From San Jose to MBV 1 is the first Community Practice Note in the series; From Carr Street to MOTH is the second Community Practice Note in the series; and From Saratoga Avenue to MBV 2 and Ekuthuleni is the third Community Practice Note in the series.
Litigation

Dladla and the Further Residents of Ekuthuleni Shelter v City of Johannesburg and MES (Dladla)

On 18 May 2016, the Supreme Court of Appeal (SCA) reversed a High Court decision from August 2012 in the Dladla matter.

In the original judgment, the High Court found that the City’s and Metropolitan Evangelical Services’ (MES) day-time lockout rule at the Ekuthuleni Shelter was an unjustifiable infringement of the residents’ constitutional rights to dignity, freedom and security of person, and privacy. The court also found that the City’s and MES’ refusal to permit the residents of the shelter to reside in communal rooms together with their spouses or permanent life partners was an infringement of their constitutional rights to dignity and privacy.

The City appealed the ruling in the SCA on 3 May 2016, and the SCA reversed the High Court’s decision. The SCA agreed that the daily lockout rule, and the rule separating spouses in temporary accommodation provided by the City do in fact violate the residents’ rights to dignity and privacy. But the court held that it is reasonable to limit those rights in circumstances where the state provides temporary shelter to evictees.

The residents have applied to the Constitutional Court for leave to appeal the decision. The Constitutional Court has set the residents’ application down for hearing on 14 February 2017.

Media

• Spouses have no right to sleep together at shelters – SCA, Jeanette Chabalala, News24 (19 May 2016).

Hlophe and Others v City of Johannesburg and Others (Hlophe)

In March 2015, the Supreme Court of Appeal ordered the Mayor, City Manager and Director of Housing at the City of Johannesburg to provide accommodation to the occupiers of Chung Hua Mansions or face proceedings for contempt of court. In May 2015 an application for leave to appeal against that order was dismissed by the Constitutional Court.

The order was not complied with, and SERI instituted contempt of court proceedings.

Before those proceedings were heard, on 30 November 2015, the owners of Chung Hua Mansions, together with the police, illegally evicted the residents of Chung Hua for the seventh time in five years. SERI brought an urgent application against the eviction.

The eviction formed part of the government’s now notorious “Operation Fiela”. In the early hours of the morning, 94 residents were removed from their homes without warning by the South African Police Services and the Johannesburg Metro Police Department. Once the police left, the owner of the building refused to let the residents back into their homes, rendering them homeless. The owner then erected a steel gate in front of the building and stationed armed private security guards outside, further preventing their access.

SERI brought an urgent application against the eviction and the residents were re-admitted to their homes in terms of an order granted by Sutherland J in the Gauteng Local Division in early December 2015. Eventually, and spurred on by the contempt of court proceedings, the City identified a small building next to a sports field, south of the inner city, to which 93 Chung Hua residents were relocated on 9 and 11 January 2016.
SERI op-eds

• Look to owners and state for ‘bad buildings’, Dennis Webster and Michael Leonard, Mail and Guardian (31 July 2015).

• Disdain for rule of law hurts poor, Irene de Vos and Dennis Webster, Business Day (27 July 2015).

Hawerd Nleya and Others v Ingelosi House (Pty) Ltd (Ingelosi House)

SERI acts for the residents of 8 O’Reilly Street, Hillbrow, in an application for leave to appeal against an eviction order granted in the Gauteng Local Division of the High Court on 28 May 2014. There are 21 households on the property, comprising about 90 people, many of whom have been living on the property for over eight years.

An eviction order was granted against all of these long-standing residents in opposed court with eight of the residents present, but unrepresented.

The Judge questioned five of the residents, who all confirmed that they required time to raise money for a lawyer and to put together a defence. They explained that an affidavit, purportedly filed on their behalf, was filed without their knowledge. The Judge did not consider the personal circumstances of the residents or whether an eviction order would be just and equitable in the circumstances.

An application for leave to appeal against the order and judgment of the High Court was brought, but on 27 October 2015, that court dismissed the application, finding that the residents’ plea at the hearing of the matter for more time to raise money for an attorney was dilatory. The Judge found that “[u]ltimately the respondents (residents) came to listen rather than seek a postponement” and when they appeared, failed to address the legal issues before the court.

SERI petitioned the Supreme Court of Appeal, which granted leave to appeal to a full bench of the High Court. The Registrar has yet to allocate a date for the hearing.

Occupiers of Erven 87 & 88 Berea v De Wet and Another (‘Kiribilly’)

SERI represents 184 residents of the Kiribilly block of flats in Berea, Johannesburg in a rescission application against an eviction order granted, purportedly by consent, on 10 September 2013.

The residents contend that the eviction order was wrongly granted, in that there was no consent. None of the residents could afford legal representation, and because none who were able to attend court could communicate effectively in English, the residents were represented by a member of the City of Johannesburg’s Ward Committee for the inner city area, who was neither an admitted advocate nor an attorney. Instead of obtaining a postponement, the Ward Committee member agreed to the residents’ eviction, without any authority or mandate to do so.

The application for rescission was dismissed in the Gauteng Local Division of the High Court on 12 November 2015.

On 4 February 2016, Justice Mphahlehle handed down judgment preventing the owner of the Kiribilly block of flats from evicting the residents until they had an opportunity to appeal against their eviction order. SERI’s application for leave to appeal the judgment was denied by the High Court on 5 February 2016 and later by the Supreme Court of Appeal. SERI has applied for leave to appeal to the Constitutional Court. The application has been set down for 16 February 2017.
Advocacy

Inner-City Federation

In 2015 SERI clients in the inner city formed the Inner-City Federation. The Federation functions as a platform for shared knowledge and experiences where residents come together to solve common issues. The work of the Federation seeks to bring about more unity and solidarity among inner-city residents. The Federation serves as a support structure dealing with internal building problems that residents encounter and also assists in the creation and strengthening of building committees.

The Federation is composed of two members from each building or building committee who attend the monthly meetings, where members come together to share experiences and discuss possible strategies. In the past year the Federation has assisted in the election of committee members in various buildings and continues to attend court hearings in solidarity with other Federation members.

Popular Education

• On 22 August 2015, SERI conducted an evictions workshop for Jeppestown residents
• On 13 September 2015, SERI delivered a tenants rights workshop for the inner city federation

Conferences and Events

• On 30 November 2015, SERI presented at the Africities Summit on evictions in Johannesburg’s inner city
Bank Repossessions and Sales-in-Execution

SERI focuses on preventing banks and other lending institutions from abusing court processes dealing with debt collection.

In Nkata, SERI entered as amicus curie in the Constitutional Court and argued that the National Credit Act must be interpreted in favour of the values of fairness and equality. In Thabete, SERI stopped a sale in execution which First National Bank tried to institute without approaching the court.

SERI also developed a guide titled Preventing or Opposing a Sale in Execution: A Legal Guide. The guide is a resource for home owners and paralegals in an effort to combat unfair repossessions.
Research

Preventing or Opposing a Sale in Execution: A Legal Guide (June, 2016)

A sale in execution takes place when a person is unable to repay the monthly instalments due on a loan they owe to a creditor (usually a bank), and the person’s property is sold at a public auction by the sheriff of the court to pay off the debt. Thousands of families lose ownership of their homes each year when their homes are repossessed and sold by a bank.

This guide, launched in June 2016, is a resource for individuals and households who are facing the threat of a sale in execution of their homes, as well as for community-based paralegals and lawyers who deal with sales in execution of people’s homes or bank repossessions. The guide explains the relevant legal processes and sets out what steps homeowners can take to avoid their houses being sold in execution. It will help homeowners prevent sales in execution before they happen; oppose sales in execution if the process to repossess their home is already underway; or assist homes owners who have already lost their home through a sale in execution.
Litigation

Sipho Berman Maseko and Others v Standard Bank of South Africa Ltd and Others (Maseko)

SERI represents a family of five people living in Vosloorus in an application for leave to appeal against an eviction order granted in the Gauteng Provincial Division of the High Court.

Sipho Maseko purchased the land in 1992, and has always believed that he was the owner of the property. However, he recently discovered that the property was never registered in his name, although he paid registration fees and was led to believe that all the required steps had been taken. Instead, the property changed hands several times over the years without his knowledge.

The current owner of the property, Standard Bank, was granted an order for the Masekos’ eviction in June 2015. Standard Bank argued that an eviction order would be just and equitable because no-one in the household is elderly, disabled or a domestic servant, and because the family would not be left destitute if evicted.

SERI became involved in the case after the eviction order was granted and is applying for leave to appeal on the ground that the court erred in finding that it would be just and equitable to evict the Masekos, or alternatively, in failing to apply its mind to whether their eviction would be just and equitable in the circumstances.

In February 2016, it was discovered that the Masekos’ previous legal representatives entered into a settlement agreement, agreeing to their eviction. They did so without the Masekos’ instruction. The eviction order reflects the settlement agreement. SERI filed supplementary grounds of appeal in respect of the application for leave to appeal. SERI also filed a rescission application on behalf of Mr and Mrs Maseko.

SERI also challenges the validity of Standard Bank’s purchase of the property.

Thabethe* and Another v FNB and Others (Thabethe)

SERI represented a Soweto family, the Thabethes*, in a rescission application challenging a default judgment against them and the sale-in-execution of their home. First National Bank (FNB) had agreed to stop the sale in execution subject to the Thabethes making further payments towards the bond. Seven years later, the bank reneged on this agreement and proceeded to sell the property in execution without first approaching a court for leave to do so.

By that time, the full outstanding debt owing to FNB was paid. On 12 December 2013, the Gauteng Provincial Division of the High Court declared the sale-in-execution null and void.

The Thabethes then approached the High Court to have them re-registered as the owners of their home. On 10 February 2016, the Gauteng Local Division ordered that the couple be re-registered as owners. This meant that the people to whom the Thabethes’ home was sold never became the lawful owners of the house, and that the title deed to the Thabethes’ home had to be put back in their name.

*At the family’s request, its name has been changed to preserve its privacy.
SERI op-ed

- Court checks banks over home debts, Mbekezeli Benjamin and Lwazi Mtshiyo, Mail and Guardian (29 April 2016).

Nomsa Nkata v First Rand Bank Limited and Others (Nkata)

SERI was admitted as amicus curiae in *Nkata v First Rand Bank Limited*. The case concerned the circumstances under which a distressed borrower could reinstate her credit agreement after falling behind with her payments.

The applicant, Ms Nomsa Nkata, had a bond agreement with First Rand Bank (“FRB”). After she defaulted on her repayments, FRB obtained a court order against her in which her home was declared executable. After this order was granted, Ms. Nkata repaid all her arrears. Despite this, FRB sold her home in execution.

Ms Nkata approached the High Court which held that as she had reinstated the credit agreement, FRB unlawfully sold her home in execution. FRB appealed against this judgment to the Supreme Court of Appeal (SCA). The SCA held in FRB’s favour. Ms Nkata appealed this decision to the Constitutional Court.

On 21 April 2016, the Court found that Ms Nkata’s loan agreement had been reinstated, and set aside the sale of her home. The majority of the Court agreed with all of SERI’s submissions and held that section 129 (3) of the National Credit Act, which deals with reinstatement of credit agreements, must be interpreted in favour of the values of fairness and equality, and that section 129 (3) automatically reinstates a credit agreement upon payment of outstanding arrears.

Media

- SERI welcomes judgment which throws lifeline to credit consumers, Ernest Mabuza, Times LIVE (21 April 2016).

Advocacy

Submissions

- On 11 February 2016, SERI made submissions on proposed amendments to Rule 46 of the Uniform Rules of Court and Rule 43 of the Magistrates’ Court Rules. These Rules regulate the sale in execution of immovable property in the higher courts and magistrates’ courts respectively. SERI submits that the proposed amendments to the Rules introduce potentially progressive developments into the processes governing the sale in execution of immovable property, where such immovable property is also a person’s home. However, the proposed Rules, as amended, still suffer from a number of serious problems that should urgently be addressed by the Rules Board.

Popular Education

- On 5 July 2015, SERI conducted a workshop on evictions and sales in execution for the Unemployed People’s Movement in Port Elizabeth.
Spatial Justice

Spatial Justice is an emerging sub-theme in SERI’s work. Spatial Justice deals with the relationship between where people live, and their economic welfare. SERI will soon publish a substantial report on spatial justice in Johannesburg. Our ongoing advocacy and mobilisation work is set out below.

Advocacy

- On 29 March 2016, SERI submitted comments on the City of Johannesburg’s draft Spatial Development Framework (SDF). The SDF is a city-wide spatial policy document identifying the main challenges and opportunities in the city, setting a spatial vision for the future city, and outlining a set of strategies that would lead to the realisation of that vision. SERI’s submission focuses on three topics: Spatial Justice, Provision of Affordable Housing, and Informal Work.

- On 1 March 2016, SERI made a submission on the City of Johannesburg’s Municipal Planning By-Law 2015 (1 March 2016). On 29 January 2016, the City of Johannesburg (the City) published an invitation to comment on its Municipal Planning By-Law, 2015. The By-Law is published pursuant to the Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA). SPLUMA and the By-Law set out development principles which apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land. SERI’s submission sets out a number of progressive amendments to the By-Law which would provide necessary protection to the right of access to adequate housing.

Conferences and Events

NdifunaUkwazi and SERI co-hosted the second annual Urban Land Justice Colloquium between 12 and 13 October 2015. The event opened on with a keynote address by Judge Siraj Desai. On 13 October 2015, panellists from communities who have endured struggles for land and security of tenure, or who have worked with government to improve their living environment, shared their experiences and insights. Scholars and researchers in the fields of urban studies and city planning introduced the new Spatial Planning and Land Use Management Act (SPLUMA), and explored its potential as a tool for achieving spatial justice in South Africa’s cities. SERI spoke on the prospects for informal settlement upgrading in SPLUMA.

Media

- Land conference hears stories of hope and despair, Barbara Maregele and Ashleigh Furlong, Ground Up, (14 October 2015)

Op-Eds

- The idea of new cities may be folly, Lauren Royston and Yahia Shawkat, Business Day (11 September 2015).
MAKING A LIVING
SERI’s work on ‘Making a Living’ developed out of our focus on precarious work and livelihoods. Changes in the labour market and South Africa’s high unemployment rates mean that many poor people remain trapped in systems of cheap labour. The rapid casualisation of work has led to decrease in wages, reduced job security, the loss of employment benefits and increased vulnerability of workers.

Informal trade plays a vital role in ensuring survival, livelihood and entrepreneurial opportunities for the urban poor. Despite this, there has been a growing intolerance of informal trade in towns and cities in South Africa. SERI continues its work to ensure that traders’ rights to trade remain protected in Johannesburg. SERI released a short film in collaboration with Brava Media in 2015, titled The Streets at Stake, which documents informal traders’ experiences of Operation Clean Sweep and its aftermath. SERI is also currently developing a resource guide in collaboration with informal traders which explains the rights and regulations applicable to informal traders, and the remedies available to them when those rights and regulations are abused.

SERI has developed a relationship with the Commercial Stevedoring Agricultural and Allied Workers Union (CSAAWU), a farm worker union based in the Western Cape. SERI represents CSAAWU affiliated workers in the Robertson Abattoir case where 39 workers were unfairly dismissed for refusing to work unlawfully long hours. The dismissal of the workers was part of a clear anti-union strategy by the farm owner. These cases cut across our theme of ‘Expanding Political Space’.
Litigation

South African Informal Traders Forum and Others v City of Johannesburg and Others (SAITF)

SERI represents the South African Informal Traders Forum (SAITF) and over 1 200 informal traders who were forcibly removed from their trading sites as part of the Mayor’s “Operation Clean Sweep” campaign, undertaken by the City of Johannesburg and the JMPD between 30 September and 31 October 2013.

Following Operation Clean Sweep, the City of Johannesburg embarked on a process to deproclaim and prohibit trading in some of the streets in the Johannesburg Central Business District. This process was started with the City Council taking a resolution on 21 May 2014 to prohibit trading in certain areas within the CBD. SAITF participated in this process and sought to highlight the City’s failure to investigate the true cause of its concerns around the trading environment in the inner city. SAITF through SERI argued that the City was bound by the Businesses Act to investigate whether better management and control would not address the City’s concerns without restricting or prohibiting trade.

After this intensive period of advocacy, on 26 April 2016, the City unveiled its new plan for informal trading in the Inner City which explicitly stated that the City would not prohibit informal trade in the inner city. The City conceded that with better management their complaints would be resolved. Further, the City proposed the proclamation of a further 1 450 trading spaces in the short to medium term with plans to open up more trading opportunities with other long term projects like the decking of a railway bridge and the opening of the Kazerne Taxi rank.

The City’s change in attitude presents a great victory to SAITF and informal traders who work in the Johannesburg inner city.

SERI Media

- Joburg’s vision blind to street life, Mbekezeli Benjamin and Dennis Webster, Business Day (4 December 2015).
- Podcast of interview with Dennis Webster and Brian Phaaloh (SAITF General Secretary) on the launch of SERI’s informal trade research, Power FM (1 October 2015).
- Video segment on informal trade in Johannesburg, including interview with Brian Phaaloh (SAITF General Secretary) and coverage of the launch of SERI’s informal trade research report, SABC (30 September 2015).
- The streets at stake in Johannesburg, Dennis Webster, openGlobalRights (10 September 2015).

Media

On 14 August 2015, the Constitutional Court dismissed the Commercial Stevedoring Agricultural and Allied Workers’ Union’s (CSAAWU) applications for leave to appeal against two costs orders handed down in the Cape Town Labour Court. Although the Constitutional Court did not itself order costs against the union, as a result of its decisions, the costs orders of the Labour Court remained in place. The costs orders threatened to close CSAAWU down. However, the litigation together with the publicity around it, enabled CSAAWU to raise funds which to pay off the costs orders. The appeals process and the coverage of the case also brought to light the struggles faced by workers in the agricultural sector, and the difficulties faced by activists in organising those workers. It also highlighted the importance of a union like CSAAWU, a grassroots worker-led union operating in one of the most exploited sectors in the country.

**Seri Media:**

**Media:**
Advocacy

Farm worker advocacy

SERI has a developing relationship with the Commercial Stevedoring Agricultural & Allied Workers’ Union (CSAAWU) which represents poor and vulnerable farm workers, predominantly in the Western Cape. This relationship involves the provision of litigation, research and advocacy support to CSAAWU.

The first workshop held with CSAAWU officials and paralegals was an anti-eviction workshop, based on Extension of Security and Tenure Act, on 14 and 15 June 2016. SERI developed a guide for the training which will be further developed for publication. A second eviction workshop on Prevention of Illegal Eviction Act took place on 16 and 17 July 2016.

The Streets at Stake

In October 2015, SERI produced a short film, The Streets at Stake, in collaboration with Brava Media, which explores the realities of informal trade in the inner city of Johannesburg. In 2013, informal traders in the city were evicted on a mass scale as part of Operation Clean Sweep. The City of Johannesburg explained the operation as an effort to rid the inner city of crime and grime. The Streets at Stake documents the eviction of traders, the subsequent refusal to allow them to resume their trade, and the litigation which followed. The traders eventually reversed their eviction in the Constitutional Court, which lambasted the operation as “an act of humiliation”, and allowed traders to return to their places of business.

Conferences and Events

• On 20 October 2015, SERI attended a workshop organised by the Department of Performance Management and Evaluation on the extension of social protections to informal workers.

• On 9 March 2016, SERI was on the closing panel of a conference hosted by the Centre for the Study of Violence and Reconciliation titled Urban frontiers: A conversation about poverty, violence and development in Southern African cities.

• On 31 March 2016, SERI presented and discussed SERI’s informal trade research findings and advocacy positions on informal trading in Johannesburg with the Department of Economic Development of the City of Johannesburg.
EXPANDING POLITICAL SPACE

TION 04
'Expanding Political Space' - which encompasses participation, protest and policing - grew out of SERI's work representing communities and individuals engaged in struggles to protect socio-economic rights.

Public participation in local government decision-making around access to basic services is a core principle of the numerous policies and laws which provide for formal channels of participation. However, the systemic exclusion of communities from formal means of participation often means that engagement with the state happens outside of formal participatory channels through issue-based CBOs, social movements and community forums. These voices are often ignored, leading to frustration and increased 'service delivery' protests.

While freedom of assembly and demonstration is a legitimate form of democratic participation, local authorities and police officials often prevent individuals, social movements and CBOs from protesting. The use of force by the police has become a defining feature of the policing of public protests, whilst the arrests of activists on bogus charges and the abuse of the criminal justice system to silence dissent is commonplace.

SERI respects the agency of people to express themselves in the manner in which they deem appropriate, whilst enjoying the protections guaranteed by the Constitution. SERI has responded to the growing criminalisation of protest by building our litigation capacity in bail applications and criminal law. This assisted our representation of students during the #FeesMustFall campaign.

Our continued advocacy on Marikana and police accountability led to SERI's Marikana public outreach program and the Marikana families’ submission to the Claassen Board of Inquiry.
Research

Publications

• N Munshi, “Clamp downs on democratic space: The role of the police and litigation” in (Re)Claiming Local Democratic Space, The State of Local Governance Publication published by the Good Governance Learning Network, June 2016.
Litigation

Precast Bail Application

On 16 February 2016 the Lenasia Magistrates’ Court granted bail to 28 residents of Precast and Thembelihle informal settlements, who had been arrested in the wake of two days of protest in the area.

Despite there being no evidence that any of the residents had committed any offence, they were detained for almost three weeks at the Johannesburg Correctional Centre. This is because the question of their bail was not raised or dealt with by the State, the presiding officer, or previous legal representatives over two court appearances.

Among the 28 arrested were a number of elderly men, a 54-year old woman, breadwinners, young people living with their parents, a person employed by the police, and a man who was arrested at the Lenasia Police Station when he went to report damage to his home - and who clearly had nothing to do with the protests at all. In addition, five residents of Thembelihle, an informal settlement 1 km from Precast, were arrested in their homes in the early hours of the morning, long after the protests had come to an end.

On 12 February 2016, SERI moved bail applications for each of the accused. The State opposed bail in every case, but provided no evidence linking any of the accused persons to the commission of any offence. It argued simply that the release of any and all of the accused persons might lead to further protests. There was no basis for suggesting this, and bail cannot, in any event, be refused to quell community based protest. The Magistrate set bail at R500. Right2Know, Operation Khanyisa Movement, the Marikana Support Campaign and the families of the accused immediately put together funds to secure the release of the accused.

S v Oyama Faye & Others

SERI represented three residents of Tembisa who were arrested during a service delivery protest held on 29 August 2014. They were charged with public violence and disturbing public peace in terms of the Ekurhuleni Metropolitan Municipality by-laws. The case against one of the accused was discharged in terms of section 174 of the Criminal Procedure Act at the close of the State’s case. On 12 May 2016, judgment was handed down by the Tembisa Magistrate Court and the remaining two clients were acquitted.
#FeesMustFall (2015 and 2016)

SERI has been active in supporting the #FeesMustFall movement around the country through the provision of strategic support to university students who were arrested, detained, threatened with eviction from their residences, or prevented from protesting, during their attempts to campaign against fee increases.

SERI directly provided or arranged for representation in 232 cases of arrest and detention of students, almost always securing the students’ release within 24 hours, often by paying bail on the students’ behalf. SERI provided assistance to successfully oppose the threat of eviction of students from 2 students residences in Cape Town and Mahikeng.

Media

- The question of human rights violations against the #feesmustfall protesters, Jane Duncan, The Conversation (9 November 2015).
- Six students and informal leader released, Sowetan (26 October 2015).
Marikana

*Marikana Civil Claims*

SERI continues to act for the families of 36 of the deceased mineworkers killed at Marikana in August 2012. In August 2015 the families filed civil claims against the Minister of Police in the High Court in Pretoria.

A large number of the deceased mineworkers were breadwinners who also supported their extended families. Approximately 320 families living in the North West, Eastern Cape and Gauteng provinces, as well as Lesotho and Swaziland, relied on the deceased mineworkers’ income. A lot of the families continue to live in unbearable conditions of poverty without financial assistance.

The families are claiming compensation for, the following:

- loss of the financial support;
- grief and emotional shock caused by the death of their husbands, fathers, brothers and caregivers;
- medical expenses; and
- loss of family life and parental care.

The families also claim a formal apology from the Minister of Police for the loss of their loved ones.

In January 2016, SERI, along with representatives of other victims of Marikana, met with the Presidency’s lawyers who proposed a number of options to expedite the processing of all civil claims. However, the victims have still not been compensated.

*Media*

- *ConCourt dismisses Legal Aid’s leave to appeal*, Sarah Evans, Mail and Guardian (22 September 2015).
- *TV Interview with Naadira Munshi on the Marikana civil claims and the third commemoration of the massacre*, SABC Newsroom (17 August 2015).
- *Families of Marikana mine workers file civil claims against government*, The Sowetan (11 August 2015).
Advocacy

Conferences and Events

• On 21 March 2016, SERI presented on the impact of University interdicts sought against students during Fees Must Fall at an event titled the ‘Securitisation of University Campuses’ held at Wits University.

IMBOKODO - the Widows of Marikana

In August 2015, SERI produced a short film, IMBOKODO - The Widows of Marikana in collaboration with Brava Media. The short film documents the experiences of the families of the mine-workers killed at Marikana. It addresses the ways in which the families fought to reclaim the legacies of their loved ones during the Marikana Commission of Inquiry, but continue to live in conditions of grinding poverty.

Marikana public engagement event

In October and November 2015, SERI conducted 8 Marikana public engagement events attended by approximately 2000 people in total. They took place in Sasolburg, Idutywa, Mqanduli, Elliotdale, Lusikisiki, Ntabankulu, Sterkspruit and ButhaButhe.

The public engagement events were organised with the active assistance of the families of the deceased mineworkers. Speakers for the events included a mineworker directly involved in the strike and who survived the massacre after being shot at over seven times, lawyers of the family’s legal team represented by SERI who participated in the Marikana Commission of Inquiry and members of the affected families. SERI collaborated with the Uhuru Productions to screen their award winning documentary film “Miners Shot Down” which documented the events at Marikana from 9 to 16 August 2012.
The project’s major achievements were to: disseminate knowledge of the Marikana massacre amongst the home communities of the miners who were killed in the massacre; to create solidarity between the families of the deceased and those broader communities; to challenge stereotypes and misinformation about the deceased miners and the causes and consequences of the massacre; to commemorate the lives of those killed with the communities who raised them; to strengthen SERI’s relationships with its clients and the communities they come from; and to strengthen the call for justice for the families of the Marikana deceased.

Submission to Claassen Inquiry

The Claassen Board of Inquiry (Board of Inquiry) was established by the President of the Republic pursuant to the recommendations of the Marikana Commission of Inquiry. The Board of Inquiry must look into, among other things, the allegations of misconduct by the National Commissioner and her fitness to hold office. It must determine various issues, including whether the National Commissioner, acting alone or with other leadership of the South African Police Service, misled the Marikana Commission by concealing the decision to implement a “tactical option” which led to the deaths of the striking miners on 16 August 2012, and whether, in taking the decision to implement that tactical option, the National Commissioner “ought reasonably to have foreseen the tragic and catastrophic consequences” that followed.

The hearings of the Board of Inquiry, led by Judge Cornelius Claassen, took place in the first weeks of May and June 2016. The families made written and oral submissions to the Board of Inquiry where they argued that the National Commissioner misconducted herself, is unfit to hold office and should be relieved of her duties.
In the press

Union appeals court ruling

LOST CASE, CAN’T PAY COSTS

S’duduzo Dludla

THOUSANDS of farmworkers in the Boland could be left without union representation unless the Constitutional Court lets their unions off the hook from paying two farmers’ legal costs.

This is the submission by the Commercial Stevedoring Agricultural and Allied Workers Union (CSAAWU), which is asking the Constitutional Court for leave to appeal a Western Cape Labour Court order that it pay the legal costs of two farms it took to court over dismissals of its members.

The workers were dismissed after the unprotected strikes in the Boland early in 2013 in which they insisted on higher wages.

CSAAWU challenged the dismissals of 11 workers from Steytler Boerdery and three from La Maison Farm in the Labour Court but lost in both cases, resulting in the court ordering the union and the workers to pay the farmers’ legal costs amounting to about R600 000.

The Labour Court and Labour Appeals Court refused the union permission to appeal and it has now approached the Constitutional Court, saying its members’ rights to access to courts and to fair labour practice is affected.

In its application, the Socio-Economic Rights Institute (SERI) claims the union will be bankrupted and will have to shut down if forced to pay the legal costs.

This will “deprive some of South Africa’s poorest and most vulnerable workers of the only realistic avenue through which they can access the labour dispute resolution apparatus,” Seri lawyer Bhavna Ramji says in court papers.

But David Andrews Steytler, owner of Steytler Boerdery, says in his opposing papers that the union is capable of paying the money.

“CSAAWU earns R64 600 per month on its own version. [II] … has failed to reveal the amounts which it has raised towards its costs in fundraising.”

Court victory for the people

THE City of Joburg acted unlawfully by failing to apply a policy on upgrading informal settlements in Slovo Park, the High Court ruled yesterday.

The court said the decision not to apply the policy was taken outside the legislative and policy framework applicable to informal settlements.

The upgrading of informal settlement policy concerns the provision of funding for informal settlements that are on land suitable for permanent residential development. It includes the provision of sanitation, water, electricity and waste removal. Slovo Park residents have been without services for over 20 years.

“On the facts of this case, the decision is unreasonable and, accordingly in breach not only of the residents’ rights just to administrative action, but also of the residents’ rights of access to adequate housing in terms of Section 20(1) of the Constitution,” the court ruled.

The city was ordered to make an application for funding to upgrade the area.
Innovation

Guide helps homeowners know mortgage rights

Shock ruling for City of Joburg

THE CITY of Joburg and mayor Parks Tau have been ordered by a high court to immediately begin the process of building 10 000 houses for Slovo Park informal settlement residents in Soweto.

The order by Acting Judge S Strauss in the high court in Joburg also instructed Tau to allocate houses to those who do not qualify for RDP houses. In terms of the ruling, everybody who lived in the area before the court application was entitled to those houses, as prescribed by the upgrading of informal settlement policy (UISP).

The court ordered Tau to approach Human Settlements MEC Paul Mashatile for funding to upgrade the Slovo Park informal settlement in terms of UISP.

Slovo Park residents triumph

UPGRADE | Residents of Slovo Park informal settlement, south of Soweto, won yesterday a 20-year court battle against the City of Johannesburg and the Gauteng MEC for human settlements. In terms of a High Court in Johannesburg judgment, the residents will continue to live in Slovo Park, which the city is compelled to develop and upgrade. The city cannot move residents 11km away as it had wanted. Penny Mashego
Abattoir workers taking dismissals to appeals court

Abattoir workers who were dismissed after allegedly refusing to work 12-hour shifts are preparing for their case to be taken to the Labour Appeal Court in Pretoria.

Abattoir workers took the matter to the Labour Court in Cape Town, but the Labour Court dismissed their case.

The workers, members of the Commercial, Catering and Allied Workers Union (CCAWU), plan to appeal the decision of the Labour Court to the Labour Appeal Court.

Photo: Sizwe Mehlwana

From slum flat to... slum flat

Johannesburg - A series of publications released by the Socio-Economic Rights Institute of South Africa (SERI) has highlighted how inadequate accommodation provided for people living in informal settlements in cities has been a barrier to their development.

The publications, titled Johannesburg Inner-City Alternative Accommodation Series, were released on Friday and document how the city’s housing programme falls short of what is legally required, as in many cases, people who were given alternative accommodation by the city in compliance with court orders ended up living in the same type of unsafe and unhygienic spaces after being moved.

Photo: Siphiwe Sibeko

Spouses have no right to sleep together at shelters - SCA

Jeanette Chabalala, News24

Bloemfontein – The Supreme Court of Appeal in Bloemfontein on Wednesday set aside a judgment by the South Gauteng High Court stating that certain rules of an urban shelter, including the sleeping arrangements of couples, were constitutionally invalid.

The High Court had ruled that some of the regulations infringed the resident’s constitutional right to dignity, freedom and security of person.

The SCA said that husbands and wives and permanent life partners had a constitutional right to live together, but they do not always have the right to sleep together.

“According to the High Court, the court of final resort, the Prospect House was aninappropriate vehicle to contain the court’s findings regarding the constitutionality of its regulations,” said Chabalala.

Photo: Matthew Blyde

Sunday Times

‘Dear Mandela’ film-maker launches new short film collection

SUNDAY TIMES  

‘Dear Mandela’ film-maker launches new short film collection

The film, directed by Zeinab Madonsela, is a collection of short films that tell the story of Nelson Mandela and his legacy.

Photo: Rosetta Msimango

SERI welcomes judgment which throws lifeline to credit consumers

The Socio-Economic Rights Institute (SERI) on Thursday welcomed a Constitutional Court judgment which has thrown a lifeline to distressed credit consumers.

The court found that consumers who were unrested under their credit agreements could make their credit agreements by meeting their creditors’ terms to date, even after a loan had defaulted for the first time.

The court also said that in the case of insolvency, a businessperson could not apply to the court for an order to give him or her further credit.

Photo: Siphiwe Sibeko
# Statement of Financial Position as at 29 February 2016

## Assets

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>658 418</td>
<td>539 016</td>
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<tr>
<td>Current assets</td>
<td>7 909 773</td>
<td>11 092 280</td>
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<tr>
<td>Accounts receivable</td>
<td>347 754</td>
<td>401 126</td>
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<tr>
<td>Accrued income</td>
<td>104 873</td>
<td>479 421</td>
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<td>Cash and cash equivalents</td>
<td>7 457 146</td>
<td>10 211 733</td>
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<tr>
<td><strong>Total assets</strong></td>
<td>8 568 191</td>
<td>11 631 296</td>
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</table>

## Reserves and Liabilities

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2015</th>
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</thead>
<tbody>
<tr>
<td>Reserves</td>
<td>2 172 418</td>
<td>1 573 299</td>
</tr>
<tr>
<td>Accumulated surplus</td>
<td>820 131</td>
<td>556 958</td>
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<tr>
<td>Equipment fund</td>
<td>658 418</td>
<td>539 016</td>
</tr>
<tr>
<td>Retrenchment fund</td>
<td>693 869</td>
<td>477 325</td>
</tr>
<tr>
<td>Current liabilities</td>
<td>6 395 773</td>
<td>10 057 997</td>
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<tr>
<td>Accounts payable</td>
<td>238 422</td>
<td>298 175</td>
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<tr>
<td>Deferred income</td>
<td>6 157 351</td>
<td>9 759 822</td>
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<td><strong>Total reserves and liabilities</strong></td>
<td>8 568 191</td>
<td>11 631 296</td>
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### STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 29 FEBRUARY 2016

<table>
<thead>
<tr>
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<th>2016</th>
<th>2015</th>
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<tr>
<td><strong>INCOME</strong></td>
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<td><strong>R 13 117 530</strong></td>
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<tr>
<td>Grants and donations</td>
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<td><strong>R 12 175 750</strong></td>
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<td>Fees received</td>
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<td>Sundry income</td>
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<td><strong>EXPENDITURE</strong></td>
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<td>Accounting fees</td>
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<td>Audit fees</td>
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<td>Computer and website costs</td>
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<td><strong>R 113 102</strong></td>
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<td>Consulting fees</td>
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<td>Donations</td>
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<td>Insurance</td>
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<td>Interest and penalties</td>
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<td>Office supplies</td>
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<td>Rent, security, water and electricity</td>
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<td>Salaries, wages and contributions</td>
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<td>Staff training, welfare and recruitment</td>
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<td><strong>R 22 536</strong></td>
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<td>Strategic planning</td>
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<td>Telecommunications</td>
<td><strong>R 46 140</strong></td>
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<td>Travel and accommodation</td>
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<td><strong>R 161 795</strong></td>
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<td><strong>SURPLUS FOR THE YEAR</strong></td>
<td><strong>R 801 515</strong></td>
<td><strong>R 528 400</strong></td>
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STATEMENT OF CHANGES IN RESERVES FOR THE YEAR ENDED 29 FEBRUARY 2016

<table>
<thead>
<tr>
<th></th>
<th>ACCUMULATED SURPLUS R</th>
<th>EQUIPMENT FUND R</th>
<th>RETRENCHMENT FUND R</th>
<th>TOTAL R</th>
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<td>Balance at 28 February 2014</td>
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<td>358 178</td>
<td>304 581</td>
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<td>-</td>
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<tr>
<td>Transfer (to) retrenchment fund</td>
<td>(172 744)</td>
<td>-</td>
<td>172 744</td>
<td>-</td>
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<tr>
<td>Transfer (to) equipment fund</td>
<td>(328 881)</td>
<td>328 881</td>
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</tr>
<tr>
<td>Acquisitions during the year</td>
<td>(328 881)</td>
<td>328 881</td>
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<tr>
<td>Depreciation during the year</td>
<td>-</td>
<td>(148 043)</td>
<td>-</td>
<td>(148 043)</td>
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<tr>
<td>Balance at 28 February 2015</td>
<td>556 958</td>
<td>539 016</td>
<td>477 325</td>
<td>1 573 299</td>
</tr>
<tr>
<td>Surplus for the year</td>
<td>801 515</td>
<td>-</td>
<td>-</td>
<td>801 515</td>
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<tr>
<td>Transfer (to) retrenchment fund</td>
<td>(216 544)</td>
<td>-</td>
<td>216 544</td>
<td>-</td>
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<tr>
<td>Transfer (to) equipment fund</td>
<td>(321 798)</td>
<td>321 798</td>
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<tr>
<td>Acquisitions during the year</td>
<td>(346 131)</td>
<td>346 131</td>
<td>-</td>
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<tr>
<td>Proceeds from assets disposed</td>
<td>24 333</td>
<td>(24 333)</td>
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<tr>
<td>Depreciation during the year</td>
<td>-</td>
<td>(202 396)</td>
<td>-</td>
<td>(202 396)</td>
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<tr>
<td>Balance at 29 February 2016</td>
<td>820 131</td>
<td>658 418</td>
<td>693 869</td>
<td>2 172 418</td>
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