

2020/2021



Towards a culture
of human rights

Report on the State of Human Rights in Gauteng

Towards Ensuring the Right to Adequate
Housing through the Upgrading of
Informal Settlements

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List of abbreviations and acronyms

BEPP	Built Environment Performance Plan
DHS	Department of Human Settlements
DoRA	Division of Revenue Act, 2020
GIS	Geographic Information System
HSDG	Human Settlements Development Grant
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Integrated Development Plan
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act
MTEF	Medium Term Expenditure Framework
MTSF	Medium Term Strategic Framework
NUSP	National Upgrading Support Programme
SAHRC	South African Human Rights Commission
SBIDP	Service Delivery and Budget Implementation Plan
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act
UISP	Upgrading of Informal Settlements Programme
UISPG	Upgrading of Informal Settlements Partnership Grant
USDG	Urban Settlements Development Grant

Introduction

Since the advent of democracy the South African government has delivered in excess of 4.5 million housing opportunities¹. Although this is to be lauded the reality remains that South Africa’s housing crisis persists. This housing crisis, although national, is more pronounced in certain provinces and is increasingly becoming a defining characteristic of South Africa’s urban centres. With trends all pointing to a further increase in the rate of urbanisation attempts to address the housing crisis in metros across the country require closer scrutiny. Given the South African Human Rights Commission’s specific mandate to ensure that the rights afforded to everyone in South Africa is realised, whether immediately or progressively, the Commission is well-placed to place scrutiny on national, provincial and local housing policies, budgets and ultimately implementation.

According to Statistics South Africa’s most recent General Household Survey, 16.8% of households in South Africa’s metros are living in informality – in short, in either makeshift, mostly corrugated tin, or traditional dwellings, mostly clay and thatch dwellings, with limited access to water and sanitation, and in many instances electricity in the dwelling. In Gauteng’s three metros the percentage of households living in informality stands at 18.4% for the City of Ekurhuleni, 19.1% for the City of Johannesburg and 16.4% for the City of Tshwane²³. In other words, between 1 in 5 and 1 in 6 households in Gauteng’s metros are living in informal dwellings.

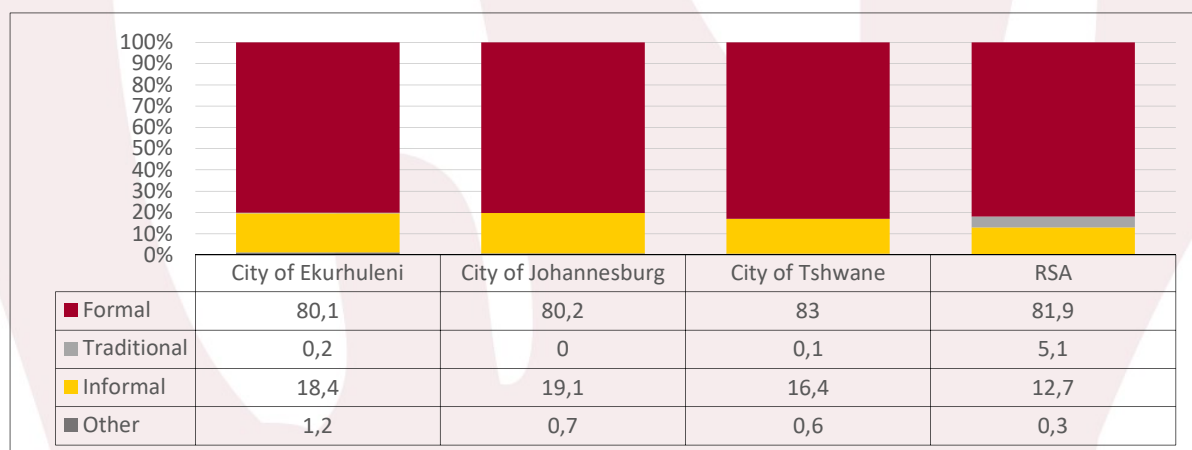


Figure 1: Percentage of households that live in formal, informal and traditional dwellings by Gauteng metropolitan area and in South Africa as a whole, 2019

¹ Department of Human Settlements 2019-2020 Annual Performance, pg.7

² Statistics South Africa, General Household Survey, Selected Development Indicators, Metros 2019, pg. 10

³ Statistics South Africa, General Household Survey 2019, pg. 32

In Gauteng’s metros the percentage of households that rely on shared and communal taps to access water stands at 8% for the City of Ekurhuleni, 7% for the City of Johannesburg and 3% for the City of Tshwane. The percentage of households without access to electricity stands at 20.2% for the City of Ekurhuleni, 29.2% for the City of Johannesburg and 15.1% for the City of Tshwane.

	Ekurhuleni	Johannesburg	Tshwane
Total number of households in the municipality	1 283 162	1 925 389	1 187 664
Number of households with access to electricity	1 024 568	1 363 728	1 008 720
Number of households without access to electricity	258 594	561 661	178 944
% of households without access to electricity	20,2%	29,2%	15,1%
Number of households with the main source of drinking water piped (tap) water on community stand: distance less than 200m from dwelling/institution	103 581	137 852	36 404
% of households using a shared, communal tap for water	8,1%	7,2%	3,1%

Table 1: Gauteng metro indicators, 2019⁴

These percentages show the number of households and the number of people that are still living in inadequate housing and with inadequate access to electricity and to water and sanitation. These percentages highlight the households that were and remain vulnerable and susceptible to COVID-19 because their informality and their limited access to basic services limits their ability to practise physical distancing.

The COVID-19 pandemic, the declaration of the national state of disaster, the subsequent lockdown and the ongoing requirements around physical distancing have invariably had an impact on the planned budgetary allocations metropolitan municipalities adopted for the financial year from 1 July 2020 to 30 June 2021.

Given this context, this report aims to provide a critical assessment of the plans developed, budgets allocated and adjusted, steps taken and money spent by the three metros in Gauteng so far in their 2020/2021 financial year. The report aims to determine what the cities of Ekurhuleni, Johannesburg and Tshwane have done to ensure greater access to water and sanitation, electricity, a safe environment and greater dignity for residents of informal settlements. The report will focus specifically on the Upgrading of Informal Settlements Programme (UISP) projects the cities have committed to.

⁴ Compiled using data from Statistics South Africa’s General Household Survey, Selected Development Indicators, Metros 2019.

Legal framework on the right to adequate housing

The right to an adequate standard of living is a fundamental human right. The right is enshrined under Article 25 of the Universal Declaration of Human Rights.⁵ The right has, however been narrowed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11 enjoins State Parties to the Covenant to recognize the right of everyone to an adequate standard of living and to the continuous improvement of their living conditions⁶.

The ICESCR acknowledges the resource constraints and challenges faced by State Parties⁷. Despite these challenges the ICESCR states that “many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating “self-help” by affected groups.”⁸ The ICESCR further stipulates that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”⁹

Beyond complementing the social, economic, cultural, climatic and ecological factors to be considered to assess the enjoyment of the right the ICESCR believes adequate housing includes having the following requirements met¹⁰:

- Legal security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy

Nationally, the right to housing is enshrined in Section 26 of the Constitution, which states that:

1. Everyone has a right to have access to adequate housing.

⁵ Universal Declaration of Human Rights.

⁶ ICESCR Article 11

⁷ General Comment 4, paragraph 6

⁸ General Comment 4, paragraph 10

⁹ General Comment 4

¹⁰ General Comment 4, paragraph 8

2. The state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.
3. No one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary eviction.

To give effect to this right, the state has enacted various pieces of legislation including the Housing Act 107 of 1997 which provides that:

1. The national government, acting through the Minister, must after consultation with every Member of the Executive Committee (MEC) and the national organisations, representing municipalities, establish and facilitate a sustainable national housing development process.
2. Every provincial government through its MEC, must after consultation with the provincial organisations representing municipalities, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of the national housing policy.
3. Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable steps within a framework of national and provincial housing legislation and policy, ensure that the inhabitants of its area of jurisdiction, have access to adequate housing on a progressive basis.

Upgrading of Informal Settlements Programme (UISP)

Informal settlements in South Africa's cities are some of the most densely populated communities in the country and yet they are also the communities that are most likely to have limited or no access to basic services. This has and continues to be the reality for many informal settlements, even though they have been in existence for decades and despite efforts by government to resolve the housing crisis.

Immediately after the advent of democracy, government's solutions to the housing crisis tended to be large-scale housing developments that were often located far from economic and social opportunities on the outskirts of towns and cities where land was cheapest. Despite this saving, the

cost of land along with construction and material costs, the cost of providing bulk infrastructure to these new developments and the cost of linking these new developments to the towns and cities through an expanded road network made and make the cost of these large-scale housing developments prohibitive.

In response, government has slowly but markedly shifted their emphasis from the provision of houses to further development of existing human settlements. This shift in the national housing policy has been from building costly subsidised units to providing serviced sites where residents, overtime and in some instances with further assistance from government, can build their own homes.

This programme of upgrading informal settlements is meant to be “an inclusive process through which informal residential areas are incrementally improved, formalised and incorporated into the city or neighbourhood by extending land tenure security, infrastructure and services to residents”¹¹.

This shift has seen the development of the National Upgrading Support Programme (NUSP) as a tool to support provinces and municipalities to implement informal settlement upgrading. The NUSP’s support includes conducting feasibility assessments for informal settlements, developing upgrading plans for targeted informal settlements and “building the capacity of officials and communities in the field of in situ upgrading”¹².

This in situ process means that housing is provided where people are already living and where access to economic opportunities are likely better and where people’s existing communities and support structures are. In situ upgrading is meant to ensure security of tenure for residents and to then incrementally upgrade their living conditions in structured stages that in most instances should not negatively impact on the living conditions of residents.

Since its development, and by 2019, the NUSP has facilitated “a total of 1 500 feasibility assessments and approximately 850 informal settlement upgrading plans had been conducted and developed.”¹³

Despite this progress, the implementation of informal settlement upgrading plans across provinces and municipalities has been inconsistent, poor or not a priority.

As a consequence, in the 2019 National Budget government introduced changes to the national government grants made available to provinces and municipalities to ensure that the upgrading of

¹¹ 2020 National Budget, pg. 71-72

¹² Department of Human Settlements 2019-2020 Annual Performance Plan, pg. 10

¹³ Department of Human Settlements 2019-2020 Annual Performance Plan, pg. 10

informal settlements was prioritised. These changes to the national government grants also placed requirements on provinces and municipalities to track money spent on upgrading.

These changes required metros specifically to spend a specific share of their Urban Settlements Development Grant (USDG) on individual informal settlement upgrading projects. The new grant conditions also required metros to publish more information on how their USDG budget is being spent to upgrade informal settlements. These new conditions “make it easier to see what proportion of the USDG metros are spending on [specific informal settlements] ... as opposed to other projects such as bulk infrastructure”¹⁴.

Again, despite this sound intent, 25 percent of the number of households in informal settlements targeted for upgrading in 2019/20 were not upgraded (this includes all informal settlement households targeted in both metros and other municipalities). The households upgraded were 32 percent less than the number upgraded in 2016/17 and 30 percent less than the houses upgraded in 2017/18¹⁵.

Urban Settlements Development Grant (USDG)

The Urban Settlements Development Grant (USDG) is granted to the eight metropolitan municipalities, from National Treasury, to fund infrastructure for municipal services and the upgrading of urban informal settlements. It is a supplementary grant to cities, which means that it is meant to supplement funds cities are spending to develop urban infrastructure and integrated human settlements from their own revenue streams¹⁶.

- **2019/20**

In 2019/20, according to the Department of Human Settlements’ Annual Report, the USDG amounted to R12.045 billion. Approved rollovers of R123.8 million brought the total USDG budget available to metros to R12.169 billion. By 31 March 2020 (the end of national government’s financial year), R11.6 billion was transferred to all eight metros and a total amount of R5.1 billion was spent. Overall, only 42.5% of the total available funds for 2019/2020 had been spent by the metros by the third quarter

¹⁴ IBP

¹⁵ Department of Human Settlements Annual Report 2019-2020, pg. 50

¹⁶ 2020 National Budget, pg. 48-49

of their financial year ending 30 June¹⁷. This reality, where metros have spent less than a half of their USDG by the end of their third quarter could be attributed to the fact that some cities submit their USDG plans late or sometimes do not submit plans at all¹⁸.

In 2019/20 Mangaung, Buffalo City, eThekweni, the City of Johannesburg and the City of Tshwane failed to submit their draft USDG plans¹⁹.

The underspending of funds ultimately resulted in the transfer of funds to: Mangaung (R301 million), the City of Ekurhuleni (R120 million), the City of Tshwane (R200 million) and the City of Cape Town (R60 million) being stopped. Reasons given for the underspending included: delays in procurement processes, violent protests, slow and/or non-performance by contractors, lack of project management skills, gang violence and labour disputes²⁰. The total amount stopped, R601 million was reallocated from these non-performing metros to Buffalo City (R340 million) and the City of Johannesburg (R341 million)²¹.

- **2020/21**

According to the Division of Revenue Bill for the 2020/21 financial year the intent, expected outcomes and requirements of the USDG (not including the Upgrading of Informal Settlements Programme component) are as follows²²:

Urban Settlements Development Grant	
Transferring Department	Human Settlements
Strategic Goal	The creation of sustainable and integrated human settlements that enable quality of household life
Grant purpose	<ul style="list-style-type: none"> • To supplement the capital revenues of metropolitan municipalities in order to implement the infrastructure projects that promote equitable, integrated, productive, inclusive and sustainable urban development
Outcome statements	<ul style="list-style-type: none"> • The outcomes to be realised in order to promote integrated sustainable urban settlements and improved quality of living environments are as follows: <ul style="list-style-type: none"> ○ Supporting inclusive densification and transit-orientated urban development, integrating existing and new urban developments ○ Provision of adequate bulk and link infrastructure for mixed-income and mixed-use urban developments

¹⁷ Department of Human Settlements Annual Report 2019-2020, pg. 13

¹⁸ Department of Human Settlements 2019-2020 Annual Performance Plan, pg. 71

¹⁹ Department of Human Settlements Annual Report 2019-2020, pg. 40

²⁰ Department of Human Settlements Annual Report 2019-2020, pg. 69-71

²¹ Department of Human Settlements Annual Report 2019-2020, pg. 209

²² Division of Revenue Bill 2020, pg. 224 - 226

	<ul style="list-style-type: none"> ○ Provide opportunities for leveraging of public funding within partnerships that promote integrated mixed-income and mixed-use urban development projects and funding for broader urban development
Outputs	<ul style="list-style-type: none"> ● The following outputs should be funded by the grant to support the improvement of the overall built environment: <ul style="list-style-type: none"> ○ Increase in bulk and link infrastructure ○ Construction/provision of internal engineering services ○ Increase in the number of serviced sites ○ Increase in the provision of individual connections ○ Increase in land provision for informal settlement upgrading, subsidised housing, or mixed-use developments in support of approved human settlements and other urban developments ○ Increase in access to public and socio-economic amenities ○ Increase in the number of interim basic services
Details contained in the business plan	<ul style="list-style-type: none"> ● This grant uses the USDG plan (containing a project list with project names, project descriptions, classification of infrastructure, Geographic Information System (GIS) coordinates and wards in which projects are being developed). The USDG plan is an annexure to the Built Environment Performance Plan (BEPP) for cities that complete a BEPP. The USDG plan is consistent with the Integrated Development Plan (IDP), including the human settlements chapter of the IDP, and the Service Delivery and Budget Implementation Plan (SDBIP) of the grant receiving municipality.
Conditions	<ul style="list-style-type: none"> ● Municipalities must submit a USDG plan (as an annexure to the BEPP, or separately) that is aligned to the SDBIP and IDP to the national Department of Human Settlements and National Treasury ● The annual USDG plan must contain a project list with project names, project descriptions, classification of infrastructure, GIS coordinates and wards in which projects are being developed. The submission should include motivations of how the projects will benefit poor households and information on spatial targeting, co-funding and other associated investments ● The flow of the first instalment is subject to: <ul style="list-style-type: none"> ○ Submission of the 2019/20 third quarter report, signed-off by the municipal Accounting Officer including the performance matrix with non-financial information ○ Submission of a USDG plan that is aligned to the municipal IDP, SDBIP and national priorities by 29 May 2020 ● The flow of the second instalment will be conditional upon the: <ul style="list-style-type: none"> ○ Submission of the 2019/20 fourth quarter report signed-off by by the municipal Accounting Officer including the performance matrix with non-financial information ○ Submission of the 2020/21 first quarter performance information, in line with the requirements of Municipal Finance Management Act (MFMA) circular 88 ● The flow of the third instalment will be conditional upon submission of second quarter performance information ● A maximum of 3 percent of the USDG may be used to procure capacity to support the implementation of USDG human settlements programme outputs as contained in the Medium Term Strategic Framework (MTSF) and in line with the capacity building guideline published by the DHS

	<ul style="list-style-type: none"> • Municipalities must indicate the amounts of their annual allocations for spending on the identified catalytic projects in their BEPPs as approved by the municipal council • Municipalities must also report their non-financial performance in terms of the requirements set out in MFMA circular 88 or any further circular issued in this regard
Allocation criteria	<ul style="list-style-type: none"> • The grant is allocated to all metropolitan municipalities • The base allocation is derived from the Municipal Infrastructure Grant formula in part 5 of annexure W1 of the 2020 Division of Revenue Bill. The formula incorporates household backlogs in basic services and access to socio-economic services and poverty-weighted data. • The allocation of the Upgrading of Informal Settlements Programme component ring-fenced within the USDG is 20 percent of the allocation for each municipality. These funds are also determined through the USDG allocation formula.
Responsibilities of the receiving officer in municipalities	<ul style="list-style-type: none"> • Submit 2019/20 evaluation reports in terms of the USDG performance matrix, as contained in the SDBIP, to the transferring officer • Metropolitan municipalities may replace non-performing projects with performing projects providing a similar infrastructure that fulfils the same policy objectives. This replacement should not jeopardise the achievement of the overall MTSF targets committed to be the municipality • Changes to the approved project list may only be made once a quarter and the metro must notify the DHS in writing and provide all the relevant details of the new project 30 days after the end of the quarter • Submit monthly financial reports, as contemplated in section 71(5) of the MFMA, within 10 working days after the end of each month indicating reasons for deviations and remedial actions. Such reports must be submitted to the national department, provincial departments and National Treasury • Ensure that the USDG performance matrix is consistent and aligned with national priorities and provincial human settlement plans • Comply with the terms and conditions of the receiving officer outlined in the Division of Revenue Act • Municipalities should request the roll-over of unspent funds through National Treasury and inform the transferring officer of all processes regarding the request • Ensure effective and efficient utilisation of the grant and alignment to the purpose and outputs of the grant • Ensure compliance with the required intergovernmental forums, reporting, and accountability frameworks for human settlements • Ensure that the USDG is used to meet the municipality MTSF targets

The Division of Revenue Bill for the 2020/21 financial year further set the USDG amounts to be allocated to the metros²³. The amounts allocated to the three metros in Gauteng are reflected in Table 2.

²³ Division of Revenue Bill 2020, pg.44

City	2020/21
	R'000
City of Ekurhuleni	1 967 505
City of Johannesburg	1 848 287
City of Tshwane	1 602 161

Table 2: USDG amounts allocated to Gauteng's metropolitan municipalities in 2020/21

In response to the COVID-19 pandemic changes to all conditional grants, including the USDG, were to be expected. In the 2020 national adjustment budget tabled in June, government indicated that "municipalities are responsible for implementing many aspects of the COVID-19 response" and that "these include providing improved access to water and sanitation in informal settlements and rural areas, providing temporary shelter for homeless people, and sanitising public transport facilities"²⁴.

An amount of R20 billion was subsequently made available for municipalities to provide these services. A portion of this R20 billion came from the reprioritisation of R2.3 billion within the USDG. Government indicated that the amount should fund:

1. The provision of water and sanitation to communities that lack access, and higher frequency and/or standards of services in informal settlements.
2. To provide temporary relocation areas in line with the requirements of the housing code.
3. The repair of municipal-owned infrastructure identified for quarantine sites (limited to repairs to existing facilities, not modifications and operational costs)²⁵.

In addition to these permitted reallocations the USDG amounts to be allocated to the metros were also decreased²⁶. The adjusted amounts allocated to the three metros in Gauteng according to the Division of Revenue Amendment Bill are reflected in Table 3.

City	2020/21 Main Allocation	2020/21 Adjusted Allocation
	R'000	R'000
City of Ekurhuleni	1 967 505	1 775 670
City of Johannesburg	1 848 287	1 668 076
City of Tshwane	1 602 161	1 445 948

Table 3: Adjusted USDG amounts allocated to Gauteng's metropolitan municipalities in 2020/21

²⁴ Budget Review: 2020 Adjusted National Budget (tabled in June), pg.44

²⁵ Budget Review: 2020 Adjusted National Budget (tabled in June), pg.44

²⁶ Division of Revenue Amendment Bill 18 June 2020, pg.16

Upgrading of Informal Settlements Programme (UISP) component

In 2019/20 a new component under the USDG was introduced for the upgrading of informal settlements. The component set a minimum amount of the USDG each city must spend on informal settlement upgrades and requires cities to work in partnership with communities. In 2019/2020 the UISP component was set at 20 percent of the USDG. The component and the 20 percent requirement has been extended for one more year, to 2020/21²⁷.

National government indicated in the 2020/21 National Budget that the “extension of this component serves as a planning and preparatory platform for a new Informal Settlements Upgrading Partnership Grant, planned for 2021/22”²⁸.

According to the Division of Revenue Bill for the 2020/21 financial year the intent, expected outcomes and requirements of the UISP component of the USDG (the ring-fenced 20 percent) are as follows²⁹:

Upgrading of Informal Settlements Programme component of the USDG	
Transferring Department	Human Settlements
Strategic Goal	The creation of sustainable and integrated human settlements that enable quality of household life
Grant purpose	<ul style="list-style-type: none"> To provide funding to facilitate a programmatic, inclusive and municipality-wide approach to upgrading informal settlements
Outcome statements	<ul style="list-style-type: none"> Promote integrated sustainable urban settlements and improved quality living environment as per the National Housing Code 2009 which includes tenure security, health and security as well as empowerment Serve as a planning and preparation platform towards the introduction of the new Upgrading of Informal Settlements Partnership Grant
Outputs	<ul style="list-style-type: none"> Programmatic municipality-wide informal settlements upgrading strategy Number of approved individual informal settlements upgrading plans aligned to the National Upgrading Support Programme (NUSP) methodology Number of social compacts concluded with communities and/or community resource organisations outlining their role in the upgrading process Number of informal settlements designated for upgrading in terms of the municipal Spatial Development Framework (SDF) and Spatial Planning and Land Use Management Act (SPLUMA) and by-laws enacted in this regard Number of households provided with secure tenure

²⁷ 2020 National Budget, pg. 48-49

²⁸ 2020 National Budget, pg. 48-49

²⁹ Division of Revenue Bill 2020, pg. 224 - 226

	<ul style="list-style-type: none"> • Number of households provided with individual engineering services (public lighting, roads, storm water, refuse removal and bulk connections for water, sanitation and electricity) • Hectares of land acquired for in situ upgrading • Number of in situ individually serviced sites developed
<p>Details contained in the business plan</p>	<ul style="list-style-type: none"> • The UISP component requires that cities use the human settlements chapter of their IDP to prioritise informal settlements for upgrading in 2020/21 • This component requires the submission of a UISP business plan in the prescribed format, with informal settlement upgrading plans for each settlement to be upgraded which include: <ul style="list-style-type: none"> ○ Project description ○ Settlement name and GIS coordinates ○ Category of settlement ○ Project institutional requirements (including list of stakeholders and departments responsible) ○ Sustainable livelihood implementation plans ○ Outputs and targets for services to be delivered ○ Cash flow projections (payment schedule) ○ Details of the support plan ○ Risk management plan ○ Prioritisation certificate issued by the MEC in consultation with relevant mayors • For those settlements where upgrading plans have not yet been completed, an interim plan with clear deliverables in terms of UISP phases contained in the Housing Code must be submitted
<p>Conditions</p>	<ul style="list-style-type: none"> • The following ring-fenced funds per municipality may only be used for projects contained in the UISP business plan of each municipality that is submitted as an annexure to the USDG business plan, in the format prescribed by the Department and aligned to the NUSP methodology and subject to the conditions and requirements specified for this component: <ul style="list-style-type: none"> ○ Buffalo City: R 152 million ○ Nelson Mandela Bay: R 181 million ○ Mangaung: R 151 million ○ City of Ekurhuleni: R 394 million ○ City of Johannesburg: R 370 million ○ City of Tshwane: R 320 million ○ eThekweni: R 393 million ○ City of Cape Town: R 296 million • Where there are no upgrading plans and spending is approved in terms of an interim plan, funding will only be transferred to a metro provided that confirmations is provided to the national department that individual upgrading plans are being developed for these projects and will be completed by 2021/22 • The ring-fenced amounts for this component are minimum amounts and municipalities may choose to spend a larger portion of their USDG allocation in compliance with the requirements of this component • A social compact must be included as part of each individual informal settlement upgrading plan. A maximum of 3 percent of the project cost may be used for community/social facilitation • The transfer of the first tranche of funds is conditional upon approval by the DHS of a municipal business plan which is consistent with the

	<p>provisions of the Housing Act, 2020 Division of Revenue Act and in compliance with the National Housing Code</p> <ul style="list-style-type: none"> • Cities must report quarterly on projects funded through this component using the template prescribed by DHS. Reporting must include financial and non-financial performance and progress against UISP plans
Allocation criteria	<ul style="list-style-type: none"> • The UISP component applies to all metropolitan municipalities • The allocation of the Upgrading of Informal Settlements Programme component ring-fenced within the USDG is 20 percent of the allocation for each municipality. These funds are also determined through the USDG allocation formula.
Responsibilities of the receiving officer in municipalities	<ul style="list-style-type: none"> • Initiate, plan and formulate applications for projects relating to the upgrading of informal settlements • Submit the final business plan by 29 May 2020 • Implement approved project in accordance with UISP plans approved by the national department • Fast-track the planning approval processes for informal settlements upgrading projects • Assume ownership of the engineering services installed • Manage, operate and maintain settlement areas developed under this programme • Coordinate and facilitate the provision of bulk and connector engineering services (including through funding from the main USDG) • Submit a report on the status of informal settlements in their municipality area and their categorisation in terms of the NUSP methodology to DHS by 29 May 2020 • Identify lessons from the implementation of this component and share with the DHS • Prepare and submit quarterly reports (financial and non-financial) on projects funded through this component using the template prescribed

Upgrading of Informal Settlements Partnership Grant (UISPG)

In 2020/21 national government indicated that if it deemed the UISP component of the USDG to be a success, with input from the metropolitan municipalities, a new Upgrading of Informal Settlements Partnership Grant (UISPG) will be created through the reprioritisation of funds from the USDG³⁰. The 2021/22 National Budget indicates that government deemed the UISP component to be a success. It has now launched and formalised the UISPG³¹.

³⁰ 2020 National Budget, pg. 48-49

³¹ Division of Revenue Bill 2021, pg. 226

Methodology

In order to provide a critical assessment of what the 3 metros in Gauteng have done so far in their 2020/2021 financial year to ensure greater access to water and sanitation, electricity, a safe environment and greater dignity for residents of informal settlements the report will focus specifically on the Upgrading of Informal Settlements Programme (UISP) projects the cities have committed to under the USDG.

The requirements set by national government in relation to the USDG and its UISP component has enabled the Gauteng provincial office of the South African Human Rights Commission to request the following from the three metros:

1. The Urban Settlements Development Grant (USDG) business plan for 2020/21 submitted to National Treasury on or before 29 May 2020.
2. The Upgrading of Informal Settlements Programme (UISP) business plan for 2020/21 submitted to National Treasury, as an annexure to the USDG business plan, on or before 29 May 2020.
3. The first and second quarterly reports (financial and non-financial) on projects funded through the UISP component of the USDG and that were submitted to National Treasury.

Towards Ensuring the Right to Adequate Housing through the Upgrading of Informal Settlements

By studying and unpacking the information requested from the City of Ekurhuleni, the City of Johannesburg and the City of Tshwane this section will assess whether identified projects and their corresponding budgets in these metros have met the requirements and criteria set by national government. Any deviations and failure to prioritise and implement these projects will be unpacked to determine to what extent metros are working towards or failing to ensure that greater access to water and sanitation, electricity, a safe environment and greater dignity for residents of informal settlements is achieved.

1. CITY OF EKURHULENI

The City of Ekurhuleni has developed an Upgrading of Informal Settlements Programme (UISP) plan as an annexure to their 2020/21 USDG plan that was submitted to national government.

The specific 2020/21 UISP projects, and their corresponding budgets, that Ekurhuleni committed the 20 percent component of the USDG to, were listed as follows:

Project Description	Area	Budget 2020/21
Electrification of informal settlements	City Wide	220 000 000
Clayville Electrification	Tembisa 2	10 000 000
Increase in bulk and link infrastructure	Apex Ext. 12 (Benoni)	17 085 000
Increase in number of serviced sites	Mayfield Ext. 45 (Davyeton)	14 620 000
Increase in number of serviced sites	Mayfield Ext. 46	3 227 000
Increase in bulk & link infrastructure	Mega Project Esselen Park	38 500 000
Increase in bulk & link infrastructure	Mega Project Van Dyk Park	40 000 000
		343 432 000

Table 4: City of Ekurhuleni's USDG UISP component projects

Despite national government having indicated that the City of Ekurhuleni would be eligible for R394 million in its 2020 Division of Revenue Bill (tabled in February 2020)³², Ekurhuleni's USDG UISP component plan, submitted in May 2020, failed to account for R50million of this amount.

Of the projects listed in the plan only two indicated the number of households that would be targeted over the 2020/21 financial year to be in line with the Service Delivery and Budget Implementation Plan (SDBIP). The number of households targeted in the 5 other projects might be in the SDBIP or, as is the case with Ekurhuleni, in the City's entire multi-year UISP business plan that follows the template set and required by national government. This however isn't ideal because all documents should contain all pertinent information that would allow for monitoring of impact and implementation. Not knowing conclusively how many informal settlement households stand to benefit from the R390 million set aside for upgrading in 2020/21 is a shortcoming in the City's 2020/21 USDG UISP plan

This lack of conformity across various documents is also partly because what metros have included under their 2020/21 USDG UISP component is not reflected in their overall, multi-year, UISP plan. This is because specific USDG UISP component projects sometimes, technically do not qualify as UISP projects that are in line with the National Upgrading Support Programme (NUSP) methodology.

The City of Ekurhuleni's plan to electrify informal settlements "citywide" in 2020/21 by using R220 million of its USDG grant (reflected in Table 4 above), for example, cannot readily be reflected in a UISP business plan, which has a prescribed format, which requires informal settlement upgrading

³² Division of Revenue Bill 2020, pg. 224 - 226

plans for each settlement to be upgraded and which has to include, amongst others, a project description, settlement and GIS coordinates and the category of the settlement as per the NUSP³³.

This of course does not diminish the value of 3000 homes likely being electrified in Ekurhuleni in 2020/21 and the dignity that such a programme affords households. That said, by spending 64 percent of the UISP component of the USDG “city-wide” the City of Ekurhuleni is missing an opportunity to engage and include specific informal settlements and specific households in their planning. The UISP requirement that a social compact must be included as part of each individual informal settlement upgrading plan – to be secured through community and social facilitation (that up to 3 percent of the project cost may be used for³⁴) – is an opportunity to let disadvantaged households know that their lived experience is understood and that incremental steps are being taken to change that for the better. A “city-wide” approach leaves informal settlement households in the dark about when they can expect basic service delivery.

As a consequence of the Division of Revenue Amendment Bill adopted nationally in June 2020, and in an adjustment budget of its own, the City of Ekurhuleni adjusted the budgets linked to their specific 2020/21 USDG UISP projects as follows:

Project Description	Budget 2020/21	Adjusted Budget
Electrification of informal settlements – City Wide	220 000 000	↑ 221 250 000
Clayville Electrification – Tembisa 2	10 000 000	↓ 8 750 000
Increase in bulk & link infrastructure – Apex Ext. 12 (Benoni)	17 085 000	↓ 12 085 000
Increase in number of serviced sites – Mayfield Ext. 45 (Davyeton)	14 620 000	14 620 000
Increase in number of serviced sites – Mayfield Ext. 46	3 227 000	↑ 12 527 000
Increase in bulk & link infrastructure – Mega Project Esselen Park	38 500 000	↓ 33 500 000
Increase in bulk & link infrastructure – Mega Project Van Dyk Park	40 000 000	↓ 25 000 000
	343 432 000	↓ 327 732 000

Table 5: City of Ekurhuleni’s Adjusted Budget for USDG UISP component projects

As of the writing of this report, as of the end of the second quarter and according to the second quarterly financial and non-financial report prepared and submitted by the City of Ekurhuleni on the implementation of their USDG UISP projects, overall 44.45% of the budgets linked to these projects had been spent. Below is the breakdown of the 7 projects:

Project Description	% as of end of second quarter
Electrification of informal settlements – City Wide	72,53%

³³ Division of Revenue Bill 2020, pg. 224 - 226

³⁴ Division of Revenue Bill 2020, pg. 224 - 226

Clayville Electrification – Tembisa 2	99,37%
Increase in bulk & link infrastructure – Apex Ext. 12 (Benoni)	33,77%
Increase in number of serviced sites – Mayfield Ext. 45 (Davyeton)	27,51%
Increase in number of serviced sites – Mayfield Ext. 46	18,70%
Increase in bulk & link infrastructure – Mega Project Esselen Park	59,29%
Increase in bulk & link infrastructure – Mega Project Van Dyk Park	0,00%

Table 6: City of Ekurhuleni’s USDG UISP component projects as of the end of the second quarter

According to the City of Ekurhuleni delays can broadly be attributed to “delays in the appointment of professional service provider”, “community interference” or “community unrest”. The delays however have real world consequences and negatively impact on the right of residents of informal settlements to adequate housing, to an environment that is not harmful to their health and well-being, to water and ultimately on their right to dignity.

In 2019/20 the City of Ekurhuleni did not receive R120 million of the USDG originally allocated to it because of non-performance³⁵. Similar non-performance in 2020/21 would be unacceptable especially if such non-performance characterised the implementation of the USDG UISP component.

2. CITY OF JOHANNESBURG

In 2019/20 the City of Johannesburg failed to submit its draft USDG plans³⁶. In 2020/21 this fortunately wasn’t the case and in keeping with the requirements set out in the 2020 Division of Revenue Bill, the City submitted its plan which included its multi-year UISP plans.

The specific 2020/21 UISP projects, and their corresponding budgets, that Johannesburg committed the 20 percent component of the USDG to, were listed as follows:

Project Description	Area	Budget 2020/21
Formalisation of informal settlements	-	221 623 000
Electrification of informal settlements	Princess Plot, Meriting, Rugby Club EL, Matholesville EL, Kya Sands, Lenasia Ext.11 (Patsing), Vasco Dama SWS	98 377 000
New basic water & sewer services	Princess Plot, Naledi, Dark City (Poortjie), Tshepisoong, Mountain View, M1 Hostel	50 000 000
		370 000 000

Table 7: City of Johannesburg’s USDG UISP component projects

³⁶ Department of Human Settlements Annual Report 2019-2020, pg. 40

The R370 million committed to these USDG UISP component projects is in line with the amount national government indicated that the City of Johannesburg would have to spend on these components³⁷.

As for the projects listed, the City of Johannesburg has done well to indicate all the areas that would be electrified and receive new basic water and sewer services in 2020/21 under two of the listed projects. Unfortunately under “Formalisation of informal settlements” – which according to the City will entail the upgrading of land tenure rights – no areas are specified. Again, the NUSP methodology behind the upgrading of informal settlements requires that informal settlements slated to be upgraded are specified in plans. The City has indicated that this project will include 30 informal settlements and that social facilitation forms a part of the project. This to some extent mitigates the failure to list the informal settlements because through facilitation the residents of the 30 informal settlements will be aware of the upgrading plans for their households and will be able to make input into these plans.

To the City of Johannesburg’s credit, despite a reduction in its USDG budget in the national Division of Revenue Amendment Bill adopted in June 2020, the City did not adjust its budget allocations to its USDG UISP component projects. It kept the overall amount committed at R370 million. This shows a commitment on paper to the provision of adequate housing through the upgrading of informal settlements.

Unfortunately and worryingly, as of the writing of this report, as of the end of the second quarter and according to the second quarterly financial and non-financial report prepared and submitted by the City of Johannesburg on the implementation of their USDG UISP projects, a mere 11% of the budgets linked to these projects had been spent. Of similar concern is that only 1% of the budget had been spent between the end of September and December, in the second quarter. Below is the breakdown of the 3 projects:

Project Description	% as of end of second quarter
Formalisation of informal settlements	18%
Electrification of informal settlements	0%
New basic water & sewer services	4%

Table 8: City of Johannesburg’s USDG UISP component projects as of the end of the second quarter

In the non-financial report covering the second quarter the City offers no reasons for the delays in implementation of these projects but instead simply lists the next steps required. With the majority of projects contractors have not been identified, in others procurement processes had not yet been

³⁷ Division of Revenue Bill 2020, pg. 224 - 226

initiated and in another a tender had still to be finalised and advertised (as of the end of the second quarter).

The delays, especially where they appear to simply be administrative in nature, reflects poorly on the City of Johannesburg and has real world consequences for residents city-wide. The failure of the City of Johannesburg to timeously initiate and procure services negatively impacts on the right of residents of informal settlements to adequate housing, on their right to an environment that is not harmful to their health and well-being, on their right to water and ultimately on their right to dignity.

3. CITY OF TSHWANE

In correspondence with the City of Tshwane around its 2020/21 USDG and its UISP component the SAHRC noted that it was appreciative of the fact that the City of Tshwane had been placed under administration on 5 March 2020 and that the administration had been successfully challenged in the courts and ultimately set aside in October 2020.

Historically the City of Tshwane however, whether under administration or not, has not met the requirements set by the USDG. In 2019/20 the City of Tshwane had failed to submit their draft USDG plans³⁸. In the same year R200 million of the USDG that had been allocated to Tshwane was not transferred to the City due to non-performance³⁹.

The City of Tshwane has fared no better in 2020/21. Even though the City managed to submit a USDG plan, the plan's annexure covering the upgrading of informal settlements simply listed 20 informal settlements and stated that "Engagement with Community through Cllr. and Sectional Leaders" would be undertaken. No budget was allocated towards these engagements even though the USDG requirements permit 3% of funds to go towards community/social facilitation of the upgrading of informal settlements.

In short, the City of Tshwane in its plans has not listed any projects that would benefit from the USDG UISP component made available to it – an amount of R320 million⁴⁰.

In addition the quarterly reports required by the Division of Revenue Bill, specifically covering the UISP component projects, fail to cover these projects. Instead the two quarterly reports give an overview of the USDG in its entirety and provides no information on specific UISP component projects.

The failure of the City of Tshwane to meet the requirements around the USDG, and specifically around its UISP component, is indicative of poor planning, poor budgeting, and poor reporting, and shows a lack of

³⁸ Department of Human Settlements Annual Report 2019-2020, pg. 40

³⁹ Department of Human Settlements Annual Report 2019-2020, pg. 209

⁴⁰ Division of Revenue Bill 2020, pg. 224 - 226

commitment to ensuring the right to adequate housing through the upgrading of informal settlements is met. These shortcomings invariably mean that residents of informal settlements in Tshwane are likely to have to wait even longer to be reflected in City plans and budgets and that the systematic incremental upgrading of households will be delayed.

Further monitoring of the upgrading of informal settlements projects

In the Budget Review for the Adjusted National Budget for 2020/21, National Treasury stated that “municipal spending of COVID-19-related funds will be monitored through the recently introduced municipal Standard Chart of Accounts”. Treasury went on to say that municipalities “are responsible for ring-fencing and classifying their COVID-19 funding and expenditure correctly” and that the conditional grants will be “monitored through the conditional grant reports required by the Division of Revenue Act”. Further, each “municipality is expected to inform its community about its COVID-19 related spending, allowing for local oversight.”⁴¹

These requirements all allow for robust monitoring of municipal budgets and ultimately of the commitment of municipalities and metros to pro-human rights budgeting in general and the right to adequate housing specifically.

As June 2021 and the financial year end of municipalities approaches a review of the permitted reprioritisation of USDG funds⁴² (R2.3 billion across the eight metros) would reveal to what extent metros prioritised the provision of water and sanitation to communities that lack access and whether metros provided a higher frequency and standard of service around the provision of water and sanitation services during a global pandemic that requires greater public health measures.

In their *Asiviklane* project, the International Budget Partnership (IBP) has shown that some informal settlements in metros across the country “do not have access to any basic water and sanitation in the form of taps and toilets.” In many other settlements they have found that “there are simply not enough taps and toilets for all the residents in the settlement, with large numbers of households sharing one tap or toilet.” As a result, the IBP for instance, while lauding and advocating for large, multi-year upgrading of informal settlements projects, argues that in the current crisis prioritisation should be given to ensuring incremental provision of taps and toilets to as many residents in a metro as possible and as soon as possible⁴³. The permitted reprioritisation of USDG funds enabled the

⁴¹ 2020 Adjusted National Budget (tabled in June) *Budget Review*: pg. 19-20

⁴² Budget Review: 2020 Adjusted National Budget (tabled in June), pg.44

⁴³ International Budget Partnership, *Asiviklane Budget Synthesis*, 16 February 2021

prioritisations that the IBP recommends. A review of USDG funds spent in individual metros will reveal whether greater, immediate access to taps and toilets, and as a consequence to improved dignity and public health outcomes, was something metros endeavoured to achieve.

Similarly as the financial year end of municipalities approaches a review of all four quarterly reports required under the USDG for the upgrading of informal settlements component can be undertaken. Such a review will reveal to what extent metros fulfilled the requirements set for themselves in relation to the upgrading of informal settlements. Such a review would also set a baseline for the performance of metros in implementing the likely requirements of the Upgrading of Informal Settlements Partnership Grant (UISPG) which has now been introduced by National Treasury in its 2021/22 budget.

Conclusion

Firstly, further monitoring of the upgrading of informal settlements projects in the three metros is required. This report has given a background to the Upgrading of Informal Settlements Programme (UISP) and how projects under this programme have been and will be funded.

This report has also looked at the implementation of UISP projects, funded through the Urban Settlement Development Grant (USDG), in the three metros in Gauteng in the first half of their 2020/21 financial year. This sets a baseline for future monitoring of these specific projects and the broader programme of upgrading moving forward.

Both the City of Ekurhuleni and the City of Johannesburg have made concerted efforts to ensuring that the right to adequate housing through the upgrading of informal settlements is met. They have done so by developing detailed plans and allocating specific budgets. Both cities, in future, should endeavour to list the specific informal settlements and number of households that will stand to benefit under every UISP project, whether funded through the new Upgrading of Informal Settlements Partnership Grant (UISPG) and/or from the cities' own revenue streams. Listing informal settlements meets the requirements set by the National Upgrading Support Programme (NUSP), helps clarify how and when individual informal settlements will benefit from incremental steps towards achieving adequate and dignified housing and assists in making residents of informal settlements partners in the programme.

The City of Johannesburg's underspending of the USDG UIPS component half-way through the year is reason for concern and requires a concerted effort from the City to meet the targets set – targets that are meant to provide households with better services and move them towards enjoyment of the right to dignified and adequate housing.

With regards to the USDG and the USDG UIPS component the City of Tshwane is self-evidently not-performing. The failure to plan, budget and report around the upgrading of informal settlements is an indictment on the City and leaves the residents of informal settlements in Tshwane uncertain of when they might expect incremental upgrading of the places and spaces they call home. The uncertainty these residents face is unnecessary and any delays in working towards the right to adequate housing through the upgrading of informal settlements should be addressed as a matter of urgency especially given that funding has been made available to achieve this end.

Given that national government has now launched and formalised the UISPG means that despite the challenges – some listed above – the UISP is set to define how all levels of government work towards providing dignified and adequate housing to residents of informal settlements. Government should be supported in this work and, through monitoring, should be guided to ensure that it delivers.

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