



URBAN LAND BULLETIN II

Urban Land and Housing Dialogue Series:

Impacts of COVID-19 on the Rental Housing Sector - Evictions
and Inadequate Tenure Security in a Time of Crisis

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1 Evictions and Tenure Security: During and Beyond a Crisis

According to the South African Constitution, everyone in the country has a right to housing and similarly, a right to security of tenure. This means that every citizen must be able to live in safety and decency in their home, without the fear or threat of eviction unless if a court authorises the eviction.¹ Access to housing and secure tenure became that much more important when the Coronavirus pandemic / COVID-19 toppled the whole world into a health crisis.

Recognising the importance of ensuring that everyone, especially poor and vulnerable persons, remain within their homes and therefore are protected from evictions during this time, the government published regulations that made it illegal to carry out evictions during the national state of disaster.² However, in a country where most citizens live in overcrowded informal settlements and backyards, along with having poor access to basic services such as water and sanitation, following the COVID-19 protocols given by the government to protect themselves from infection was almost impossible.

From March until June 2020, South Africa was under a lockdown following the declaration of the Coronavirus pandemic as a national disaster. In June, the government initiated a Risk Adjusted Strategy according to which regulations determined a differentiated strategy based on five Alert Levels – Level 5 having the most extreme measures and Level 1 being the least extreme/almost normal. We are now at Alert Level 1 where most activities (social, economic, etc.) are expected to return to normal. Along with Regulation 70, different levels of authorisations, in terms of evictions, were to apply for as long the national state of disaster lasted.

¹ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) Act 19 of 1998.

² Disaster Management Act, 2002: Amendment of Regulations Issued in Terms of Section 27(2).

INDEX

01

1 Evictions and Tenure Security: During and Beyond a Crisis

06

2 Land Occupations in the Khayelitsha CBD

07

3 The Right to Alternative Accommodation

10

4 Additional Resources

DAG is a registered non-profit organisation with the South African Government's Department of Social Development (Registration no: 0069-194 NPO). DAG is an association not for gain incorporated under Section 21 of the South African Companies Act (Registration no: 1993/006859/08). DAG is a public benefit organisation with South African tax exemption (Registration no: 930016961).

Section 70: Eviction and Demolition of Places of Residence

1. A person may not be evicted from his or her land or home or have his or her place of residence demolished for the duration of the national state of disaster unless a competent court has granted an order authorising the eviction or demolition.
2. A competent court may suspend or stay an order for eviction or demolition contemplated in subregulation (1) until after the lapse or termination of the national state of disaster unless the court is of the opinion that it is not just or equitable to suspend or stay the order.
3. A court hearing an application to authorise an eviction or demolition may, where appropriate and in addition to any other report that is required by law, request a report from the responsible member of the executive regarding the availability of emergency accommodation or quarantine or isolation facilities pursuant to these Regulations.

Source: Disaster Management Act, 2002: Amendment of Regulations Issued in Terms of Section 27(2).

Even though illegal evictions or demolitions were not supposed to happen, for as long as we were under a national state of disaster, many people were evicted, and their homes destroyed by either the state and/or private property owners. In August 2020, Cape Town mayor, Dan Plato said that the City of Cape Town's (CoCT's) land invasion operations have resulted in the removal of over 55 000 illegal structures, since 1 July.³ By September, government officials had demolished more than 58 000 temporary homes on state-owned land in Cape Town, while many people have been evicted from informal settlements, disused government buildings and public spaces in cities across the country.⁴



Pictured above: Law enforcement officials clash with residents over land invasions in Mfuleni - Source: *Daily Maverick* - Photo/Gallo Images_Brenton Geac.

The graphs on page 3 show the huge growth in informality from 2018 to 2020, when COVID-19 had the biggest impact on citizens who struggled to pay their rent and as a result, became evicted. Left with no other options, many of those who were evicted occupied vacant land parcels in an effort to create a home for their families. Demonstrating the significant impact of COVID-19 on informal housing, the CoCT estimates that from July to September 2020, 147 land invasion incidents were reported while 9,761 structures were occupied since January until August 2020.



Pictured above: RR section Khayelitsha - Source: *Daily Maverick*.

³ Mthethwa, C. 2020. Cape Town will appeal 'dangerous' land ruling, says Dan Plato. News 24 [Online], 25 August. Available: <https://www.news24.com/news24/southafrica/news/city-of-cape-town-to-appeal-courts-eviction-judgment-says-it-has-to-protect-public-land-20200825> [2020, September 11].

⁴ Nnoko-Mewanu, J. 2020. Cities Forcibly Evict Residents in South Africa. Homelessness Increases Risk for Covid-19 Spread [Online]. Available: <https://www.hrw.org/news/2020/09/02/cities-forcibly-evict-residents-south-africa> [2020, September 10].

87,547

Overall Growth Total **2018**

12,084

Overall Growth Total **2019**

51,194

Overall Growth Total **2020**

± 8,950

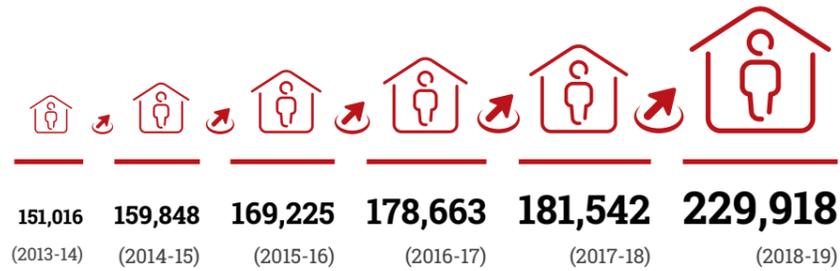
Growth Total - 18 August

Sourced from: City of Cape Town (CoCT) Presentation: Unlawful Land Occupations, 30 September 2020.^{5,6}

These numbers compel one to ask serious questions about the use of vacant land owned by the state (including the CoCT, SOE's and Province) and whether these land parcels are indeed effectively used in the best interest of the public.

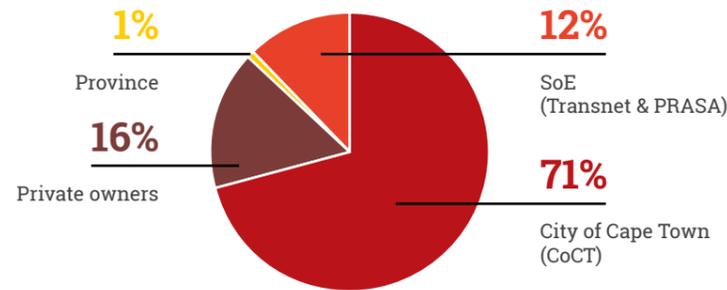
^{5,6} This information was taken from the CoCT's presentation. We have not independently verified or corroborated same on the ground.

Informal Structure Growth



Land Occupations (2018 - June 2020) and Land Ownership

Hectareage and owners of the occupied land, between 2018 up to June 2020.



In 2020, most of the land occupied was owned by the CoCT (71%), followed by private owners (16%), state-owned enterprises (SOE's)/parastatels (12%), and finally, Province (1%).

Land Owner	2018-19	2019-20	2020-21	Total
CoCT	241,4671	71%	232,8559	73%
Private	52,6623	16%	52,6623	16%
Province	3,0555	1%	1,3267	0%
SoE (Transnet & PRASA)	41,5581	12%	34,3537	11%
Total	338,743	100%	321,1987	100%



Pictured above: City removes occupiers from Nyakathisa informal settlement in Khayelitsha - Source: *GroundUp* - Photo: *Buziwe Nocuz*.

There are abounding perceptions that people occupying land are 'invaders' or that such occupations are politically motivated rather than driven by need. Although there may be some truth to the idea that occupations are driven by opportunistic land invaders, it is very difficult to believe that this many of the city's urban poor would choose this time to engage in such high-risk activities merely because they are being opportunistic. Instead, we believe that in the majority cases of unlawful occupations, people build houses on vacant land because they are in desperate need of a home and have no other alternative but to occupy available land.

Already vulnerable and marginalised people, particularly those living in urban areas found themselves especially at risk of eviction. The evictions and demolitions have shown very clearly people's need for security of rental tenure. Many tenants have expressed their inability

to pay rent, and consequently have faced illegal evictions from their landlords. Moreover, with homelessness a real consequence for many evictees – mostly because of limited support or tenure security – this situation has significantly contributed to land occupations.

Mostly, where evictions have happened, those responsible have failed to provide alternative accommodation – as prescribed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) Act 19 of 1998 – thus leaving evictees homeless and more vulnerable to the risk of infection.

The CoCT has stated that it has not carried out any evictions during the lockdown, instead they implemented 'anti-land invasion operations' in which the main objective was to protect public land earmarked for housing development from being illegally invaded.⁷ Similarly, municipalities in other cities have

justified evictions of households who took up residence on/in vacant and disused public land or buildings, often without a court order, on the basis that this was done to protect land set aside for state-subsidised housing or other projects.

The courts, however, have been exceptionally critical of this type of argument with the South Gauteng High Court in Johannesburg ruling that the City of Johannesburg (CoJ) and the Johannesburg Metro Police Department (JMPD) were in contravention of the law when they forcefully evicted 23 people from a public building during the lockdown period.⁸ Similarly, in a precedent-setting judgment, the Western Cape High court said that the CoCT may no longer carry out any further evictions or demolitions of occupied and unoccupied structures without a court order.⁹

⁷ Mafolo, K. 2020. Tracking Covid-19 Lockdown demolitions: City of Cape Town says it has a right to protect its property. Daily Maverick [Online], 23 July. Available: <https://www.dailymaverick.co.za/article/2020-07-23-home-demolitions-city-of-cape-town-says-it-has-a-right-to-protect-its-property/> [2021, April 6].
⁸ Manyane, M. 2020. Court rules against City of Joburg evictions during Covid-19 lockdown. Sunday Independent [Online], 12 April. Available: <https://www.iol.co.za/sundayindependent/news/court-rules-against-city-of-joburg-evictions-during-covid-19-lockdown-46615118> [2020, September 11].
⁹ Kiewit, L. 2020. City of Cape Town condemns high court eviction ruling as a 'dangerous precedent'. Mail & Guardian [Online], 26 August. Available: <https://mg.co.za/news/2020-08-26-city-of-cape-town-condemns-high-court-eviction-ruling-as-a-dangerous-precedent/> [2020, September 11].

Vuyani's Story



It was such an extraordinary and unprecedented circumstance that came with COVID-19: for the first time ever, I experienced lockdown.

When the lockdown was introduced, I lived with my brother, my sister, and our respective families in a small house. Usually, some of us were working nightshift while others worked during the day. This arrangement made it easier for us to accommodate each other in this small box-size house. During lockdown however, we were all squashed in our home, along with our kids who were not going to school.

In our communities, immediately following the lockdown, you could see poverty, people having to stay home and having nothing to eat.

Suddenly, there was a wave of people complaining that they could not afford to pay rent because they were not working. For years, many rented at someone's flat or in shacks at the backyard of state subsidised homes. We had to find alternatives. There was none. The only alternative was a piece of land across Landsdown Road; a nice big piece of land, next to the station. The land was a like a buffer zone between Khayelitsha and Mitchell's Plain.

So, we earmarked that piece of land for us: those who are landless. We could see that we could utilise

that open space as alternative accommodation. We started occupying the land.

Unfortunately, law enforcement came and chased us away. We kept on looking for another alternative because we could not stay where we were staying. Mostly, because we too were required to observe and maintain COVID-19 protocols.

We found another alternative: a strip of land that comes from Empolweni up to R300, behind Driftsands. When we discovered that piece of land, we saw it necessary to occupy that land.

No one mobilised us to occupy the land. As individual families we saw it necessary to do that. We immediately named it: its name became COVID-19. That is the new township that is there.

Within days, we saw hundreds of people coming there to acquire a piece of land for their own families. Before we knew, the land was finished. So, we started organising ourselves. We elected representatives who will represent us formally and talk to those who are in power to negotiate this process of land occupation. Our representatives give weekly feedback about what will happen to us.

But in between, we experience a lot of evictions. Today, it is called 'evictions', but during the apartheid years it was called 'forced removals'. Law enforcement came and demolished our shacks. We had to endure that pain. But we regrouped

and started building again to show them that we have nowhere to stay. These are our homes. We have built them ourselves for our families amongst ourselves. We are a new community here.

We continue to receive threats from law enforcement that after a certain date we will be evicted. We say to them, well you can evict us. But ensure that when you evict us, you also relocate us. But we know the relocation will become our baby. They are good at destroying, but they are not good at rebuilding.

We have so many challenges still there. We have no streets, no running water or electricity, nothing. We don't even have hope that our local municipality will come onboard to provide the service delivery that we need as citizens of this country. Not as lawbreakers but as law-abiding citizens. Truthfully, we have not found any assistance from any sphere of government.

We have learned that the land belongs to the CoCT and Cape Nature. Their refusal to engage with us does not assist us to find amicable solutions.

Without consulting communities about land identification and land use for residential purposes, these so-called 'illegal occupations or invasions' will continue. We need our government to consult and meaningfully engage with us on land in our city.

2 Land Occupations in the Khayelitsha CBD

In 2020, the CoCT identified Khayelitsha as one of the city's 'hotspots' ¹⁰ of land occupations. During this time, this area saw an unprecedented increase in the number of land occupations, mostly due to the adverse socio-economic impact of the COVID-19 pandemic on people who were already vulnerable before the pandemic. Conversations and interviews with community partners, showed that several new communities developed naturally because of the land occupations. The map on page 7 shows the names of, and where these new communities were created.



Pictured above: Bulelani Qolani struggling to get back into his shack during an eviction.

Also, it is in Khayelitsha where the shocking incident of a man, Mr. Bulelani Qolani, who was evicted while naked by City law enforcement officials, happened. The treatment of Mr. Qolani is a painful reminder of the apartheid years, when many black and coloured families were violently and forcibly removed from their homes by an uncaring and repressive government. Although the CoCT's executive mayor, Dan Plato, admitted that Mr. Qolani's dignity was compromised during this shameful incident, he maintained that the City has a responsibility to protect state-owned land from unlawful occupations.¹¹ Although the latter may be true, it can never be that under a democratic government, the most vulnerable are stripped of their dignity and humanity in the interests of protecting public property – of which the state is merely the custodian.



Image credit: David Harrison, Daily Maverick.

2005

Land Availability Agreement drawn up between CoCT and KCT, giving KCT development rights for 23ha of land in the Khayelitsha CBD.



Planning for Khayelitsha CBD Residential Project on 10ha of this land proceeds.

Phase 1 to include 368 units of BNG housing. Phase 2 to include a mix of Gap and FLISP residential units with some retail.

Map internally sourced and adapted from Cape Farm Mapper.



Services & Infrastructure connections provided on KCBD Residential Project Site.

2020

MARCH 2020

COVID-19 Pandemic: SA enters Stage 5 lockdown.



KCT appoints contractor for Phase 1 of KCBD Residential Project and receives list of beneficiaries from CoCT.

APRIL 2020



Land occupiers set up shack dwellings on CBD land previously set aside for development.

Khayelitsha Land Occupation/ Photo credit: Ashraf Hendricks/ Date: 19 May 2017.

AUGUST 2020

Khayelitsha Human Settlements Forum revived by the Khayelitsha Development Forum to address land occupations.

JULY 2020



Public outcry against evictions in Khayelitsha (spurred by videos of violent Empolweni evictions).

Outrage Rife after Khayelitsha Eviction Incident/Photo Credit: Chantelle Whittles/Date: 2 July 2020.

¹⁰ Other hotspots included Makaza and Philippi. Palm, K. 2020. CoCT Sees Major Spike in Land Invasions, Says Housing Opportunities Under Threat. EWN News [Online], September. Available: <https://ewn.co.za/2020/09/17/coct-sees-major-spike-in-land-invasions-says-housing-opportunities-under-threat> [27 April 2021]. ¹¹ Plato, D. 2020. Opinion | The eviction of a naked man is not part of the City of Cape Town's conduct. EWN News [Online], 2 July 2020. Available: <https://www.news24.com/news24/opinions/opinion-the-eviction-of-a-naked-man-is-not-part-of-the-city-of-cape-towns-conduct-20200702> [27 April 2021].

Figure 3: Map of Land Occupations in Khayelitsha during 2020



■ Occupation

1. Level 2
2. COVID-19
3. Sinako
4. Empolweni
5. Gomora
6. Nyakathisa 1&2
7. New Cross
8. Social Distance
9. Ndlovini Extension
10. Gushindoda

3 The Right to Alternative Accommodation

Although occupiers are protected by law, occupations are still unlawful (not allowed by our legislation).

Section 26(3) of the Constitution gives important and much needed guidance on what steps must be followed to evict unlawful occupiers who face eviction. Often, people, including government officials and private owners, find it hard to accept or understand that unlawful occupiers are protected by the Constitution and the PIE act.

“But basically, we are only looking for a piece of land where we can build our homes in a bigger space. Not live at the backyard, not paying rent and during the lockdown you get chased away by your landlord. No, we want our own piece of land. The politicians might find it as fertile ground to start campaigning for their political careers. But we are not interested in political campaigns here. We are interested in service delivery... streetlights... clinics... a suitable place to stay. We are driven by circumstances that are unprecedented like COVID-19 regulations such as social distancing.” (Occupier, KPBT)

¹² Presentation by the eThekweni Municipality. N.d. Unlawful Occupation and Land Invasions – Evictions & Interdicts. Available: <http://www.mile.org.za/QuickLinks/News/Presentations%20and%20Useful%20Documents/Land%20Invasion%20Wo/Evictions%20and%20Interdicts.pdf> [15 April 2021].

Section 26(3): South African Constitution¹

1. **Everyone has the right to have access to adequate housing.**
2. **The state must take reasonable legislative and other measures, within its 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**

Additionally, the PIE Act which gives effect to section 26(3) requires that a court consider all the relevant circumstances before making an eviction order.

Unlawful occupations happen when:

- Land is occupied **without the approval/consent** of its owner or the person responsible for the land or without any right in law to occupy such land. (The owner is any registered owner of land including a government department or entity).
- Building or Structure includes any hut, shack, tent or similar structure or any other form of **temporary or permanent** dwelling or shelter.
- There's a **need for alternative accommodation** which affect every sphere of government.¹²

Key issues:

Given its unlawful nature, landowners (the government and private persons) can apply to the courts to evict occupiers from their land. The courts must consider all the relevant facts and circumstances before making a decision about the application, i.e., the eviction must be just and equitable. A key circumstance to consider is whether the occupiers have and/or will be provided (by the state) with alternative accommodation in the case of an eviction.

The Constitution and the courts have been clear: occupiers' needs must be addressed. Moreover, occupations are acts of desperation, especially given the above context.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) Act 19 of 1998, s6(3)

3. **In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to:**
 - a) the **circumstances** under which the unlawful occupier occupied the land and erected the building or structure;
 - b) the **period** the unlawful occupier and his/her family have resided on the land in question; and
 - c) the **availability** to the unlawful occupier of suitable alternative accommodation or land.

“Land occupation is not politically driven at all. Yes, you might get here and there, political opportunists that would want to hijack the momentum. No, we are fully aware of those and we have dealt with them at the beginning, to say this is not a political campaign. This is a community-based driven kind of campaign or a revolution.” (Occupier, KPBT)

“When eviction leads to homelessness in the inner City or in informal settlements, the duty is a Municipal duty to provide adequate temporary alternative accommodation. Failure to comply with the court order that provides for alternative accommodation may lead to a finding of contempt of court of municipal officials. Municipalities must be party to any litigation that might trigger their obligations.” (Lauren Roysten, SERI)

The context in which land occupation happens is one that is largely a result of the failure of the property/housing market to deliver affordable formal housing options to people in need, and on the other hand, the fact that the state has not yet provided affordable housing to a sufficient scale. Although the state has gone a long way in providing state-subsidised housing to the urban poor, most of this housing has been located on the outskirts of the city, far away from job opportunities and social amenities.

According to the CoCT 60% to 65% households earned less than R20 000 per month, meaning they could not afford an entry level house (estimated at R20 000) through the formal property market.

The current housing delivery, (via government and the private sector), is at 20,000 annually which implies a shortfall of 30,000 affordable housing opportunities.¹⁶ Evidently, there is and will continue to be a failure on the part of the government to adequately respond to the housing crisis.

What is required is a meaningful, reasonable, and pro-active response to the housing and land crisis driven by the state.

There is a constant tension between land occupiers and the state. Several contributing factors reinforce this tension:

- Often occupiers built their shacks on vacant land that the government has planned to use/has earmarked for human settlement development and/or state-subsidised (RDP/BNG) housing. However, because of long delays, often for decades while projects are undergoing approval, the land has been lying vacant and unused.
- At the same time, many people who are desperate for adequate housing, remain on municipalities' housing waiting lists for decades, leading to a lot of frustration. Last year, people who used to be tenants living in backyard structures and who lost their livelihood, and as a result their homes due to the COVID-19 pandemic were particularly desperate for a place to live.
- Mostly, because, the government/municipalities have not communicated these development plans to the communities, those seeking to occupy land assume that there are no plans and that the land is simply lying vacant and unused while they need land for housing.
- By law, the government has a responsibility to both provide access to housing for the poor and but also, to protect state-owned assets, such as land or property. On this basis, the state argue that it is their responsibility to protect land from unlawful occupations and therefore, to evict people from land that was set aside for housing developments.
- In this way, the state's responsibilities in relation to their role as the custodian/protector of state assets (land) come against/is in direct contention with the occupiers' immediate need for land and a place to call home.
- Land and building occupations are risky and not ultimately desirable for the occupiers, and they clearly hinder any form of long-term planning on the part of the state. But, on the part of occupiers, when faced with the possibility of becoming homeless vis-à-vis taking the risk of eviction and occupying vacant and unused land, the risk will almost always appear worth it.

¹⁶ Ibid.

19,985 **20,040** **16,217**

Houses delivered **Houses delivered** **Houses delivered**
2017/18 2018/19 2019/20

Source: Western Cape Department of Human Settlements.

City's housing backlog in 2020 **365,000**

Informal households in 2020 **250,000**

800,000 - 1million

Projected population growth in the next 10 years

50,000 houses p/year

Needed to be delivered by the City to meet the increasing housing demand (500,000 over the next 10 years)

Source: CoCT

What does 20 years of court cases on evictions and alternative accommodation mean for the government/municipalities:



A reasonable housing policy

Municipalities must adopt a reasonable housing policy that addresses both permanent housing solutions and adequate temporary alternative accommodation for those facing eviction. They must therefore plan for homelessness.



Participation in eviction proceedings

Municipalities must be involved in eviction proceedings where the occupiers could become homeless because of the evictions.



Meaningful engagement

Municipalities must meaningfully engage with everyone involved in the eviction proceedings.



Place sufficient information before a court

Municipalities must give the court as much information as needed that is practical, so that the court can make a decision that is fair and equitable for everyone involved.



Budget

Municipalities must budget for everyone who is in desperate or emergency need of housing. They can use national or provincial funding for this purpose.

Source: Presentation delivered at DAG Urban Forum/Dialogue, 21 October 2020 by Lauren Roysten on behalf of the Socio-Economic Rights Institute of South Africa (SERI).

4 Additional Resources

Legal Assistance and Advice

Centre for Applied Legal Studies (CALS)
University of the Witwatersrand, Johannesburg
011 717 8600 | www.wits.ac.za/law

Lawyers for Human Rights (LHR)
Pretoria, Johannesburg, Cape Town, Durban & Upington
012 320 2943 (Pta Office) | www.lhr.org.za

Legal Aid South Africa
National
0800 110 110 | www.legal-aid.co.za

Legal Resources Centre (LRC)
Johannesburg, Cape Town, Durban & Grahamstown
011 836 9831 (National Office) | www.lrc.org.za

ProBono.org
Johannesburg and Durban
011 339 6080 (Jhb Office) | www.probono.org.za

Socio-Economic Rights Institute of South Africa (SERI)
Johannesburg
011 356 5860 | www.seri-sa.org

Other Institutions

Rental Housing Tribunals
011 630 5035 (Gauteng)
0860 106 166 (Western Cape)
031 336 5300/5222 (KwaZulu-Natal)
018 387 6057 (North West)
015 294 2241 (Limpopo)
013 766 6200 (Mpumalanga)
053 830 9444/9544 (Northern Cape)

Independent Police Investigative Directorate (IPID)
012 399 0000 (National) | complaints@ipid.gov.za
www.icd.gov.za

South African Board of Sheriffs
021 426 0577 | contact@sheriffs.org.za
www.sheriffs.org.za

Additional Resources Source: Socio-Economic Rights Institute of South Africa (SERI) (2015). *Resisting Evictions in South Africa: A Legal and Practical Guide*.



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