



**FINAL REPORT OF THE GAUTENG
PROVINCIAL INQUIRY INTO
THE ALEXANDRA TOWNSHIP
TOTAL SHUTDOWN**

[09 JULY 2021]

EXECUTIVE SUMMARY

At the beginning of April 2019, residents of Alexandra Township took to the streets of Alexandra Township, itself, as well as surrounding suburbs to protest ongoing service delivery failures. Residents barricaded roads with burning tyres and rocks as part of the #AlexTotalShutdown and the Alex Total Shutdown movement, which was, and is, a call to action against severe overcrowding, inadequate service delivery, rampant crime and illegal land occupations.

Following the Total Shutdown protests, the South African Human Rights Commission (SAHRC/Commission) and the Public Protector of South Africa, together with the Total Shutdown movement conducted a site visit in Alexandra. The site visit covered the Setjwetla informal settlement, the Alexandra women and men's hostels, the Marlboro Cemetery, and the sports field at the KwaBhekiLanga High School. Based on what was observed on the site visit as well as in-person engagement with members of the Total Shutdown movement and other residents of Alexandra, the Commission and Public Protector resolved to hold a joint-inquiry into the causes of the protest action - the prevailing socio-economic conditions and the maladministration in the running of Alex, with a specific focus on the delivery and realisation of the Alexandra Renewal Project (ARP).

In terms of the joint-inquiry and the reporting thereon, the Commission, based on its constitutional mandate, focused on socio-economic rights and related issues, while the Public Protector, based on its constitutional mandate, focused on maladministration and related issues.

As part of the joint-inquiry, the Commission and Public Protector held a public forum with residents of Alexandra on 14 and 15 May 2019. Following the public forum, organs of state responsible for service delivery in Alexandra, as well as political parties mentioned during the public forum, were given an opportunity to respond to submissions made during the public forum.

Based on the site visits, submissions from residents and the responses from the state, it is clear to the Commission that there are severe failures, as well as difficulties in the realisation of the socio-economic rights and right to freedom and security of persons living in Alexandra.

These failures equate to violations of constitutional rights. The extent of the violations is exacerbated by inadequate interim measures implemented by the relevant government departments.

While some Reconstruction and Development Programme (RDP) homes have been built and security of tenure issued for some, the right to “adequate housing” is far from being realised. Too many residents live in informal settlements and have to share one chemical toilet between approximately 55 people and have to walk to the outskirts of the township to get piped water.

Pollution of the streets and air have become a significant problem that needs to be urgently addressed.

The number of ideal health clinics in Alexandra is encouraging, but is not enough for the population of Alexandra and their continuous vulnerability to illnesses caused by informal housing, a lack of proper sanitation, a lack of access to clean piped water, continued exposure to pollution and the affliction that comes from a lack of opportunities to earn an income and provide for oneself.

There are, as explained through the submissions, a number of reasons for these failures including, the improper use of budgets, planning that is not coherent and integrated; skills shortages, high staff turnover, illegal occupation, limited space, extreme overcrowding, high rates of unemployment, non-collaborative working between organs of state and reduced public confidence, cooperation and consequently much needed public participation. These factors are inimical to the progressive realisation of the socio-economic rights of the people living in Alexandra.

The Commission seeks to issue these findings with a view that they do not suffer the same fate as innumerable undertakings intended to respect rights, but which have had limited success. It is of little to no use for the people of Alex for the Commission to make findings on each of the detailed challenges shared with the Commission, and which it observed, since by their nature many of the issues are interrelated. Accordingly, the Commission has deemed it more appropriate to identify and make findings in respect of the broader issues. The findings on these issues will require specific responses from individual organs of state, and in certain instances where integrated information is sought, collective submissions.

Organs of state to whom the findings relate will be required to respond to the findings by the Commission within 60 days and advise the Commission on the current status of the issues below; together with short and medium term plans to be taken by respective departments together with an indication of the budget and human resources that will be allocated to give effect to the plans, followed thereafter by regular updates.

In respect of property and housing, organs of state are required to report on:

- Measures taken in response to the number of people who applied for state or RDP housing in the mid-1990s and who twenty years later, are still waiting to be allocated a house;
- Controls in place to mitigate against the reoccurrence of illegal occupation of RDP housing allocated to other people, as well as the erection of illegal structures and steps to be taken to remedy the existing illegal occupation;
- A description of property that has been identified for development;
- A by-law enforcement and accountability strategy and implementation plan;
- Detailed information in respect of mitigation actions relating to the loss of water, monitoring exercises, the accessibility of sanitation and water for vulnerable persons; and timeframes within which basic minimum standards will be achieved; and
- A plan for the repair and maintenance of the Madala and Helen Joseph Hostels. This plan should specifically include detailed, and integrated measures for remedial rights restoration in respect of the two hostels.

In respect of water, sanitation, refuse removal and the right to a clean environment, organs of state are required to provide information on:

- Short and long-term steps and plans being taken and put in place to fix leaks and burst pipes, including information on the progress of the Water Demand Management Project, infrastructure repair and maintenance to mitigate costs and decrease of accessibility on account of leaks, burst pipes;
- Efforts to improve on the current chemical toilet to person ratio of 1:55 (eleven households to one toilet) as well as improving on accessibility in terms of location;
- Progress in addressing littering and the illegal dumping of waste, more generally; and in respect of dumping in the Jukskei River,
- Specific plans to ensure proper enforcement of Waste Management and environmental protection by-laws, indicating the roles and responsibilities of the JMPD, environmental inspectorates and enforcement officers in this regard; and
- The provision of sufficient, licensed landfills with reasonable or no gate fees for access to lessen illegal dumping of refuse.

A report is requested from the Gauteng Department of Social Development (“DSD”) in respect of the concerns involving the lack of the carrying capacity of the DSD to adequately service communities in Alex, including in respect of progress in establishing a permanent office in Alex. In addition, the DSD must advise the Commission of the means it will employ to better monitor and evaluate the trends, needs and quality of the services provided in Alex, with a view of using disaggregated information to better plan for the delivery of specific needs of the communities in Alex.

The Commission has requested that the Gauteng Department of Basic Education engage with the Gauteng Department of Home Affairs in order to ensure all learners who are entitled to birth certificates and identity numbers, receive them.

In respect of freedom and security, the relevant organs of state are required to report on:

- Efforts made by the Johannesburg Metro Police Department and the South African Police Services to work synergistically;
- The COJ, Community Safety and JMPD’s plans to enforce by-laws in respect of illegal activity and ensuring the safety and protection of housing development in Alex.
- The assessment of need, and allocation of adequate law enforcement resources in Alex comparative to resource allocation in neighbouring suburbs such as Sandton and Kramerville. The report must address concerns around unfairly discriminatory patterns of resource allocation to communities such as Alex; and provide comprehensive objective data to support resource allocation decisions including disaggregated crimes statistics.; and
- The measures to be taken to overcome challenges relating to their ability to conduct visible policing.

The summaries above, appear more fully in section 8 of this report. The Commission, on receipt of the reports required from organs of state, will monitor progress of the remedial actions to be taken by organs of state toward full resolution of issues on an ongoing basis.

The findings and directives by the Commission are to be read as determinations by the Commission which are confined to the existing state of human rights in Alexandra. These findings and directives are separate from any other findings made or to be made by the office of the Public Protector of South Africa or, any other tribunal, court or body.

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The Commission directs that all parties to which the findings and issues apply, to respond to the Commission jointly or separately, within 60 days of receiving this report.

The Commission's directives herein are binding on the Respondents. Should any of the parties be aggrieved by the findings and directives of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review.

LIST OF ACRONYMS AND ABBREVIATIONS

ALPOA	Alexandra Land and Property Owners Association
ANC	African National Congress
ARP	Alexandra Renewal Project
ATS	Alexandra Total Shutdown Movement
BLA	Black Local Authorities
CBD	Central Business District
CBO	Community Based Organisation
CCTV	Closed Circuit Television
CIMS	Capital Investment Management System
CLO	Community Liaison Officers
CoGTA	Cooperative Governance and Traditional Affairs
CoJ	City of Johannesburg Metropolitan Municipality
The Commission	The South African Human Rights Commission
Community Safety	The Gauteng Department of Community Safety
Constitution	The Constitution of the Republic of Africa Act 108 of 1996
CPF	Community Policing Forums
DBSA	Development Bank of Southern Africa
DBE	Gauteng Department of Basic Education
DHSWS	Department of Human Settlements, Water and Sanitation
DHS	Gauteng Department of Home Affairs

DRG	Deed Restoration Grant
DSD	Gauteng Department of Social Development
DWS	Department of Water and Sanitation
ECD	Early Childhood Development
EFF	Economic Freedom Fighters
EISD	Environment and Infrastructure Services Department
EXCO	Executive Committee
FBO	Faith Based Organizations
FIU	Forensic Investigative Unit
GBV	Gender Based Violence
GPG	Gauteng Provincial Government
GPO	Gauteng Provincial Office
Helen Joseph	Helen Joseph Hostel
HSDG	Human Settlements Development Grant
IDP	Integrated Development Plan
IRMP	Integrated Rodent Management Programme
JDA	Johannesburg Development Agency
JMC	Alexandra Joint Management Centre
JMPD	Johannesburg Metropolitan Police Department
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LSU	Legal Services Unit
M&E	Monitoring and Evaluation
Madala	Madala men's Hostel

MASP	Men as Safety Promoters
MEC	Member of Executive Council
MIG	Municipal Infrastructure Grant
MOU	Memorandum of Understanding
MSA	Municipal Systems Act 32 of 2000
NCOP	National Council of Provinces
NEMA	The National Environmental Management Act 107 of 1998
NEMA Waste Act	The National Environmental Management Waste Act 59 of 2008
NHA	The National Health Act 61 of 2003
NPO	Non-Profit Organizations
NWA	The National Water Act 36 of 1998
NWRS	National Water Resource Strategy
PPSA	The Public Protector of South Africa
PUAHB	Peri-Urban Areas Health Board
RDP	Reconstruction and Development Programme (RDP)
SAFA	South African Football Association
SAHRC	South African Human Rights Commission
SAHRC Act	The South African Human Rights Commission Act 40 of 2013
SANCA	South African National Council of Alcoholism and Drug Dependence
SAPS	South Africa Police Services

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SASSA	South African Social Security Agency
Shutdown	Alexandra Total Shutdown
ULTRA	Upgrading of Land Tenure Rights Act 112 of 1991
USDG	Urban Settlements Development Grant
URP	Urban Renewal Project
WASP	Women as Safety Promoters
WDM	Water Demand Management
WSA	Water Services Act 108 of 1997

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1. INTRODUCTION

- 1.1. On 21 February 2019, residents of Alexandra Township (**'Alex'**) marched to the City of Johannesburg Metropolitan Municipality (**'the CoJ'**)'s offices, in Region E, to hand over a memorandum of complaints. However, there was no response despite the fact that prior to the march the residents were complaining to councillors about land invasions around ward 105. The residents complained that the JMPD and SAPS failed to respond to their complaints about illegal land invasions.
- 1.2. At the beginning of April 2019, the South African media began reporting on the Alex Total Shutdown also known as the #AlexTotalShutdown (**'the Shutdown'**) and the Alex Total Shutdown (**ATS**) movement: a call to action against inadequate service delivery, rampant crime and illegal land occupations.
- 1.3. On 3 April 2019, residents of Alex took to the streets, barricading roads with burning tyres and boulders. The protests were purportedly sparked by the ongoing lack of service delivery which, despite previous protest actions and engagements with CoJ officials, had still not been adequately addressed.
- 1.4. Following news of the Shutdown, the South African Human Rights Commission (**'the Commission'**) together with the Public Protector South Africa (**PPSA**) met with members of the ATS and undertook a site visit. Following the site visit, the Commission and PPSA convened an inquiry into the causes of the protest action, and on what could be done to address the causes (**'the Inquiry'**).
- 1.5. It was agreed that in terms of the Inquiry, the PPSA's office would inquire into aspects of maladministration, including the allocation of resources by respective departments towards the delivery of quality public services in the township, while the Commission would focus its investigation on human rights issues, including access to housing, water and sanitation, education, health and the environment with regard to the health and well-being of the people of Alex.
- 1.6. The Inquiry received oral and written submissions from the Alex community and thereafter allowed organs of state to respond to these submissions. The submissions are referenced in this report, together with the Commission's findings and directives, with a view that the socio-economic rights of the people of Alexandra are effectively respected and realised.

- 1.7. On 01 June 2021, an interim report of the inquiry was distributed to the organs of state/respondents, to which the interim report referred to, either in terms of findings and/or directives, for response and/or comment. The Commission did not receive comments from the organs of state/respondents but they acknowledged receipt of the interim report.

- 1.8. This document constitutes the South African Human Rights Commission's final report which includes the assessment of the inquiry as well as the Commission's findings and directives.

2. BACKGROUND

Alexandra Township

“Like a pirate ship that has been through many adventures, Alexandra is able to tell a century-old tale of the struggle of rural Africans who came to Johannesburg to look for greener pastures. The first 40 families arrived in Alexandra in 1913, with their houses standing tall and proud.” - Itumeleng Mafisa

- 2.1. Alexandra Township or Alex was established in 1912. It was the only place where Black people or “natives” as they were labelled by the colonisers, could buy free-hold land. The cost of the plots ranged from £40.00 to £200.00.
- 2.2. Alex is approximately 800 hectares in size, including the East Bank, and was “designed” for a population of about 70 000 people.¹ Original stands were between 500 and 1000m² with the stands progressively decreasing in size as more people purchased land. By 1949, Alex had an approximate population of 100 000 people.
- 2.3. As different governments assumed control, new or different development plans were introduced for Alex. Under the United Party, Alex was expected to be self-sufficient and infrastructure development and services such as water, electricity and waste removal were not provided.² Under the Apartheid government, plans for Alex included charging higher rates to depopulate Alex; forcibly removing tens of thousands of residents to Soweto, Thembisa and Orange Farm;³ turning it into a hostel only labour camp;⁴ and creating a new suburb to be managed by the Black Local Authorities.
- 2.4. Following the Apartheid government’s abolition of influx control, urbanisation surged leading to an increased population in Alex. By 1990, the population of Alex was estimated to be between 200 000 and 300 000 people.⁵ Most of the new residents were

¹ Report on the Interactive Planning Workshop for Johannesburg, Greater Johannesburg Metropolitan Council, September 27-30, 2000. Accessed at: <http://web.mit.edu/urbanupgrading/upgrading/case-examples/overview-africa/alexandra-township.html>; and Matlapeng, Abueng Lydia, ‘Bommastandi of Alexandra Township’, Johannesburg (2011) (Wits University). Accessed at: <http://wiredspace.wits.ac.za/bitstream/handle/10539/11283/Thesis.pdf?sequence=3&isAllowed=y>.

² Tourikis, P.N, ‘The political economy’ of Alexandra Township: 1905-1958’, (1981) (Wits University).

³ Roefs, M., Naidoo, V., Meyer, M. and Makalela, J. (2003). Alexandra: a case study of urban renewal for the Presidential 10 Year Review Project. Pretoria: Human Sciences Research Council.

⁴ Ibid at 17.

⁵ Bonner, P. and Nieftagoedin, N. (2008). Alexandra: A History. Johannesburg: Wits University Press.

accommodated in “backyard” shacks and free-standing informal settlements. People living in Alex also occupied factories at the edge of the township, bordering or in Marlboro.

2.5. In 1994, a new development framework was adopted by the newly elected ANC government with the aim of de-densifying Alex from 770 people per hectare to 220 people per hectare, which would have required relocating 150 000 to 160 000 people. The financial costs towards the plan were estimated at R3 billion and the national and Gauteng Provincial Government (**GPG**), the CoJ Municipal Council and private sector donors were to finance its implementation. The plan was only partially put into effect.⁶

2.6. Today, the ±800 hectares of Alex contains a population of ±750 000.⁷ These cramped and overcrowded conditions; combined with a lack of planning and infrastructure development as the township grew, high rates of unemployment and limited access to socio-economic rights make Alex a ticking time-bomb in terms of service delivery problems.

The Alexandra Renewal Project

2.7. The Alexandra Renewal Project (**ARP**), was introduced by then President Thabo Mbeki in his 2001 State of the Nation Address.⁸ The ARP was to be a joint urban regeneration project between the three tiers of government, the private sector, non-profit organisations (**NPOs**) and community-based organizations (**CBOs**).⁹ The ARP was to be part of the

⁶ Morris, ‘Alexandra township, a history: Lessons learnt for urban renewal and some challenges for planners.’

⁷ Report on the Interactive Planning Workshop for Johannesburg. See fn 1 above; and Mafisa, S, ‘Waiting to exhale: The story of Alexandra township’, The Sowetan, 18 October 2019. Accessed at: <https://www.sowetanlive.co.za/news/south-africa/2019-10-18-waiting-to-exhale-the-story-of-alexandra-township/>. Socially, Alexandra can be subdivided into three parts, with striking differences; Old Alexandra (west of the Jukskei River) being the poorest and most densely populated area, where housing is mainly in informal dwellings and hostels. The East Bank, east of the Jukskei River, an area redeveloped in the 1980’s and now occupied by the middle-class community of Alex. This part constitutes less than 5% of Alexandra. Finally, the Far East Bank now called Tsutsumani developed as an athletes’ village to accommodate the 1999, 7th All Africa Games sports athletes. Tsutsumani consists of 1700 freestanding, semidetached and simplex units. These are now occupied by local people who have been on the housing waiting list and qualify in terms of government enlisted housing subsidy qualification criteria. See https://mirror.unhabitat.org/downloads/docs/9128_29666_AURSubmission.pdf.

⁸ UN Habitat Scroll of Honour Submission, 15 August 2009 Accessed at: https://mirror.unhabitat.org/downloads/docs/9128_29666_AURSubmission.pdf (‘UN Submission’).

⁹ Ibid.

South African government's Integrated Sustainable Rural Development and Urban Renewal Programme.¹⁰

2.8. The ARP was intended to upgrade the living conditions and human development potential in Alexandra.¹¹ Projects within the ARP were to focus on housing and infrastructure development, local economic development, urban management, environmental management and development of human skills.¹² The functional areas within the focus areas were education, engineering, environment, health, heritage, housing, local economic development, local government capacity building, safety and security, sport and recreation, and welfare.

2.9. More specifically, the ARP, its partners and its people, were responsible for de-densification of people living in Alex to appropriate land and housing; upgrading existing housing; upgrading security of tenure; creating additional affordable housing; rehabilitating single-sex hostels into family units; fixing water and sanitation services, roads, street lighting, rainwater drainage; improving access to healthcare; fixing and maintaining school buildings; improving policing and safety and security and reducing levels of crime and violence; and ensuring a healthy and clean living environment in Alex.

2.10. The ARP was allegedly kick-started with financial capital of R1.3 billion which was to be spent over seven years.¹³

2.11. In 2009, the Gauteng Provincial Government (GPG) hailed the ARP as having “experienced far-reaching success”, and was even awarded the United Nations Scroll of Honour at the World Habitat Day, in Washington DC, for the ARP.¹⁴ According to the

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Roefs, M et. al, “Alexandra: A Case study of urban renewal for the Presidential 10 year review project - Review by the Human Sciences Research Council (Democracy and Governance Programme) In association with Indlovo Link” June 2003 at 31. Accessed at: <http://repository.hsrc.ac.za/handle/20.500.11910/8227>.

¹⁴ Media Statement, “MEC Kgaogelo Lekgoro receiving a United Nations (UN) habitat scroll of honour for Alexandra Renewal Project” 5 October 2009. Accessed at: <https://www.gov.za/mec-kgaogelo-lekgoro-receiving-united-nations-un-habitat-scroll-honour-alexandra-renewal-project#>.

GPG's submission to UN Habitat the ARP was successfully implemented between 2001 and 2009 because, amongst other things:¹⁵

- 2.11.1. The rate of unemployment was reduced through the Expanded Public Works Programme;
- 2.11.2. 7 000 families were relocated from the banks of Jukskei River and its banks grassed and cleaned up;
- 2.11.3. Existing housing had been upgraded, new housing was developed and transferred, hostels had been redeveloped and persons living in informal settlements had been resettled;
- 2.11.4. Water and wastewater systems were upgraded with 72% of Alex residents gaining access to water and sanitation and 88% having access to safe electricity;
- 2.11.5. 46 000 hygienic refuse bins were distributed throughout Alex and Pikitup refuse collection had improved;
- 2.11.6. A school, a library, a business support centre, parks and new clinics had been completed; and
- 2.11.7. The Alexandra Development Forum created a platform for community engagement and participation.

The #AlexTotalShutdown

"Ask anyone you come across in Alexandra what the Alexandra Renewal Project has brought to the area and you are likely to be met with a shrug of the shoulders. The more vocal residents will tell you that the money allocated for the project has been "stolen"." - Bheki Simelane and Yanga Sibembe

- 2.12. Protest action and media reports, from 2018 and 2019, tell a different story to that of the GPG and its 2009 UN Scroll of Honour.

¹⁵ Ibid 9, at pages 7-8.

- 2.13. In April 2018, Alex experienced strikes in respect of illegal land invasion or illegal land occupation.¹⁶ In August 2018, elderly Alex residents protested outside the Gauteng Department of Human Settlements demanding that government resolve their land claims, which included issuing title deeds for those who were on land and providing alternative accommodation or compensation for those who had lost their land through government expropriation.¹⁷ From a 2018 article on the Alexandra Heritage Centre, it appeared that the Centre is completely dependent on private funding, with little to no support from the Gauteng Department of Sports, Arts and Culture.¹⁸
- 2.14. According to Mr Bobby Solomons, of the ATS, the Shutdown, happened because there was no meaningful response to assure the community of Alex that their service delivery grievances would be addressed. The service delivery grievances that the community protested about did not begin under the then-current leadership of the Democratic Alliance. They began during the previous administration but were never subsequently addressed or resolved.
- 2.15. Mr Solomons advised that on 21 February 2019, a petition was submitted to the CoJ, listing the Alex community's service delivery grievance. No response was received but when Alex community members later asked for feedback from their ward councillor, the response was that the CoJ did not have capacity to address the grievances.
- 2.16. This protest action then escalated and by March 2019, the ATS had plans to shut down Alex as well as the neighbouring affluent Sandton CBD. The purpose of the Shutdown was to bring attention to a long list of grievances suffered by residents of Alex, which included:
- 2.16.1. Bad policing and the decay of the township;¹⁹

¹⁶ Dlamini, P, "Joburg hit by multiple protests, aside from strike" 25 April 2018, Times Live. Accessed at: <https://www.timeslive.co.za/news/south-africa/2018-04-25-joburg-hit-by-multiple-protests-aside-from-strike/>.

¹⁷ Khubeka, T, "Alexandra protesters demand govt resolve land claims" 8 August 2018, Eye Witness News. Accessed at: <https://ewn.co.za/2018/08/07/alexandra-protesters-demand-govt-resolve-land-claims>.

¹⁸ Blignaut, C, "A cultural centre flowers in Alexandra after 20 years of efforts" 24 September 2018 City Press. Accessed at: <https://www.news24.com/citypress/news/a-cultural-centre-flowers-in-alexandra-after-20-years-of-efforts-20180924>.

¹⁹ Dlamini, P, "Angry residents take to the streets in Alexandra 'total shutdown' protest" 3 April 2019, The Sowetan. Accessed at <https://www.sowetanlive.co.za/news/south-africa/2019-04-03-angry-residents-take-to-the-streets-in-alexandra-total-shutdown-protest/>.

- 2.16.2. Land invasions and RDP occupation;²⁰
 - 2.16.3. A lack of access to sustainable housing;²¹
 - 2.16.4. A lack of access to healthcare and social services;²² and
 - 2.16.5. Poor roads, and no access to electricity, water, sanitation and refuse collection.²³
- 2.17. For many Alex residents and members and supporters of ATS, the ARP had brought them nothing with some alleging that the money allocated to the ARP had been stolen.²⁴

The SAHRC and PPSA Site Visit

- 2.18. In response to the media reports of threats of the Shutdown, on 3 and 4 April 2019, representatives of the Commission's Gauteng and national offices, together with officials from the **PPSA** visited Alex to conduct site inspections, undertake preliminary engagement with community members of Alex and in so doing, to assess the situation.
- 2.19. The site inspections were conducted together with the ATS and covered Setjwetla, the Alexandra women and men's hostels, the Marlboro Cemetery, and the sports field at the KwaBhekiLanga High School ("**the Site Inspections**").
- 2.20. Based on the Site Inspections and engagement with residents of Alex, the Commission and the PPSA came to understand that the protest action was predominantly in response to the lack of the realisation of socio-economic rights in Alex.
- 2.21. Following the site inspection, and in accordance with the Terms of Reference set out in section 4 of this report, the Commission and the PPSA established a joint inquiry into the prevailing socio-economic conditions and the alleged maladministration in the running of Alex, with a specific focus on the delivery and realisation of the ARP. The

²⁰ Ibid.

²¹ Lekabe, T, "This what Alexandra residents actually want from government", April 2019, Eye Witness News. Accessed at: <https://ewn.co.za/2019/04/17/this-is-what-alexandra-residents-actually-want-from-mashaba>.

²² Ibid.

²³ Ibid.

²⁴ Simelane, B and Sibembe, Y, "Alexandra Renewal Project: Search for the missing R1.6bn" 12 April 2019, Daily Maverick. Accessed at: <https://www.dailymaverick.co.za/article/2019-04-12-alexandra-renewal-project-search-for-the-missing-r1-6bn/>.

SAHRC would, based on its constitutional mandate, focus on socio-economic rights and related issues, while the PPSA, based on its constitutional mandate, would focus on maladministration and related issues.

3. The Mandate and Powers of the Commission

The Constitution

3.1. The Commission is an independent institution established in terms of section 181 of the Constitution to strengthen constitutional democracy. Section 184(1) provides that the Commission must:

- “(a) promote respect for human rights and a culture of human rights;*
- (b) promote the protection, development and attainment of human rights;*
and
- (c) Monitor and assess the observance of human rights in the Republic.”*

3.2. Section 184(2) of the Constitution empowers the Commission to monitor, investigate, research, educate, lobby, advice and report, on matters where human rights may have been violated.

The SAHRC Act

3.3. In addition to the broad powers and functions conferred on the Commission by the Constitution, the Commission’s power and obligations, are fleshed out, more specifically, in the South African Human Rights Commission Act 40 of 2013 (**‘SAHRC Act’**). The sections set out below make up the empowering provisions which have enabled the Commission to independently investigate the Alex socio-economic challenges, establish the Inquiry as a form of investigation, engage organs of state and civil society, and which empower the Commission to make the recommendations as set out at the end of this Report.

3.4. In terms of section 13 of the SAHRC Act, the Commission is empowered to:

- “(i) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights;*
- (ii) undertake such studies for reporting on or relating to human rights as it considers advisable in the performance of its functions or to further the objects of the Commission; and*

- (iii) *request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights*.²⁵

3.5. In terms of the SAHRC Act, the Commission:

- “(iii) must liaise and interact with any organisation which actively promotes respect for human rights and other sectors of civil society to further the objects of the Commission;*
- (iv) may consider such recommendations, suggestions and requests concerning the promotion of respect for human rights as it may receive from any source;*
- (v) must review government policies relating to human rights and may make recommendations;*
- (vi) must monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission*”.²⁶

3.6. The Commission is also competent—

- “(a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum; and*
- (b) to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.*”²⁷

3.7. In addition the SAHRC Act requires that “[a]ll organs of state must afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.”²⁸

3.8. In order to give effect to the powers and obligations set out in section 13 of the SAHRC Act, the Commission may

- “(a) conduct or cause to be conducted any investigation that is necessary for that purpose;*

²⁵ Section 13(1)(a).

²⁶ Section 13(1)(b).

²⁷ Section 13(3).

²⁸ Section 13(4).

- (b) *through a commissioner, or any member of staff duly authorised by a commissioner, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;*
- (c) *require any person by notice in writing under the hand of a commissioner ... in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice must contain the reasons why such person's presence is needed and why any such article or document should be produced".²⁹*

3.9. The Commission may also, in order to give effect to its powers and obligations set out in section 13:

- "(1) ... search any person or enter and search any premises on or in which anything connected with an investigation is or is suspected to be.
- (2) *The entry and search of any person or premises under this section must be conducted with strict regard to decency and order, including the protection of a person's right to—*
 - (a) *respect for and protection of his or her dignity;*
 - (b) *freedom and security; and*
 - (c) *his or her personal privacy.*"³⁰

3.10. As regards reports by the Commission and any findings therein, in terms of the SAHRC Act:

- "(3) *The Commission may ... in the manner it deems fit, in writing, make known to any person, the head of the organisation or institution, or the executive authority of any national or provincial department, any finding, point of view or recommendation in respect of a matter investigated by it.*
- (4) *If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the head of the organisation or institution or the executive authority of any national or provincial department concerned, the head of the organisation or institution or the executive authority of any national or provincial department concerned must within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking*

²⁹ Section 15(1) (a)-(c).

³⁰ Section 16(1)-(2).

*any steps to give effect to such finding or recommendation, if any such steps are required.*³¹

3.11. In addition, the findings of an investigation by the Commission must, when it deems it fit but as soon as possible, be made available to any person implicated thereby.³²

³¹ Section 18(3)-(4).

³² Section 18(5).

4. Terms of Reference

The Objectives of the Inquiry

4.1. Following the Site Inspections and engagement with ATS and residents of Alex, the Commission and the PPSA were able to determine, that generally, the discontent that motivated the protest arose as a result of:

- 4.1.1. A lack of service delivery in general;
- 4.1.2. A lack of refuse removal, specifically;
- 4.1.3. A lack of access to adequate housing;
- 4.1.4. Illegal electricity connections;
- 4.1.5. Illegal structures being erected;
- 4.1.6. Failure by the City of Johannesburg Metropolitan Municipality (**CoJ**) to enforce the relevant by-laws to address the construction of illegal structures and illegal electricity connections;
- 4.1.7. High levels of crime and a lack of police resources; and
- 4.1.8. An understaffed and under-resourced local fire station.

4.2. The objectives of the Inquiry was therefore to investigate and understand how the three spheres of government (national, provincial and local) have dealt with their constitutional obligations to realise socio-economic rights in Alexandra. More specifically, the objectives of the Inquiry were to determine whether or not the national and provincial departments of Human Settlements, Water and Sanitation (**DHSWS**), Cooperative Governance and Traditional Affairs (**CoGTA**), Social Development (**DSD**), Basic Education (**DBE**); the South African Police Service (**SAPS**) and the Department of Community Safety (**Community Safety**); and the City of Johannesburg (**CoJ**):

- 4.2.1. had responded to the ongoing social challenges in Alex;
- 4.2.2. engaged, meaningfully and in good faith, with the people of Alex, with a view to finding humane and pragmatic solutions to their grievances related to provision of municipal services;

- 4.2.3. experienced any administrative, operational and financial challenges (either individually or jointly) impeded on the delivery of access to socio-economic rights in Alex;
 - 4.2.4. had made budget allocations and distributive decisions, in respect of Alex, that were reasonable and commensurate with the need to give effect to the progressive realisation of the rights of the community;
 - 4.2.5. Devised and implemented a coherent and coordinated programme, in accordance with applicable legislation and policy, designed to meet their constitutional obligations ; and
 - 4.2.6. Utilised the R1.3 billion budget allocated for the ARP, in accordance with its purposes.
- 4.3. In respect of housing the Inquiry aimed to ascertain whether or not:
- 4.3.1. the three spheres of government had either devised, implemented, monitored, or ensured the development and rollout of a housing programme in Alex, incorporated reasonable measures to provide relief for those in need of housing (including urgent and emergency housing); and
 - 4.3.2. alternatives, including resettlement, relocation, land and / or stand allocation, had been developed to ensure access to adequate housing for the Alex community over time; and
- 4.4. With regards to policing, the Inquiry aimed to ascertain the adequacy of policing in the community of Alex, specifically as it impacted vulnerable and marginalised persons (with particular reference to women, children, persons with disabilities, foreign nationals, and the LGBTQI community).
- 4.5. Once the information was gathered, the objectives of the Inquiry then shifted to making findings and making recommendations based on findings.
- 4.6. We remind the reader that within these objectives, the SAHRC focused on socio-economic rights, while the PPSA focused on maladministration and corruption.

4.7. Nature and Proceedings of the Inquiry

4.8. The proceedings were inquisitorial in nature.

4.9. The Inquiry Panel comprised:

4.9.1. Mr Buang Jones, Gauteng Provincial Manager of the Commission & Inquiry Chairperson;

4.9.2. Ms Princess Kelebogile Ka-Siboto, Senior Legal Officer, LSU of the Commission;

4.9.3. Ms Alexandra Fitzgerald, Senior Legal Officer, LSU of the Commission;

4.9.4. Mr Matthew Du Plessis, Senior Legal Officer, GPO of the Commission;

4.9.5. Harriette Buga, Legal Officer, GPO of the Commission; and

4.9.6. Mr. Vusumuzi Dlamini, Senior Investigator, Public Protector South Africa.

4.10. The Commission invited both written and oral submissions from interested parties. Parties who provided submissions were entitled to legal representation, but oral submissions had to be made by the interested party themselves and not their legal counsel.

4.11. The first part of the Inquiry was open to all interested parties, members of the public and media ("**the Public Inquiry**"). This was followed by an in-camera / private inquiry ("**the Private Inquiry**") where parties implicated by submissions made during the Public Inquiry, such as the CoJ, government departments and political parties were allowed to provide responses to submissions in which they were implicated, to the Inquiry Panel.

4.12. Submissions were made by local, provincial and national government, community forums, NPOs and individuals.

4.13. Proceedings of the Inquiry were recorded and transcribed.

5. A Summary of the Public Submissions Made to the Panel by Participants of the Inquiry

On 13 May 2019, the Commission and the PPSA held a public forum with the residents of Alexandra at the East Bank Community Hall, to afford the residents of Alexandra a platform through which to share their experiences and challenges as residents which led to the total shutdown.

For the sake of convenience and clarity, submissions have been divided into the different socio-economic rights at issue during the protests and the Inquiry:

Property and Housing

Illegal Structures and Illegal Occupations

- 5.1. Mr Bobby Solomons, the spokesperson for the ATS highlighted the issue of land invasion and the construction of illegal structures, particularly in unsafe places, such as under electric pylons. He insinuated that the building of illegal structures under the electric pylons caused a cable to collapse causing a fire to break out in a settlement, in Alex, requiring residents to be evacuated. Mr Solomons and Mr Sandile Mavundla, also of ATS submitted, with reference to climate change, that they were concerned with people who were continuously building or erecting informal structures on flood lines.
- 5.2. The Panel also heard from a long-term resident of Alex, whose access to their own yard had been limited by the erection of a shelter during an unlawful occupation.
- 5.3. Mr Solomons stated that many elderly residents of Alex, who had applied for RDP housing in 1996 and who still had Form C-RDP slips and were either, still waiting for their RDP house or, through corrupt activity, had their RDP house given to or occupied by land invaders. These land invaders are alleged to be foreign nationals.

Relocations

- 5.4. In 2001, approximately 6800 informal settlement residents in Alex, who qualified for a housing subsidy were relocated to RDP houses in Braamfischerville, while those who did not were moved to Diepsloot, where they would allegedly be afforded opportunities for housing. This move at the time triggered criticism from both Alex residents and the SAHRC on account of the physical distance of the relocated sites from Alex. Residents were moved far away from their community and services, schools and employment. As a result, a significant number of those relocated, returned to the banks of the Jukskei River.

5.5. Ms Malebou Mogabodi and Ms Kiyalani Makalani, secretary and chairperson of the Anti-Rental Committee (**ARC**), respectively, told the Inquiry Panel that the CoJ demolished 4000 houses and thereafter relocated the households to subsidised rental accommodation, particularly the K206 Flats in Extensions 9 and 10 of Alex, which some could not afford. Rentals were charged in the sum of R700.00 for two bedroom flats and R350.00 for one bedroom flats respectively. These rates applied even if the householders were unemployed. The ARC was formed as households did not want their homes demolished and did not want to pay rent. They believed that the landlords were foreign nationals working with the CoJ.

5.6. Participants also provided information on expropriation for redevelopment of land in Alex, which took place in 2005. Residents were offered approximately R50 000.00 for their properties, regardless of the actual value of their property or the property price they or their parents or grandparents paid when the plot was first acquired. Mr Motivo Segopa from Alexandra Land and Property Owners Association (**ALPOA**) informed the panel that ALPOA had successfully applied to the Land Claims Court to interdict against the demolition of properties (despite the receipt of compensation for expropriation). The CoJ later applied for the interdict to be rescinded, in 2008 or 2009. It is unclear whether the rescission application was successful or not.

Housing Development

5.7. The Inquiry Panel was informed that multitudes of households still live in informal settlements.

5.8. Participants informed the Inquiry Panel that the 1700 units built in Tsutsumani were of an exceptionally low standard.

5.9. Elderly residents also made submissions to the Inquiry Panel around the allocation of government housing to younger people. They told the Panel that despite having waited for housing since 1996 and having the necessary documentation to show they were eligible and waiting, younger persons had been allocated housing before them.

5.10. Mr Mavundla, of ATS, added that in 2016, a statement of intent to engage with property owners and to develop Alex was signed by then Mayor, Mr Parks Tau of the CoJ, then Land Claims Commissioner, Ms Cindy Benyani, MEC for Human Settlements, Mr Paul Mashatile, and representatives of ALPOA and the South African National Civic Organisation. According to Mr Mavundla nothing has happened subsequent to the signing of the statement

Redevelopment of Hostel Accommodation

- 5.11. The Inquiry Panel also heard that the state of dilapidation of the Madala Hostel (“**Madala**”) has left the tenants disgruntled. According to residents a portion of the roof of Madala burned down while another section of the roof was blown off and remained that way for three years.
- 5.12. The Inquiry Panel was informed by residents that the Helen Joseph Hostel (“**Helen Joseph**”) was also dilapidated, and overcrowding resulted in too many people having to share limited sanitation facilities. As a result sewerage blockages were common at Helen Joseph. Raw sewage has on several occasions spilt into communal areas, either as a result of sewerage blockages in the Hostel or blocked storm-water drains causing sewage to flow into the Hostel, exposing residents to bacterial and viral diseases caused by exposure to raw sewage. The residents stated that this housing and water and sanitation violation extended to a violation of the right “to an environment that is not harmful to their health or well-being” as per Section 24(a) of the Constitution.

Water, Sanitation, Refuse Removal; and the Right to a Clean Environment

Water

- 5.13. Access to water varies within Alex. Formal areas such as Tsutsumani Village have piped water, while water in informal settlements, like Setjwetla, is generally limited to communal water sources. The Commission noted, on the Site Visit, that the communal water sources were, in contravention of the Compulsory National Standards Regulation’s 200 metre requirement as they were quite far from some households, which rendered access to water difficult, especially for children, women, elderly persons and persons with disabilities.

Wastewater Management

- 5.14. The Inquiry Panel was informed that sewerage services are primarily provided in the formal areas of Alex, with informal settlements not receiving proper sewerage services, thus, while some parts of Alex have benefited from the CoJ’s 2018 initiative that linked the standpipes to underground septic tanks or to a sewerage network to channel greywater, most informal settlements did not.

- 5.15. According to the CoJ, informal settlements residents are provided with chemical toilets. There are approximately 1175 chemical toilets in Alex. Approximately eleven households (with an average of five persons to a household) each share one toilet.
- 5.16. In the area of Silvertown, within Alex, the ratio of chemical toilet to person is much higher. The Commission was made aware during the Site Inspection that due to the rapid increase in alleged illegal occupation in Silvertown, approximately thirteen chemical toilets serve 70 households.
- 5.17. An additional problem with the chemical toilets, raised by residents before the Inquiry, was that the chemical toilets were, more often than not, located on the outskirts or edges of informal settlements raising concerns about safety for the women and children who would have to navigate the respective informal settlements to use the toilets.
- 5.18. These safety concerns along with the sheer number of individuals having to make use of a single chemical toilet, and the health concerns, contribute to the ongoing willingness of households to find alternative solutions all of which invariably result in excrement being disposed directly into the Jukskei River, further polluting the environment. In Setjwetla, during the Site Visit, it was observed by the Commission, that some residents in informal housing located on the banks of the Jukskei River, had erected makeshift sewer pipes to direct raw sewerage directly into the river. This added substance to the submissions from Edenvale River watch that Alex is one of the peak inflows of sewerage pollution into the Jukskei River resulting in dangerously high E.Coli levels.
- 5.19. The Commission also observed that some people opted to relieve themselves directly in the Marlboro graveyard.
- 5.20. Where sewerage systems do exist, blockages are a major problem. According to submissions, it has taken the CoJ many years to address sewage blockages at Helen Joseph Hostel. The Inquiry Panel heard that it had become the norm for the approximately 3000 residents of the Hostel to live in a building with regular raw sewage spills caused by poor maintenance.

Refuse Removal

- 5.21. According to submissions, the informal settlements are provided with refuse bags, while formal areas of Alex are provided with bins and skip containers ('**skips**').

5.22. During the Site Visit, the Commission's team observed that, in Setjwetla, garbage was dumped in the Marlboro Cemetery and into the Jukskei. The Commission also noticed that some residents had compacted garbage to create platforms upon which to erect their shacks on either side of the Jukskei River banks.

5.23. In addition to the litter that is strewn on the streets of Alex, the Inquiry Panel was informed that overflowing skips are a permanent feature contributing to air pollution, which leads to respiratory illnesses and promotes a proliferation of rats as well as flies.

5.24. A resident complained to the Inquiry Panel that she had been reporting illegal dumping of refuse, which has left them exposed to the waste, for the past two years to no avail.

Healthcare

5.25. In respect of healthcare, the Commission noted that residents of Alex struggled with access. This was due to the ratio of residents to clinics resulting in clinics being overburdened, as well as the far distances some residents have to travel to reach their nearest clinic.

Social Welfare

5.26. The biggest concern for residents of Alex was that they could only access DSD's offices in downtown Johannesburg, as there was no closer office.

Education

5.27. In terms of issues relating to education, Mr Sandile Mavundla of ATS submitted to the Inquiry Panel that the land invaders were also invading schools. The Minerva High School was an example where land ear-marked for future expansion to provide sport facilities had been invaded.

Freedom and Security – Policing

5.28. A police station in Alex, has a service ratio of one police officer to approximately 730 Alex residents (although this ratio in all likelihood is higher). This ratio is higher than the United Nations (UN) recommended ratio of one officer to 220 people. These limited policing resources invariably impact on the ability of the police to render an appropriate service.

5.29. Residents also pointed out that the CoJ was failing to enforce by-laws, particularly when it came to illegal land occupation and illegal electricity connections.

6. A Summary of the Responses to the Public Submissions Made to the Panel by Participants of the Inquiry

From 18 April 2019, the Commission and the PPSA allowed departments and representatives implicated in the submissions made by the residents of Alex, to respond to the submissions. For the sake of convenience and clarity, responses, like submissions, have been categorised into the different socio-economic rights at issue during the protests and the Inquiry:

The responses relating more generally to the administration of services to the people of Alex are first summarised and are followed by responses in respect of each socio economic rights.

General Administration of Alex

The IDP

- 6.1. Reference was made to the Integrated Development Planning for Local Government (“**the IDP**”).³³ Approximately 1022 Alex residents attended the 2019/20 IDP meeting for Alex. However, the meeting was ultimately disrupted by the Shutdown.
- 6.2. The CoJ stated that additional consultative sessions were organized, but in general the number of attendees in these consultative meetings decreased over time. The Johannesburg Development Agency (**JDA**) identified various reasons for this lack of participation. The first of these reasons, was that it was difficult to reach residents of Alex directly and to have their voices heard and input noted. (He did not explain why exactly). The second reason noted, was labelled as consultation fatigue – the residents are tired of talking and not seeing results. The third reason noted, was that, according to JDA, there was a marked increase in the level of distrust in the state. The fourth and

³³ “Local municipalities in South Africa have to use “integrated development planning” as a method to plan future development in their areas. Apartheid planning left us with cities and towns that: have racially divided business and residential areas; are badly planned to cater for the poor - with long travelling distances to work and poor access to business and other services; have great differences in level of services between rich and poor areas; and have sprawling informal settlements and spread out residential areas that make cheap service delivery difficult. Rural areas were left underdeveloped and largely unserved. The new approach to local government has to be developmental and aims to overcome the poor planning of the past. Integrated Development Planning is an approach to planning that involves the entire municipality and its citizens in finding the best solutions to achieve good long-term development. An Integrated Development Plan is a super plan for an area that gives an overall framework for development. It aims to co-ordinate the work of local and other spheres of government in a coherent plan to improve the quality of life for all the people living in an area. It should take into account the existing conditions and problems and resources available for development. The plan should look at economic and social development for the area as a whole. It must set a framework for how land should be used, what infrastructure and services are needed and how the environment should be protected.” Integrated Development Planning for Local Government. Accessed at: <https://www.etu.org.za/toolbox/docs/localgov/webidp.html>.

final reason, which relates to the third reason, was that most residents are interested and concerned only with initiatives and funded projects that are likely to have immediate tangible outcomes, whereas the IDP is aimed at more medium to long-term projects.

6.3. According to Gauteng Cooperative Governance MEC, Mr Lebogang Maile, a decrease in participation, by Alex Residents, in the IDP meetings was that municipalities themselves have undermined the participatory intent by approaching the development of the IDP simply as a matter of compliance.

Community Assessment of Services

6.4. The CoJ admitted that it had a responsibility to develop and maintain a system whereby the community can assess municipal services.

6.5. The CoJ advised that approaches put in place include:

- 6.5.1. annual surveys;
- 6.5.2. an ombud;
- 6.5.3. a satisfaction survey conducted by an academic service provider;
- 6.5.4. the Gauteng quality of life survey; and
- 6.5.5. residents being able to petition, email and phone the CoJ.

6.6. In terms of petitions, according to the CoJ, there is a requirement that ward councillors present any petitions received to the City Manager. These petitions are then able to be tabled and raised during the monthly Council Meetings where a standing agenda item on petitions is discussed. If the Municipal Council resolves to adopt a petition, the City Manager must record progress reached in addressing the issues raised in the petition every quarter.

6.7. The CoJ also has employees specifically tasked to ensure that the needs and issues raised by the community are addressed. The community is made aware of these platforms at cluster meetings.

Intergovernmental Relations and Oversight

6.8. One of the key questions posed to the GPG and the Office of the Premier, by the Inquiry Panel was their assessment on the need to intervene in the affairs of the CoJ given

mounting challenges in the provision of municipal services such as water, electricity, refuse removal, and municipal infrastructure in Alex.

6.9. The Office of the Premier, Gauteng, indicated that despite the challenges in service delivery in Alex, CoGTA and the Gauteng Treasury did not raise failures by the CoJ to fulfil its service delivery obligations, nor did it submit a report to that effect, thus there were no constitutionally grounded triggers that warranted the Executive Council to initiate any of the intervention steps, in accordance with section 139 of the Constitution.

6.10. The Office of the Premier added that it had, however, cautioned CoGTA regarding the lack of support and oversight of municipalities in the Gauteng Province. The Office of the Premier ultimately requested that CoGTA revisit its functions and reposition its ability in order to properly and effectively supervise municipalities.

Intergovernmental Relations and Collaboration

6.11. According to Community Safety, a provincial assessment undertaken by it revealed that one of the problems was that developments took place in isolation – not all Departments affected by the development or who were needed to provide services were consulted. For example, houses would be built but there would be no bulk services because all of the related departments' working on such development were not aligned, thus delaying handover to the rightful owners.

6.12. The Inquiry Panel was informed that further misalignment existed with regards to municipal, provincial and national objectives and imperatives. It was noted that Gauteng DHSW lacked clear plans that could be shared with other national and provincial departments to alert them of what it planned to do in the next five years. Conceptualization of DHSWS's projects had been ad hoc and not well thought out. With this approach to projects; coordinated planning was not possible. This meant that the DHSWS sometimes could not get complementary service support due to a misalignment in departmental plans, priorities and budgets.

6.13. In response the MEC for the Gauteng DHSWS informed the Inquiry Panel that as part of addressing this lack of project coordination, the Gauteng DHSWS would draft a human settlements master plan and disseminate it to other departments so that they could align their budgets.

Intergovernmental Relations and Financial Collaboration

- 6.14. The Inquiry Panel was informed that the National DHSWS provides a Human Settlements Development Grant (**HSDG**) to the Province, while the Province in turn provides funding to the Urban Settlements Development Grant (**USDG**), previously the Municipal Infrastructure Grant of municipalities, such as the CoJ.
- 6.15. According to national policy, 50% of the USDG has to be assigned to the provision of services to households in informal settlements. The use of the USDG funds are allegedly monitored through quarterly meetings where the Province and the CoJ present their targets and outputs.
- 6.16. Additional funding provided by national and provincial government includes:
- 6.16.1. The Deeds Restoration Grant to facilitate and increase registration of title deeds to households;
 - 6.16.2. The Emergency Services Grant, aimed at assisting in responding to emergencies, such as informal settlements fires, flooding and the need for emergency temporary accommodation. The fund requires provinces to lodge an application with the national government for access to such funds; and
 - 6.16.3. The Informal Settlements Development Grant, introduced in 2019/2020, and developed in response to findings of a monitoring and evaluation report that indicated that both cities and provinces lacked a sense of urgency when dealing with the plight of households in the informal settlements. The grant was also set up in line with the new Urban Agenda. The grant prioritises the upgrading of informal settlements.

Property and Housing

Illegal Structures and Illegal Occupations

- 6.17. Although the causal factors behind occupations can be appreciated and sympathised with; unlawful occupations often have an impact on the state's attempt to provide dignified human settlements and homes for people living in South Africa. According to research undertaken the in situ upgrading of an existing informal settlement can be up

to three times more expensive to achieve than what it would be to develop an unoccupied area or what is referred to as a “green-fields” development.³⁴

6.18. The further economic impact of unlawful occupations can be illustrated by the implications of the unlawful occupation of then to be completed River Park Flats. According to Gauteng DHSWS, due to the unlawful occupation, R100 million will be required to complete construction of the project. R80 million of this sum had been diverted from other budgetary line items for construction in order to facilitate the eviction (and relocation) of the unlawful occupants.

6.19. Lawful eviction applications, brought by the CoJ are, according to submissions, often stalled because no alternative arrangements to house or move occupiers exist. The reality is that limited access to suitable land is something the CoJ has to contend with. This limited access has on occasion even compelled the CoJ to allow structures to be rebuilt in areas or on land that is unsafe.

6.20. Furthermore, DHSWS also submitted that over the past few years it has also been required to spend around R700 million on security in order to prevent unlawful occupation. DHSWS claimed further that an additional R4 million had to be spent on the removal of unlawfully occupied structures erected, dangerously, on power line servitudes.

6.21. There are, however, allegations against the CoJ that it carried out evictions and demolitions in Alex, illegally. The CoJ was, at the time of the publishing of this report, still investigating these allegations.³⁵

6.22. According to former MEC Moiloa, the proliferation of unlawful occupations in Alex could partly be attributed to the call, by the head of the Economic Freedom Fighters (**EFF**), Julius Malema, for people to occupy land. The EFF’s utterances, are according to submissions, devoid of any appreciation of the complexity of the urban land question.

³⁴ Fergusson, B. and Navarette, J. 2003. A financial framework for reducing slums: Lessons from experience of Latin America. *Environment and Urbanization*, 15(2):201-216.

³⁵ Khanyisile Ngcobo, “City of Joburg orders full investigation into Alexandra evictions” 31 May 2019, IOL. Accessed at: <https://www.iol.co.za/news/south-africa/gauteng/city-of-joburg-orders-full-investigation-into-alexandra-evictions-24580277>; and Nation Nyoka, “Neglected, Alex resembles its old name of Dark City”, 31 July 2019, The New Frame. Accessed at: <https://www.newframe.com/neglected-alex-resembles-its-old-name-of-dark-city/>.

6.23. SAPS' role in respect of unlawful occupation and structures is discussed under Freedom and Security.

Relocations and Expropriations

6.24. The Gauteng DHSWS conceded that the R50 000 compensation offered and paid to Alex residents, in 2005, was unfair, legally unfounded, and necessitated a re-valuation.

6.25. Following the failed relocation to Braamfischerville and Diepsloot, the CoJ resolved, through ARP policy, that relocations would only be undertaken if the new areas were within a 10km radius of Alex. In addition, the CoJ began to take established relational social structures into account when relocating people and embraced an integrated development approach and not just housing delivery.

Housing Development

6.26. The Panel was informed that, initially, at the establishment of ARP the electricity network serving the Alex informal settlements were particularly unstable in part due to the number of both legal and illegal connections. This was resolved by switching the electrical network from an underground system to an overhead system in order to avoid cable theft and illegal connections. In a further attempt to further limit illegal connections City Power initiated a realignment exercise in order to provide prepaid metred electricity.

6.27. 33 000 households have since been connected to the electrical grid. In addition the Organic Market and Setjwetla sections were electrified.

6.28. The decision to relocate residents to areas within a 10km radius of Alex, had the consequence of housing targets being reduced from 45 000 to 21 500, due to limited land within a 10km radius. 10 200 units were established in the East Bank and the Far East Bank leaving about 11 300 to be provided on land outside of Alex but within the broader region, that is, not more than 10km away.

6.29. DHSWS, informed the Inquiry Panel that the prohibitive cost of privately owned land also continued to impact on the ability of government to acquire land for de-densification, for new developments or simply to ensure security of tenure for households that had near indefinitely occupied private land.

- 6.30. By 2004, only 639 houses were built in Alex, due to varying problems including property rights. 1700 and 181 housing units were built in Extensions 7 and 8 in the Far East Bank respectively.
- 6.31. The Inquiry Panel was informed that through the ARP 840 double-storey units and 1424 semi-detached double-storey houses, with two rental rooms, were constructed between 2009 and 2011. In the same period, an additional 50 flats were built in Marlboro, and in order to accommodate and house the elderly and disabled residents of Alex, 1200 specially designed houses were at the time of the Inquiry, being constructed.
- 6.32. In respect of the submission that elderly applicants were being overlooked in favour of young housing applicants, the CoJ stated that young people who applied for formal housing would claim that the elderly were their dependents. However, once the houses had been allocated, unbeknownst to the CoJ, the elderly were then not included in the household. To make matters worse the CoJ, on paper, then saw these specific elders as having been catered for and so removed them from the beneficiary management system.
- 6.33. In some instances, the CoJ alleged, the elderly themselves would secure public housing only to hand it over to their children while they continued to live in informal housing.
- 6.34. According to the CoJ it introduced the Rapid Land Release Programme (RRLP), to give Alex residents who qualified for housing subsidies the opportunities to secure their own land and/or housing, including title deeds, by bidding on specific portions of state-owned land. The RRLP allowed residents to bypass existing subsidised housing application processes and waiting lists.
- 6.35. In addition, through the RRLP, several Alex residents who had been waiting for title deeds to secure tenure, were issued with title deeds. According to the CoJ, the main beneficiaries of these title deeds were child-headed households, single-parent headed households, households where the original applicant had passed away, existing tenants and to the recipients of newly built houses. In cases where the applicant had passed away, the legal beneficiaries were identified with assistance of the housing tribunal. In some instances this was not feasible.
- 6.36. The CoJ advised the Panel that it had made notable progress towards ensuring that households in Alex were better accommodated in and connected to surrounding areas.

Roads in Alex were widened and tarred under ARP. The extension of Rautenbach Street and the widening of Watt Street improved access to Sandton. In addition, the Old Vasco Da Gama was upgraded to improve the connectivity between West Bank and East Bank, and the pedestrian bridges built across Jukskei River had improved connectivity within Alex.

6.37. Similarly, the construction of the pedestrian bridge over the M1 motorway allowed residents of Alexandra to more readily access the economic hub of Sandton and its surrounds.

6.38. Greater accessibility to and from Alex has also been achieved through the extensive Rea Vaya investment in the area. This investment was further bolstered by various JDA transport projects. One of these is the Watt Street Interchange where Alex is the last destination on the Rea Vaya Phase 1C line. Ultimately a public transport loop around Alex, and serving Alex, will be connected to Sandton via a dedicated lane. These transport interventions have, according to the CoJ, greatly widened residents of Alex's transport options and in so doing has connected residents' homes to their places of work and to services.

6.39. DHSWS informed the panel, however, that according to study undertaken into the capacity of the department, it lacked technical expertise required for upgrading. The analysis showed that DHSWS, tasked with addressing shortcomings in built environment, which would benefit from town planning and civil engineering expertise, was mostly staffed with social science graduates. According to DHSWS it lacks the knowledge and capacity to implement informal settlement upgrading. This, according to DHSWS was reflected in the declining performance between 2014 and 2019.

6.40. In addition, a high turnover of managerial staff in the DHSWS also negatively affected institutional direction and service delivery, the Inquiry Panel was told.

Redevelopment of Hostel Accommodation

6.41. In 2017, 724 of the 1040 units at Nobuhle Hostel, were converted into family units and 90 of the 724 units were new.

6.42. According to the City residents of Madala Hostel resisted efforts to convert their units into family units. In respect of the roof not being fixed, the CoJ stated that the building

structure itself was affected; hence it seemed too risky to put a roof on it. The CoJ further stated that the Madala Hostel challenges could not be addressed by utilizing the normal maintenance budget. It required a separate budget dedicated to upgrading projects. Moreover, hostels were at the time of the Inquiry, the property of the provincial government and so this limited the municipality's ability to invest capital funds as this would be flagged as irregular expenditure in terms of the Municipal Finance Management Act. Upon realizing these limitations, the municipality approached the Gauteng Province in 2015 with the request to transfer the hostels to the municipality.

6.43. In respect of the Helen Joseph hostel, the CoJ stated that it had appointed consultants to undertake an assessment of the hostels in order to reach a lasting solution. The assessments intended to cover structural issues, electricity, gas, water, sanitation, storm water and sewerage networks. This assessment however is not the first to have been undertaken. Five years ago the CoJ was advised that what is ultimately required, in respect of hostels, is redevelopment. The City Manager acknowledged before the Inquiry that, "it's a travesty of justice that it has taken so long to fix the problems at the hostel".

Water, Sanitation, Refuse Removal and the Right to a Clean Environment

Water

6.44. In response to the 200 metre requirement, Johannesburg Water, told the Inquiry Panel that "the radius might increase to about 500 metre due to the density and the placement of infrastructure". According to Joburg Water, a lack of planned paths to communal taps, in informal settlements means that the distance cannot be standard for all residents.

6.45. The CoJ stated before the Panel that there has been an improvement in the amount of time taken to collect water as a consequence in the improvement of minimum water flow. Water pressure used to be exceptionally low around Alex East Bank because of illegal connections on the municipal infrastructure and more sub-households than the network was meant to cater for. This considerably affected water flow rate and increased the amount of time taken to collect water. The construction, by the CoJ, of the then new water reservoir in Linbro Park, which resulted in reliable supply and stable water pressure that meets Compulsory National Standards Regulation water flow standards.

6.46. The CoJ admitted that a lot of water is also lost due to leaks and burst pipes and that under-reporting of water leaks and burst pipes was a challenge in informal settlements,

including in Alex. The CoJ also conceded that underreporting could in part be attributed to the fact that neither of the two numbers to which to report water emergencies are toll free. This under-reporting leads to pipe bursts and leaks being unattended for longer than necessary which in turn affects water flow and availability.

6.47. In response to the wastage of water resulting from burst pipes and leakages, the CoJ indicated it planned to introduce a new system in which two on-site inspectors would be deployed to track both sewerage and water related faults. The inspectors will monitor developments in the informal settlements in terms of servicing chemical toilets and inspecting standpipes. Each standpipe will be inspected every week and if it needs attention, a team will be despatched to do the repairs. At the time of the Inquiry the CoJ was in the process of submitting a request to Council in order for it to make the necessary resources available.

6.48. Furthermore, in an attempt to address water wastage, Joburg Water informed the Panel that it had replaced a total of 461 kilometres of the water network over the past five years.

6.49. Moreover, the City conducted investigations into Water Demand Management (**WDM**) in October 2015. Recommendations from the investigation included the upgrading of the secondary mains infrastructure, the installation of meters and the retrofitting of household plumbing. The project was set to begin from July 2020 to June 2023 at an estimated cost of R85.7 million.

Wastewater Management

6.50. The CoJ, advised the Inquiry Panel that providing the current number of toilets matched their capacity to service the toilets at least twice a week. They also stated that insufficient space would not permit provision of more toilets even if they had the means. The incumbent City Manager explained that they were already forced to place about ten to fifteen toilets in a row, which was not ideal.

6.51. The CoJ indicated, to the Inquiry Panel, that it aims to ultimately increase the number of toilets and to reduce the ratio to one toilet to seven households, which is in line with the norms and standards of Rudimentary Services.

6.52. The City also informed the Panel that in the medium term, informal housing will get basic sanitation instead of chemical toilets once they are formalised. In order for informal housing to qualify as formal for the purposes of them having a ventilated pit latrine and/or

a communal ablution facility installed, it has to not be on private property, not be prone to flooding and must have sewerage services infrastructure in close proximity.

6.53. In respect of the breaking and blocking of current sewerage systems, the then City Manager, Dr Lukhwareni, informed the Panel that vandalism and incorrect use of the sewerage system were some of the causes for breakages and blockages. For instance, Dr Lukhwareni informed the Panel, people in Alex use of newspapers instead of toilet paper which clogs the sewerage system.

6.54. The CoJ received reports of 1286 sewer blockages in Alex, from July 2018 to end of April 2019 in Alexandra. The CoJ claimed that 96.5% of these blockages were cleared within 24 hours. This response time met the service standard set by the City which requires that 96% of the blockages reported be attended to within 24 hours.

6.55. As part of its efforts to address sewer blockages at the Helen Joseph Hostel, following an earlier intervention from the SAHRC, the City ultimately demolished a house that was built on top of a sewer manhole outside the hostel. The line was subsequently unblocked, but only for a while.

6.56. The head of the Gauteng DHSWS, Mr Sibusiso Mthembu, explained that as a Department they would approach the CoJ with a master plan on water and sanitation because at the time the CoJ would only address problems as they arose instead of implementing sustainable solutions for sewerage and wastewater management in the township.

6.57. Mr Mthembu also indicated that between 2009 and 2011, the Department provided the CoJ approximately R32 million to, amongst other things, repair sewerage pipe connections in the hostels. He informed the Panel that he did not think that the funds were properly utilised and that he believed that the CoJ had neglected its sanitation service obligations, in respect of Alex.

Refuse Removal

6.58. According to the CoJ and Pikitup, Pikitup collects waste from different designated collection points, in Alex each day.

6.59. The Gauteng DHSWS stated that in areas in Alex that were inaccessible for Pikitup trucks (due to overcrowding and no roads), waste was collected through mini excavators.

- 6.60. The CoJ advised the Panel that, following an incident in which an infant was bitten by rats and had to undergo reconstructive surgery, it introduced an Integrated Rodent Management Programme (**IRMP**). As part of the IRMP owls were introduced into the area to prey on the rats. This specific intervention was not welcomed by certain residents for whom owls hold specific negative, connotations. In addition to the owls the CoJ made use of rat traps. According to the CoJ the programme was successful.
- 6.61. The CoJ has admitted that to completely rid of Alex of all rats, it would require an integrated approach that resulted in the overall cleanliness of Alex.
- 6.62. In terms of illegal dumping into the Jukskei River, the CoJ stated that it had been working closely with the Environment and Infrastructure Services Department (**EISD**) to ensure the cleanliness of the Jukskei River.
- 6.63. The CoJ also indicated that regular tests were conducted to check the water quality of the river, but the submission was not clear on how regularly the testing was done or when last it was done.
- 6.64. The CoJ Council also approved a motion to build a fence along the banks of the River, in 2017, but this has not yet been done because the city has not reached a funded option. While the fence was mainly meant for safety, it would also be used to avert illegal dumping into the river which still takes place at a high rate, according to the CoJ.

Healthcare

- 6.65. Significant strides were made through the ARP to improve access to healthcare services. The Thoko Ngoma Clinic, River Park Clinic and the 4th Avenue Clinic were refurbished, and the nearby Edenvale Hospital was upgraded with a new HIV/AIDS clinic.
- 6.66. The Alexandra Hospice - Bana Kekeleni, also identified under ARP, is operational and funded by the Gauteng Department of Health and the JDA.
- 6.67. According to the CoJ, additional health services can be accessed from the Thusong Centre and the 8th Avenue Clinic.
- 6.68. The CoJ informed the Inquiry Panel that it had procured nine mobile clinics with specially fitted equipment. They were anticipated to alleviate pressure on the clinics once available. In the interim, the clinics' operating hours were extended beyond normal

operating hours of 08:00 to 16:30 and they are also open over the weekends in order to serve more people.

Social Welfare

6.69. Gauteng DSD informed the Inquiry Panel that in order to provide greater access to people living in Alex, it had partnered with non-profit organisations (NPOs) to share building facilities until Gauteng DSD could open its own premises in Alex. Most substantively, the Department provides different types of grants through the South African Social Security Agency (**SASSA**).

6.70. Gauteng DSD, together with the help of NPOs also deals with, and provides services for a number of issues faced by people living in Alex, such as issues of gender-based violence, family and marital problems, child protection, treatment and rehabilitation of substance abuse, foster care, pre-trial and pre-sentence services, schools social work, psychosocial support and material assistance to orphaned and vulnerable children and families. According to the Department, it endeavours to respond to social ills within a reasonable time frame but the reality is that in Alex the number of social ills that require intervention outweigh the staff complement. In addition, DSD and NPO staff work without the necessary demographic or monitoring and evaluation data and therefore have no clear sense of the needs, trends, and demand volumes in the community, or the effectiveness of the services provided.

6.71. Gauteng DSD informed the Panel that it also assists with provision of food relief through the food banks in line with the right to sufficient food. It provides uniforms, dignity packs, and facilitates the reapplication of lost documents to victims of disasters such as floods and fires.

Education

6.72. The Inquiry Panel was informed by Gauteng DBE that there are approximately 27 000 learners in Alexandra. Most of these learners attend one of the 18 public schools in Alexandra funded by the government. A small fraction of the 27 000 attend the one independent school.

6.73. According to Gauteng DBE, significant strides have been made through the ARP in removing approximately 2000 informal homes from various school premises in Alex. It is unclear as to whether informal homes were moved from the Minerva School and the relocation of the inhabitants is also unknown.

- 6.74. The Panel was also informed that renovations had been initiated at all 18 schools in Alex, and by using its capital and operational spend, Gauteng DBE engaged in further training of its educators in Alex, while learners, parents/guardians and support staff were mobilised to help contribute to a more positive and conducive learning and teaching environment. The Department attributed the improvement in the matric pass rate, from 17% in 2001 to 69% in 2006, to these interventions.
- 6.75. Gauteng DBE flagged the ongoing service delivery protests as a problem that negatively affected learners and learning outcomes. According to the Gauteng MEC for the DBE, Panyaza Lesufi, the Shutdown protests on 4 and 5 April 2019, and the Alexandra Community March to the CoJ on 8 April 2019 affected the entire schooling week. The MEC advised that eight school days were disrupted due to the protests. He indicated further however that students had made up for the eight lost learning days with the help of private organisations that provided tutoring and extra classes over weekends.
- 6.76. Another difficulty faced by Gauteng DBE, according to the MEC was the increasing number of undocumented South African and foreign national learners who are not registered on the Home Affairs system, who are not budgeted for National and Gauteng Provincial Treasury. This disconnect between the budget disbursed and the real number of learners to be accommodated, according to MEC Lesufi, severely limits the ability of the Gauteng DBE to deliver adequate services.
- 6.77. MEC Lesufi stated that learners who are undocumented foreign nationals pose a complication in trying to balance the constitutional obligation to provide “everyone” the right to “basic education”,³⁶ and the legal obligation, in terms of the Immigration Act, 13 of 2002, which requires that “[n]o learning institution ... provide training or instruction to ... an illegal foreigner [or] a foreigner whose status does not authorise him or her to receive such training”.³⁷
- 6.78. Gauteng DSD also made representations to the Inquiry Panel regarding access to basic education. Gauteng DSD informed the Panel that it funds Early Childhood Development programmes and that it is deployed in schools to address barriers to children attending school. Gauteng DSD, were however, unable to provide the Panel with statistics in respect of the number of children in Alex that were legally required to be in school and were either not in school or were regularly missing school days. The Gauteng DSD

³⁶ Section 29(1)(a) of the Constitution.

³⁷ Section 39(1)(a) and (b).

argued that a more coordinated relationship with DBE was required in order for it to capture this information and informed the Panel that it had entered into Memorandum of Understanding (MOU). In keeping with this MOU a list of schools in Alex, with serious challenges were identified and appropriate interventions developed which yielded some positive results.

Freedom and Security – Policing

- 6.79. According to the director of the By-law Management Unit at the Johannesburg Metropolitan Police Department (**JMPD**), “Alexandra is a very difficult place to police because of the space environment...there is congestion”. Both Community Safety and JMPD submitted that it was impossible to conduct foot patrols due to safety concerns in the informal settlements. Similarly, due to overcrowding, roads have become narrower and patrols by car have therefore also become a challenge.
- 6.80. According to Community Safety poor street lighting and the proliferation of alcohol outlets in Alex contributed to an increase in crime.
- 6.81. Given the implications of occupations for the state and for communities; and given the requirements placed on the state in order to address unlawful occupations, the involvement of the SAPS is inevitable. The scope for police involvement is legally limited to the prevention of an unlawful occupation taking place when requested by the owner of the land in question; the enforcement of by-laws in conjunction with the CoJ; and in support of the sheriff of the court when an eviction is being carried out.
- 6.82. The SAPS has designed a Community Policing Strategy which entails community education and awareness on such matters. This has yielded positive outcomes. Twenty-six arrests based on land invasions have previously been made. Two suspects were also arrested on allegations of corruption where it is alleged people were promised houses in exchange for money.
- 6.83. According to SAPS, the planning of housing interventions by the DHSWS, without SAPS is problematic. For instance, the SAPS was not involved in the planning of the relocation of Alex residents to Diepsloot and Braamfischerville, and so was not aware of the potential for the unlawful occupations of the land which had been cleared following the relocations. According to SAPS poorly managed and unutilised public spaces and facilities either create an environment for opportunistic crimes or attract unlawful occupiers.

6.84. Gauteng CoGTA attributed the difficulty in enforcing by-laws to the chasm that exists between Community Safety and the JMPD. According to CoGTA, they do not seem to be working together, or in any sort of complimentary fashion that would improve service delivery.

7. LEGAL FRAMEWORK

The Responsibilities of Public Servants and Office Bearers

The Constitution

7.1. South Africa is a democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, and supremacy of the Constitution and the rule of law.³⁸

7.2. Obligations imposed by the Constitution “must be fulfilled” and any conduct inconsistent with the Constitution is invalid.³⁹

7.3. The obligations for national, provincial and local government, more generally, include the obligations (within its jurisdiction) to:

- “(b) *secure the well-being of the people of the Republic;*
- “(c) *provide effective, transparent, accountable and coherent government for the Republic as a whole;*
- “(d) *be loyal to the Constitution, the Republic and its people*”.⁴⁰

7.4. In addition to setting out these obligations, the Constitution requires Ministers and MECs, through the taking of an oath or making of an affirmation, to confirm their loyalty to the Constitution and the people of South Africa and to confirm their undertaking to “perform the functions of [their respective] offices conscientiously and the best of their abilit[ies].”⁴¹

7.5. The Constitutional provisions apply with equal force to local government.

7.6. In respect of local government, the Constitution requires that a municipality “strive, within its financial and administrative capacity to achieve its objectives set out in the Constitution.”⁴² These are objectives are:

- “(a) *to provide democratic and accountable government for local communities;*

³⁸ Section 1(a) and (c).

³⁹ Section 2.

⁴⁰ Section 41(1).

⁴¹ Schedule 2, section 3 and 5, respectively.

⁴² Section 152(2).

- (b) *to ensure the provision of services to communities in a sustainable manner;*
- (c) *to promote social and economic development;*
- (d) *to promote a safe and healthy environment; and*
- (e) *to encourage the involvement of communities and community organisations in the matters of local government.”⁴³*

The Municipal Systems Act

7.7. Section 4 of the Municipal Systems Act 32 of 2000 (“**the MSA**”) states that a municipal council, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to—

- “(a) exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community;*
- (b) provide, without favour or prejudice, democratic and accountable government;*
- (c) encourage the involvement of the local community;*
- (d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;*
- (e) consult the local community about—*
 - (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and*
 - (ii) the available options for service delivery;*
- (f) give members of the local community equitable access to the municipal services to which they are entitled;*
- (g) promote and undertake development in the municipality;*
- (h) promote gender equity in the exercise of the municipality’s executive and legislative authority;*
- (i) promote a safe and healthy environment in the municipality; and*
- (j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.”*

7.1. In addition, section 4(3), a municipality must “in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.”

⁴³ Section 151(1).

7.2. The general duties of a municipality are set out in section 73 of the MSA, and they include the duty to give effect to the Constitution and to:

- “(a) give priority to the basic needs of the local community;*
- (b) promote the development of the local community; and*
- (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.”⁴⁴*

7.3. Municipal services must be equitable and accessible; be provided in a manner that is conducive to the prudent, economic, efficient and effective use of available resources; and the improvement of standards of quality over time. Municipal services must be financially sustainable; be environmentally sustainable; and be regularly reviewed with a view to upgrading, extension and improvement.⁴⁵

The Realisation of Socio-Economic Rights

Environment

The Constitution

7.8. In terms of section 24 of the Constitution:

- “Everyone has the right -*
- (a) to an environment that is not harmful to their health or well-being;*
and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -*
 - (i) prevent pollution and ecological degradation”.*

The National Environmental Management Act

7.9. The National Environmental Management Act 107 of 1998 (**NEMA**) requires that development must be socially, environmentally and economically sustainable, and sustainable development requires the consideration of all relevant factors including, that the disturbance of ecosystems and loss of biological diversity are avoided.⁴⁶ Thus while it acknowledges the need for development of townships it requires that pollution and

⁴⁴ Section 73(1).

⁴⁵ Section 73(2).

⁴⁶ Section 2(3) and (4)(a).

degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied; and that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.⁴⁷

7.10. All organs of state, including National and Provincial Departments must have a five-year environmental implementation and management plan, the purpose of which is meet the objectives of NEMA. To this end the implementation and management plans are intended to:

- “(a) *coordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to—*
 - (i) *minimise the duplication of procedures and functions; and*
 - (ii) *promote consistency in the exercise of functions that may affect the environment;*
- (b) *give effect to the principle of cooperative government in Chapter 3 of the Constitution;*
- (c) *secure the protection of the environment across the country as a whole;*
- (d) *prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole; and*
- (e) *enable the Minister [of Environment, Forestry and Fisheries] to monitor the achievement, promotion, and protection of a sustainable environment.”*

7.11. The Director-General for DEFF has the statutory duty to monitor compliance with environmental implementation plans and environmental management plans and may—

- “(a) *take any steps or make any inquiries he or she deems fit in order to determine if environmental implementation plans and environmental management plans are being complied with by organs of state; and*
- (b) *if, as a result of any steps taken or inquiry made under paragraph (a), he or she is of the opinion that an environmental implementation plan and an environmental management plan*

⁴⁷ Ibid.

is not substantially being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the Director General considers necessary to remedy the failure of compliance.”⁴⁸

7.12. The Minister for DEFF, has the power to at any time appoint one or more persons to assist either him or her or, after consultation with a Municipal Council or MEC or other national Minister, to assist such a Municipal Council or MEC or another national Minister in the evaluation of a matter relating to the protection of the environment by obtaining such information, whether documentary or oral, as is relevant to such evaluation.⁴⁹ The Minister may even establish a Commission of Inquiry to evaluate a matter,⁵⁰ or appoint external investigators or inspectors to inquire about possible failures to comply with NEMA.

7.13. NEMA therefore has a number of control mechanisms which allow for interventions at the national level to secure protection of the environment.

7.14. NEMA makes deliberate or negligent pollution an offence for the land owner or person in control of land and has implications for liability for organs of state where conduct or omission to act results in unlawfulness.⁵¹

The National Environmental Management: Waste Act

7.15. The National Environmental Management: Waste Act 59 of 2008 (“**NEMA Waste Act**”) was enacted, according to its preamble because “waste management practices in many areas of [South Africa] are not conducive to a healthy environment and the impact of improper waste management practices are often borne disproportionately by the poor”.

7.16. The NEMA: Waste Act legislated the requirement for national waste management strategies and norms and integrated waste management plans, in order to ensure a clean environment.

7.17. The NEMA Waste: Act also puts in place requirements for the storage and disposal of waste.

⁴⁸ Section 16(2).

⁴⁹ Section 20.

⁵⁰ Section 20(a).

⁵¹ Section 28(2).

CoJ Waste Management By-Laws

7.18. The CoJ Waste Management By-Laws⁵² have been developed in line with the NEMA Waste: Act and the norms and standards and contains an integrated waste management plan.

CoJ Public Health By-Laws

7.19. In terms of the CoJ's Public Health By-Laws,⁵³ the risk of a public health hazard⁵⁴ "occurring, continuing or recurring must be eliminated wherever reasonably possible, and if it is not reasonably possible to do so, it must be reduced to a level acceptable to the Council."⁵⁵

7.20. The By-Laws, while prohibiting the creation of public health hazards and public health nuisances,⁵⁶ places the onus on residents to take steps to prevent or reduce the hazard or nuisance or report it to the CoJ.⁵⁷ In terms of section 165, any person who contravenes the By-Laws, which includes the prohibition of illegal dumping of waste, is guilty of an offence "and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a

⁵² Published under Notice No, 1012 in the Gauteng Provincial Gazette Extraordinary No. 216 30 July 2013.

⁵³ Published under Notice No. 830 in the *Gauteng Provincial Gazette Extraordinary* No. 179 21 May 2004.

⁵⁴ "public health hazard" means any actual threat to public health, and without limitation, includes –

- (a) unsanitary conditions;
- (b) circumstances which make it easier for a communicable disease to spread;
- (c) circumstances which make food or drink, including water for domestic consumption, unhygienic or unsafe to eat or drink; and
- (d) circumstances which allow pests to infest any place where they may affect public health".

See section 1.

⁵⁵ Section 3(2).

⁵⁶ "public health nuisance" means the use of any premises or place in a manner which creates conditions that significantly increase the risk of a public health hazard occurring or which compromises any aspect of public health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a public health nuisance is considered to exist in terms of Schedule 1". See section 1.

⁵⁷ Sections 5-7.

written notice has been issued by the Council and served on the person concerned requiring the discontinuance of such offence.”⁵⁸

Property and Housing

The Constitution

7.21. In terms of section 25 of the Constitution, it is the responsibility of the state to take measures “within its available resources” to facilitate conditions which would enable “citizens to gain access to land on an equitable basis”,⁵⁹ and to ensure that persons whose land tenure is insecure due to past discriminatory laws and practices becomes “legally secure or [is provided with] comparable redress.”⁶⁰

7.22. In addition to enshrining the right to access land and security of tenure, section 26 of the Constitution requires that the state, must “within its available resources” achieve the progressive realisation of the right to have access to “adequate housing”⁶¹. Section 26 also protects persons from being “evicted from their home[s], or hav[ing] their home[s] demolished, without an order of court made after considering all relevant circumstances.”⁶²

The Upgrading of Land Tenure Rights Act

7.23. Although, pre-constitutional legislation, the Upgrading of Land Tenure Rights Act 112 of 1991 (**ULTRA**), gives effect to the obligations of section 25 of the Constitution and the need to provide legally secure land tenure, signified through the receipt of title deeds to South African citizens, particularly in townships who under apartheid laws, were unable to own land⁶³ and to formalise townships.⁶⁴

⁵⁸ Section 165.

⁵⁹ Section 25(5).

⁶⁰ Section 25(6).

⁶¹ Section 26(1) and (2).

⁶² Section 26(3).

⁶³ Chapter 1 of the ULTRA.

⁶⁴ Chapter 2 of the ULTRA.

The Housing Act

7.24. The Housing Act 107 of 1997 (“**the Housing Act**”), was enacted to “provide for the facilitation of ... sustainable housing development ... and to lay down general principles applicable to housing development in all spheres of government”.⁶⁵

7.25. The Housing Act acknowledges that housing is “vital to the socio-economic well-being of the nation”⁶⁶ and defines “housing development” as:

“the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to-

- (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and*
- (b) potable water, adequate sanitary facilities and domestic energy supply”.⁶⁷*

7.26. The Housing Act then sets out obligations for national, provincial and local spheres of government in respect of housing development. Section 2(1) of the Act provides that national, provincial and local spheres of government must:

- “(a) give priority to the needs of the poor in respect of housing development;*
- (b) consult meaningfully with individuals and communities affected by housing development;*
- (c) ensure that housing development-*
 - (i) provides as wide a choice of housing and tenure options as is reasonably possible;*
 - (ii) is economically, fiscally, socially and financially affordable and sustainable;*
 - (iii) is based on integrated development planning; and*
 - (iv) is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance;*

⁶⁵ The Preamble to the Housing Act.

⁶⁶ Ibid.

⁶⁷ Section 1.

- (d) *encourage and support individuals and communities, including, but not limited to, co-operatives, associations and other bodies which are community based, in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of, the community;*
- (e) *promote-*
 - (i) *education and consumer protection in respect of housing development;*
 - (ii) *conditions in which everyone meets their obligations in respect of housing development;*
 - (iii) *the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;*
 - (iv) *the process of racial, social, economic and physical integration in urban and rural areas;*
 - (v) *the effective functioning of the housing market while levelling the playing fields and taking steps to achieve equitable access for all to that market.*
 - (vi) *measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination by all actors in the housing development process;*
 - (vii) *higher density in respect of housing development to ensure the economical utilisation of land and services;*
 - (viii) *the meeting of special housing needs, including, but not limited to, the needs of the disabled;*
 - (ix) *the provision of community and recreational facilities in residential areas;*
 - (x) *the housing needs of marginalised women and other groups disadvantaged by unfair discrimination; and*
 - (xi) *the expression of cultural identity and diversity in housing development;*
- (f) *take due cognisance of the impact of housing development on the environment;*
- (g) *not inhibit housing development in rural or urban areas;*
- (h) *in the administration of any matter relating to housing development-*
 - (i) *respect, protect, promote and fulfil the rights in the Bill of Rights in Chapter 2 of the Constitution;*
 - (ii) *observe and adhere to the principles of co-operative government and intergovernmental relations referred to in section 41(1) of the Constitution; and*
 - (iii) *comply with all other applicable provisions of the Constitution;*

- (i) *strive to achieve consensus in regard to the policies of the respective spheres of government in respect of housing development;*
- (j) *observe and adhere to the principles in Chapter 1 of the Development Facilitation Act, 1995 (Act 67 of 1995), in respect of housing development;*
- (k) *use public money available for housing development in a manner which stimulates private investment in, and the contributions of individuals to, housing development;*
- (l) *facilitate active participation of all relevant stakeholders in housing development; and*
- (m) *observe and adhere to all principles for housing development prescribed under subsection (2) [of the Housing Act].”*

7.27. Part 2, 3 and 4 of the National Housing Act, then sets out, the additional and more detailed obligations of national, provincial and local government. While national and provincial government are responsible for the introduction and implementation and oversight of implementation of various housing policy and funding for housing development, local government, in the form of municipalities, such as the CoJ is required to:

“As part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to-

- (a) *ensure that-*
 - (i) *the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;*
 - (ii) *conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed;*
 - (iii) *services in respect of water, sanitation, electricity, roads, storm water drainage and transport are provided in a manner which is economically efficient;*
- (b) *set housing delivery goals in respect of its area of jurisdiction;*
- (c) *identify and designate land for housing development;*
- (d) *create and maintain a public environment conducive to housing development which is financially and socially viable;*
- (e) *promote the resolution of conflicts arising in the housing development process;*
- (f) *initiate plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction;*

- (g) *provide bulk engineering services, and revenue generating services in so far as such services are not provided by specialist utility suppliers; and*
- (h) *plan and manage land use and development.”*⁶⁸

7.28. In addition to the existing legislative framework, our courts have developed extensive jurisprudence on the state’s positive and negative constitutional obligations to provide urgent, medium and long term “adequate housing” within the state’s available resources.⁶⁹

Health Care, Water, Sanitation and Social Security

The Constitution

7.29. In terms of section 27 of the Constitution

- “(1) *Everyone has the right to have access to -*
 - (a) *health care services, including reproductive health care;*
 - (b) *sufficient food and water; and*
 - (c) *social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*
- (2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*
- (3) *No one may be refused emergency medical treatment.”*

The National Health Act

7.30. In terms of the National Health Act 61 of 2003 (“**NHA**”), “environmental pollution control” is listed as a municipal health service, and a health officer has a right to investigate “any

⁶⁸ Section 9(1) of the Housing Act.

⁶⁹ See *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC); *Modder East Squatters and Another v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd* 2004 (3) All SA 169 (SCA); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA (CC); *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others* 2008 (3) 208 (CC); *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC); *Occupiers of Portion R25 of the Farm Mooiplaats v Golden Thread* 2012 (2) SA 337 (CC); and *Motswagae v Rustenburg Local Municipality* 2013 (2) SA 613 (CC).

condition” which they believe to constitute, amongst other things, “pollution detrimental to health”.⁷⁰

7.31. In addition, in terms of section 21(2)(j) the Director-General of the National Department of Health must, in accordance with health policy, “facilitate the provision of indoor and outdoor environmental pollution control services”, while in terms of section 25(1)(u), provincial health departments must, in accordance with national policy, “provide environmental pollution control services”.

CoJ Public Health By-Laws

7.32. In terms of section 36 of the Public Health By-Laws, no person may pollute or contaminate any catchment area, river, canal, well, reservoir, filter bed, water purification or pumping works, tank, cistern or other source of water supply or storage in a way that creates a public health nuisance or a public health hazard.

The Water Services Act

7.33. The preamble to the Water Services Act 108 of 1997 (“**WSA**”) confers a clear responsibility on all spheres of government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable. The preamble of the WSA confers on national government custodial powers over the water resources of the country.

7.34. Section 11(1) of the WSA states that a municipality, as a “water services authority”,⁷¹ has a duty to all consumers⁷² or potential consumers in its area of jurisdiction to “progressively ensure efficient, affordable, economical and sustainable access to water services”.

7.35. “[W]ater services, as defined in section 1, is made up of “water supply services”, which are the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use but not water for

⁷⁰ Section 1.

⁷¹ In terms of section 1 of the NWA, “water services authority” means “any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993), responsible for ensuring access to water services”.

⁷² In terms of section 1 of the NWA, a “consumer” is defined as “any end user who receives water services from a water services institution, including an end user in an informal settlement”.

industrial use,⁷³ and “sanitation services”, which is the collection, removal, disposal or purification of human excreta, domestic wastewater, sewage and effluent resulting from the use of water for commercial purposes.⁷⁴

7.36. Section 11 (4) states that a municipality may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction. However, sections 5 and 11(5) of the WSA require that, in an emergency, or where the municipality or “water services institution”⁷⁵ cannot meet all of its water service and sanitation obligations, a municipality or a water services institution prioritise the provision of basic water supply and basic sanitation.

7.37. “[B]asic water supply” and “basic sanitation” refers to the prescribed minimum standard of water supply services and sanitation services, that “[e]veryone has a right of access to”,⁷⁶ and that “[e]very “water services institution”⁷⁷ must take reasonable measures to realise these rights”.⁷⁸

7.38. In addition to the obligations set out in the WSA, Regulation 4 of the Regulations Relating to Compulsory Water Standards and Measures to Conserve Water,⁷⁹ a water services institution must take steps to ensure that where the water services usually provided by or on behalf of that water services institution are interrupted for a period of more than 24 hours for reasons other than those contemplated in section 4 of the Act, a consumer has access to alternative water services, including sanitation services sufficient to protect health. These measures recognise the need for continued access to both water and sanitation on account of their vital importance to life and health.

⁷³ In terms of section 1 of the NWA, “water supply services” means “the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use but not water for industrial use.”

⁷⁴ In terms of section 1 of the NWA, “sanitation services” means the collection, removal, disposal or purification of human excreta, domestic wastewater, sewage and effluent resulting from the use of water for commercial purposes”.

⁷⁵ As per the definition in the NWA, a “water services institution” includes, a “water services authority” (municipalities including the Emfuleni Local Municipality), a “water services provider” (also usually a municipality and entities such as Rand Water who provide water to municipalities) and a “water board” (this also includes Rand Water).

⁷⁶ Section 3(1).

⁷⁷ In terms of section 1 of the NWA, “water services institution” means “a water services authority, a water services provider, a water board and a water services committee”. See footnote 88 above.

⁷⁸ Section 3(2).

⁷⁹ Published under GN R509 of 8 June 2001.

7.39. In terms of planning and giving effect to this obligation, the WSA requires that every water services authority (i.e. all municipalities who provide water) have a “water services development plan” that sets out the measures a municipality will take or implement to realise these rights. The development plan must form part of a municipalities integrated development plan.

7.40. A draft water services plan must include information:

- “(a) of the physical attributes of the area to which it applies;*
- (b) of the size and distribution of the population within that area;*
- (c) of a time frame for the plan, including the implementation programme for the following five years;*
- (d) of existing water services;*
- (e) of existing industrial water use within the area of jurisdiction of the relevant water services authority;*
- ...*
- (g) of the number and location of persons within the area who are not being provided with a basic water supply and basic sanitation;*
- (h) regarding the future provision of water services ... including—*
 - (i) the water services providers which will provide those water services;*
 - (ii) the contracts and proposed contracts with those water services providers;*
 - (iii) the proposed infrastructure necessary;*
 - (iv) the water sources to be used and the quantity of water to be obtained from and discharged into each source;*
 - (v) the estimated capital and operating costs of those water services and the financial arrangements for funding those water services, including the tariff structures;*
 - (vi) any water services institution that will assist the water services authority; and*
 - (vii) the operation, maintenance, repair and replacement of existing and future infrastructure;*
- (i) of the number and location of persons to whom water services cannot be provided within the next five years, setting out—*
 - (i) the reasons therefor; and*

- (ii) *the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and*
- (j) *of existing and proposed water conservation, recycling and environmental protection measures.*⁸⁰

7.41. The water services development plan is specifically regulated and detailed in law. It is obviously an important tool or mechanism for local government to support fulfilling the obligation to provide water supply and sanitation services. If complied with properly, and updated regularly as required, the development plan allows a municipality to gather information necessary to be able to, within its available resources, provide water supply and sanitation services in compliance its mandatory constitutional duty to provide for the right to access water and sanitation. The development plan and the obligation to report on its implementation also allows for the Ministers of the DWS and COGTA, the Province and other municipalities to monitor the performance of a municipality and to intervene where necessary given the significance to basic rights involved where this is not done.

7.42. In addition to the reporting requirements in sections 17 and 18; section 62 expressly requires that the Minister of DWS and, the Gauteng Province, to monitor the performance of every water services institution, and not just water services authority in order to ensure compliance with and attainment of all applicable national standards prescribed by the WSA,⁸¹ and compliance with every applicable development plan, policy statement or business plan adopted in terms of the WSA are observed.⁸²

The National Water Act 36 of 1998

7.43. The purpose of the National Water Act 36 of 1998 (**'the NWA'**) is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors—

- “(a) meeting the basic human needs of present and future generations;*
- (b) promoting equitable access to water;*
- ...

⁸⁰ Section 14.

⁸¹ Section 62(1)(a).

⁸² Section 62(1)(c).

- (d) *promoting the efficient, sustainable and beneficial use of water in the public interest;*
- ...
- (g) *protecting aquatic and associated ecosystems and their biological diversity;*
- (h) *reducing and preventing pollution and degradation of water resources;*
- (i) *meeting international obligations;*
- (j) *promoting dam safety*".⁸³

7.44. According to section 3, the National Government, acting through the Minister of DHSWS, has the "power to regulate the use, flow and control of all water in the Republic",⁸⁴ and that the National Government, acting through the Minister of DWS has the responsibility to ensure that: water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate; and allocated equitably and used beneficially in the public interest, while promoting environmental values.⁸⁵

7.45. Chapter 2 of the NWA regulates the development, content and implementation of the National Water Resource Strategy ('**the NWRS**') – the framework, published by the DWS, after consultation with relevant parties, for the protection, use, development, conservation, management and control of water resources for the country at national, provincial and local level. The NWRS has to make reference to international rights and obligations; estimates of present and future water requirements; and objectives in respect of water quality to be achieved through a classifications system.⁸⁶

CoJ Water Services By-Laws

7.46. In terms of section 3 of the By-Laws,⁸⁷ the minimum standard for basic water supply and sanitation must consist of:

⁸³ Section 2.

⁸⁴ Section 3(3).

⁸⁵ Sections 3(1) and (2).

⁸⁶ Section 6.

⁸⁷ No information was available on the CoJ site. Accessed at <https://www.joburg.org.za/documents/By-laws/Documents/bylaws/water%20services%20bylwas.pdf>.

- “(i) a water supply from communal water points; and
- (ii) a ventilated improved pit latrine located on each site”.

7.47. In terms of basic supply water consumption cannot exceed 6 kilolitres per a month

The Social Assistance Act

7.48. The Social Assistance Act 13 of 2004, and its regulations governs the provision of social security in South Africa.

Education

The Constitution

7.49. In terms of section 29(1)(a) of the Constitution “Everyone has the right ... to a basic education”.

7.50. Unlike other rights that are listed as socio-economic rights, the right to basic education is not subject to progressive realisation, and is an unqualified, immediately realisable right.⁸⁸ In addition to being immediately realisable, basic education is accessible to all children, including undocumented foreigners living in South Africa. In the case of *Centre for Child Law and Others v Minister of Basic Education and Others*,⁸⁹ in which the Commission was admitted as *amicus curiae*, the High Court found that:

*“sections 39 and 42 of the Immigration Act fall to be interpreted in a way that does not prohibit children from receiving basic education from schools. This interpretation is consistent with the right to basic education as enshrined in section 29; every child’s rights under section 28(2) to have their best interests taken into account in matters concerning them; international conventions’ emphasis on providing education to all children irrespective of their status and the existing obligation in the Schools Act placed on parents; and Schools to ensure that all learners receive basic education.”*⁹⁰

⁸⁸ *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC).

⁸⁹ *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG).

⁹⁰ *Ibid* at para 127.

Freedom and Security – Policing

- 7.51. In terms of section 12 of the Constitution “[e]veryone has the right to freedom and security of the person, which includes the right ... to be free from all forms of violence from either public or private sources”.⁹¹
- 7.52. The right to safety is not a socio-economic right. It is a first tier right to which the state is required to give effect to through, amongst other means, policing. The Constitution goes on to stipulate the powers, and duties of the police to give meaning to the section 12 basic right to freedom from violence, safety and security.⁹²
- 7.53. In practice however, because of historical and existing inequality in South Africa, safety is closely related to socio and economic factors. Invariably safety measures in more affluent areas are bolstered through the securing of property and person by private security, walled and access controlled living. This reality is in stark contrast to the level of security available in informal settlements.
- 7.54. Recently in the matter of *Social Justice Coalition and Others v Minister of police and Others*⁹³, the Western Cape High Court, sitting as an Equality Court found that a so-called “neutral” police allocation policy, discriminated on the grounds of race and poverty and that, with reference to evidence presented before the Khayelitsha Commission, that poorer townships were allocated fewer police resources. An extract from the judgment in the Social Justice Coalition matter, describes expert evidence provided by Dr Redpath on this issue:

“that the Khayelitsha Commission – established to investigate allegations of Police inefficiency in the Western Cape township and the breakdown of trust between the community and the Police – requested her to compare Police officer allocation to indicators of poverty and informal housing. She did this by combining the data on actual numbers obtained for the Western Cape and KwaZulu-Natal. ... she was able to determine that areas with a high percentage of electricity and piped water availability per household usually had a high percentage of formal housing. The converse, according to her, was also true: Informal or rural

⁹¹ Section 12(1)(c).

⁹² Section 205 of the Constitution reads as follows: (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government. (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces. (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

⁹³ 2019(4) SA 82 (WCC) 14.

housing was, in turn, indicated by lower levels of electricity and water provision. ... [Historically] poorer black people tend to live in informal settlements characterised by lower levels of service provision. Using this data, Redpath concluded that service provision levels were a reliable indicator of the racial demographics of an area. She further found that when comparing the trends relating to provision of Police resources per 100 000 people to levels of service provision (percentage piped water and electricity), there was a statistically significant relationship between the variables. This data, according to Redpath, showed that lower levels of service provision were associated with lower levels of Police resourcing.”⁹⁴

⁹⁴ Ibid at paras 52-53.

8. FINDINGS AND A REQUEST FOR ONGOING ENGAGEMENT ON FINDINGS

- 8.1. It is clear from the submissions made by the residents of Alex and the responses from the state that there are failures or difficulties in the realisation of the socio-economic rights and right to freedom and security of persons living in Alex. These failures have led to violations which are most pronounced when existing interim measures are considered. These interim measures are intended to support minimal violations of rights, while resources are unlocked and programs implemented to progressively realise basic socio economic rights.
- 8.2. There are, as explained through the submissions, a number of reasons for these failures including, the improper use of budgets, planning that is not coherent and integrated; skills shortages, high staff turnover, illegal occupation, limited space, extreme overcrowding, high rates of unemployment, non-collaborative working between organs of state and reduced public confidence, cooperation and consequently much needed public participation. These factors are inimical to the progressive realisation of the socio-economic rights of the people living in Alex.
- 8.3. The Commission seeks to issue these findings with a view that they do not suffer the same fate as innumerable undertakings intended to respect rights, but which have had limited success. It is of little or no use to the people of Alex for the Commission to make recommendations on each of the detailed challenges shared with the Commission, and which it observed, since by their nature many of the issues are interrelated. Accordingly, the Commission has deemed it appropriate to instead, identify and make findings in respect of the broader issues. The findings on these issues will require specific responses from individual organs of state, and in certain instances where integrated information is sought, collective submissions.
- 8.4. Duty bearers, to whom the findings relate will be required to respond to the findings by the Commission within a stipulated timeframe periodically to enable its monitoring of this matter. Together with its own consultations and independent monitoring, the Commission will monitor and track the adequacy of remedial action by organs of state.
- 8.5. To begin with the Commission requires from the relevant organs of state a report, to be submitted to the Commission within **60 days** of the release of the final report advising the Commission on the current status of the issues below; together with short and medium term plans to be taken by respective departments together with an indication of the budget and human resources that will be allocated to give effect to the plans.

8.6. The reports are to address or cover the following concerns that arose through the Inquiry.

Property and Housing

8.7. The progressive realisation of the right to “adequate housing” and security of tenure in Alex is, as it is in the rest of Gauteng and other economic hubs, despite the progress made by the state, far from being significantly realised.

8.8. To this end the plan referred to in 8.5 above should specifically indicate the concerns identified, and measures to be implemented to remedy them.

8.9. In respect of property and housing, organs of state are required to report on:

8.9.1 Measures taken in response to the number of people who applied for state or RDP housing in the mid-1990s and who twenty years later, are still waiting to be allocated a house;

8.9.2 Controls in place to mitigate against the reoccurrence of illegal occupation of RDP housing allocated to other people, as well as the erection of illegal structures and steps to be taken to remedy the existing breach to community members whose rights have been usurped by illegal occupation;

8.9.3 A description of property that has been identified for development;

8.9.4 A by-law enforcement and accountability strategy and implementation plan;

8.9.5 Detailed information in respect of mitigation actions relating to the loss of water, monitoring exercises, the accessibility of sanitation and water for vulnerable persons; and timeframes within which basic minimum standards will be achieved; and

8.9.6 Noting the lack of expert capacity, and lack of clarity around roles and responsibilities as between the relevant organs of state in respect of the repair and maintenance of the Madala and Helen Joseph Hostels; the plan should specifically include detailed, integrated measures for remedial rights restoration in respect of the hostels, both in respect of the Madala and Helen Joseph Hostels. In this regard the following information should be evident:

- Roles and responsibilities of the various stakeholders, including the procurement of expert services;
- Oversight mechanisms;
- A budget;
- Timelines;
- Public consultation and education initiatives and;
- Risk identification, mitigation and management

Water, Sanitation, Refuse Removal and the Right to a Clean Environment

8.10. The CoJ admitted that significant amounts of water is lost due to leaks and burst pipes and that under-reporting of water leaks and burst pipes was a challenge in informal settlements, including in Alex. From the Commission's work with the Emfuleni and Tshwane Municipalities, it became apparent that the leakage of water can cost municipalities millions of rands. It is therefore imperative that leaks be fixed as soon as is practically possible.

8.11. While the Commission appreciates the interim measures implemented, these measures have in certain instances degenerated to the point where it cannot be said that progressive realisation is systematically being achieved. The Commission seeks an update on the progress of the Water Demand Management Project, infrastructure repair and maintenance to mitigate costs and decrease of accessibility on account of leaks, burst pipes.

8.12. In respect of chemical toilets, the alleged ratio of toilet to person: 1:55 (eleven households to one toilet) is alarming. As stated in section 5, above the Commission noted that this high ratio, or lack of more toilets resulted in alternative solutions resulting in raw sewerage being dumped in the Marlboro Graveyard and in the Jukskei River.

8.13. In addition, the location of chemical toilets (on the outskirts of the township so that the trucks can reach) is also concerning.

8.14. Implementation information regarding progress in addressing, littering and the illegal dumping of waste, more generally; and in respect of dumping in the Jukskei should be

included in the report to the Commission. Specific plans to ensure proper enforcement of Waste Management and environmental protection by-laws should be included as well, indicating the roles and responsibilities of the JMPD, environmental inspectorates and enforcement officers in this regard. In addition, a response to the Commission's recommendation that the CoJ provide sufficient, licensed landfills with reasonable or no gate fees to lessen illegal dumping of refuse. These sites must be easily accessible and secure, at various locations within Alex to reduce transports costs, and encourage usage of the sites.

8.15. In respect of water, sanitation, refuse removal and the right to a clean environment, organs of state are required to provide information on:

8.15.1 Short and long terms steps and plans being taken and put in place to fix leaks and burst pipes, including information on the progress of the Water Demand Management Project, infrastructure repair and maintenance to mitigate costs and decrease of accessibility on account of leaks, burst pipes;

8.15.2 Efforts to improve on the current chemical toilet to person ratio of 1:55 (eleven households to one toilet) as well as improving on accessibility in terms of location;

8.15.3 Progress in addressing littering and the illegal dumping of waste, more generally; and in respect of dumping in the Jukskei River,

8.15.4 Specific plans to ensure proper enforcement of Waste Management and environmental protection by-laws, indicating the roles and responsibilities of the JMPD, environmental inspectorates and enforcement officers in this regard; and

8.15.5 The provision of sufficient, licensed landfills with reasonable or no gate fees for access to lessen illegal dumping of refuse.

Healthcare

8.16. The Commission acknowledges that the clinics in Alex have been designated Ideal Clinics, which are measured against a number of service delivery indicators and which are subject to an improvement plan. While no specific information in this regard is requested, the Commission will continue to monitor access to healthcare in Alex and take forward any concerns it observes with the department.

Social Welfare

8.17. In response to submissions regarding the carrying capacity of the DSD to adequately service communities in Alex, the Commission seeks a response regarding progress in establishing a permanent office in Alex from the Gauteng DSD. In addition, the DSD must advise the Commission of the means it will employ to better monitor and evaluate the trends, needs and quality of the services provided in Alex, with a view of using disaggregated information to better plan for the delivery of specific needs of the communities in Alex.

Education

8.18. As stated above, following the Commission's intervention in the matter of *Centre for Child Law and Others v Minister of Basic Education and Others*, section 39 and 42 of the Immigration Act do not prohibit the entry into schools of undocumented learners. There is therefore no longer a conflict for the Gauteng DBE in dealing with undocumented learners in Alex schools.

8.19. There are however, in the Commission's experience, an increasing number of South African and children of foreign nationals born in South Africa whose births, for various reasons, have not been registered with the Department of Home Affairs, and are therefore without identity numbers. The Gauteng DBE should engage with the Department of Home Affairs in order to ensure all scholars who are entitled to birth certificates and identity numbers, receive them.

Freedom and Security – Policing

8.20. The Commission received submissions that JMPD and Community Safety were not working together and that this was one of the reasons that they were not as effective.

8.21. The CoJ together with Community Safety and JMPD needs to develop a collective response to enforcing by-laws in respect of illegal activity and ensuring the safety and protection of Alex, as well as in housing development overall.

8.22. Following the decision in *Social Justice Coalition and Others v Minister of Police and Others*, the SAPS and Community Safety need to review their allocation of police resources in Alex to ensure that it is not discriminatory in comparison to police resources in wealthier suburbs, such as Alex's neighbours of Sandton and Kramerville.

8.23. In respect of freedom and security, the relevant organs of state are required to report on:

8.24.1 Efforts made by the Johannesburg Metro Police Department and the South African Police Services to work synergistically;

8.24.2 The COJ, Community Safety and JMPD's plans to enforce by-laws in respect of illegal activity and ensuring the safety and protection in housing development in Alex.

8.24.3 The assessment of need, and allocation of adequate law enforcement resources in Alex comparative to resource allocation in neighbouring suburbs such as Sandton and Kramerville. The report must address concerns around unfairly discriminatory patterns of resource allocation to communities such as Alex; and provide comprehensive objective data to support resource allocation decisions including disaggregated crimes statistics; and

8.24.4 The JMDP, SAPS and the Department of Community Safety must provide a response on measures to be taken to overcome challenges relating to their ability to conduct visible policing.

9. Conclusion

9.1. Despite the progress made by the CoJ and other organs of state in taking steps to progressively realise certain socio-economic rights of the people living in Alex, the vast majority still live in informal settlements. The conditions in which they live include having

to share a few chemical toilets and water taps on the edge on the townships. Noting the crime rates in the country, and the unacceptably high rates of violence against women and children, serious efforts are required by enforcement bodies to restore safety and security of the people of Alex. Without legally secure tenure and running water, sanitation and electricity and clean streets to live in, people in Alex will continue to live in situations that pose an ongoing violation to their right to live a dignified life.

- 9.2. The Commission has considered submissions from organs of state during the Inquiry closely. In this regard it is appreciated that the human rights issues which formed the basis of outcry by the people of Alex were not unknown to responsible authorities. Indeed, on engagement with the Panel during the Inquiry, many indicated the presence of plans to address abiding shortcomings in respect of services to the communities within Alex and in respect of other reforms to strengthen community participation. Having considered the evidence before it at the Inquiry, its own observations during inspections together with submissions from the Community, the Commission is of the view that the commitments to which responsible authorities referred requires close monitoring to ensure commitments are honoured. The Commission accordingly listed key findings and issues, as set out in section 8 above, to which organs of state must respond. In addition to monitoring implementation and corrective actions arising from the responses and in the context of the issues identified by the Commission, periodic monitoring of the realisation of certain rights and resolution of issues shall be undertaken on an ongoing basis by the Commission.
- 9.3. The findings and directives by the Commission are to be read as determinations by the Commission which are confined to the existing state of human rights in Alex. These findings and directives are separate from any other findings made or to be made by the office of the Public Protector of South Africa or, any other tribunal, court or body.
- 9.4. **The Commission directs that all parties to which the findings and issues apply, respond to the Commission jointly or separately, within 60 days of receiving the final report.**

The Commission's directives herein are binding on the Respondents. Should any of the parties be aggrieved by the findings and directives of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review. An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application

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must be made within 180 days of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision).