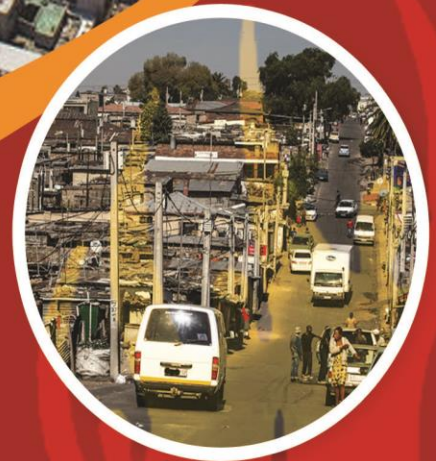
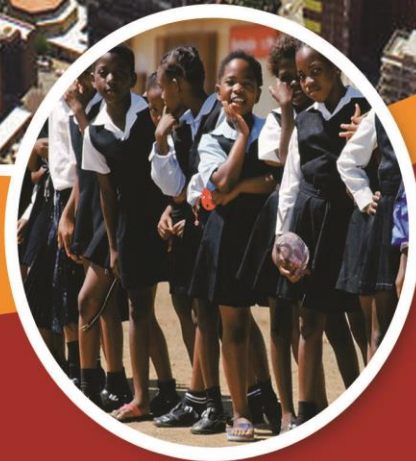




south african  
**human  
rights**  
commission

# STATE OF HUMAN RIGHTS IN GAUTENG



**REPORT 2018/2019**

**“LEAVING NO ONE BEHIND”**

TRANSFORMING SOCIETY. SECURING RIGHTS. RESTORING DIGNITY

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## 1. Background

Despite a very progressive constitution, far too many people continue to face a present and future characterised by depressing deficits of fundamental rights in South Africa. Historical deprivation for the majority of the people in the country under Apartheid is exacerbated by policy failure, political ambivalence to change, and institutional failings at all three levels of government.

Statistics glaringly show that despite having a remarkable pool of natural resource wealth and being ranked a middle-income country<sup>1</sup>, poverty, high rates of unemployment<sup>2</sup> and inequality<sup>3</sup> in South Africa remain structural and deeply entrenched amongst the majority of its population.

The state and its organs continue to grapple with addressing the triple burdens of poverty, inequality and unemployment. In comparison to other emerging market economies, South Africa has the highest levels of poverty, highest level of inequality globally and unemployment rates that are above average to its counterparts.

It is against this background that this report will provide a critical assessment of the state of human rights in the province of Gauteng where the cost of living continues to increase as incomes, social services and work opportunities have stagnated and even declined. The situation has created a harsh situation where the majority of families cannot afford to lead decent lives, and protests for the enjoyment of socio-economic rights have increased over the past decade. And yet, geographically Gauteng Province is one of the smallest with the highest GDP per capita in both South Africa and the African continent<sup>4</sup>.

This 2018/2019 human rights report for Gauteng will provide an assessment of how inequalities and injustices continue to manifest themselves in the enjoyment of the right to health, access to adequate housing and basic services in Gauteng Province. The barriers to the enjoyment of these rights will be conducted through an inequality-lens demonstrating the systemic inequalities that continue to persist in Gauteng Province thereby denying the residents of the province the enjoyment of these indivisible rights. Furthermore, this critical assessment will interrogate the policy efforts by the province to promote the Sustainable Development Goals (SDGs2030) principle of leaving no one behind<sup>5</sup>

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<sup>1</sup> United Nations Development Programme. Human Development Index 2019. Available online at:

<http://hdr.undp.org/en/countries/profiles/ZAF>

<sup>2</sup>The results of the Quarterly Labour Force Survey (QLFS) for the fourth quarter of 2019 indicate that the official unemployment rate remained unchanged (29, 1%) Statistics South Africa. Fourth Quarterly Labour Force Survey 2019. Available online at: <http://www.statssa.gov.za/?p=12948>

<sup>3</sup> United Nations University. 2019 World Income Inequality Database demonstrates that the country's Gini Coefficient (0.63) from 0.60 10 years ago. Available online at: <http://hdr.undp.org/en/countries/profiles/ZAF>

<sup>4</sup> The International Monetary Fund 2019 World Economic Outlook data shows that income per capita in Gauteng – the main economic province that comprised large cities like Johannesburg and Pretoria – almost twice the levels as that found in mostly rural provinces like Limpopo and Eastern Cape provinces. Demonstrating significant disparities across South Africa's nine provinces. Available online at: <https://www.imf.org/en/Publications/WEO/Issues/2019/10/01/world-economic-outlook-october-2019>

<sup>5</sup> The principle of "Leaving No one Behind" is embedded across all the 17 SDGs. The United Nations Committee for Development Policy characterises the principle as aiming to respond to many different contexts where people are being pushed further behind by a variety of forces, including globalization, technological developments, gender discrimination, climate change and other forms of environmental degradation that lead to a loss of access to land, livelihoods and jobs. Furthermore, the principle is aimed at responding to the extreme inequalities that persists within countries and cities as well as among countries.

## 2. Methodology

The assessment of the state of human rights in Gauteng 2018/2019 will adopt a two-pronged approach through the application of the OPERA Framework<sup>6</sup> and analysis of documentary evidence or primary evidence from the Commission's Gauteng Provincial Office complaint's mechanism and site inspections. In applying the OPERA Framework, analysis will be focused on assessing the policy efforts adopted by the provincial government to address the multifaceted nature of inequalities and provide a critical analysis of how they manifest themselves in the rights (access to health, housing and basic services) and as barriers to the enjoyment of these rights. The provincial state of the province address (SOPA) 2018 and 2019 will be analysed to assess the policy effort by the provincial government to address these systemic inequalities that act as a barrier to the enjoyment of the rights.

Administrative data sourced from Statistics South Africa such as Inequality Trends and General Household Survey will be analysed to determine the policy effort and outcomes by the provincial government to address inequalities that act as a barrier to the enjoyment of these socio-economic rights. Treaty Bodies' submissions such as the state party report to the Committee on Economic, Social and Cultural Rights by South Africa and the concluding recommendations will be assessed to determine South Africa and the Gauteng provincial government to implement the legally binding recommendations.

The complaints mechanism and site inspection reports of the South African Human Rights Commission Gauteng provincial office will be analysed (2018/2019) since South Africa signed up to the SDGs in 2015 and 2012 NDP to complement the policy effort and outcomes analysis of the state progress or failure in guaranteeing the enjoyment of the rights being assessed. Media articles will also be assessed as a medium through which high profile provincial complaints and site inspections have been captured and reported on and outcomes of the Commission's complaints have been reported on. This approach will determine the policy effort or lack thereof by the provincial government to address the human rights violations identified as a result of systemic inequalities to guaranteeing the rights on housing, health care, water and basic services.

## 3. Inequality Overview: Leaving No One Behind

Multidimensional inequality<sup>7</sup> has increased in nearly all regions of the world in recent decades, but at different levels based on differences in the role played by national institutions and implementation of developmental policies. The top 1% richest individuals in the world captured twice as much growth as the bottom 50% individuals since 1980<sup>8</sup>. Rising economic inequality creates stark disparities in access to health, housing, water, sanitation and other services which are key for the realization of economic, social and cultural rights. It can

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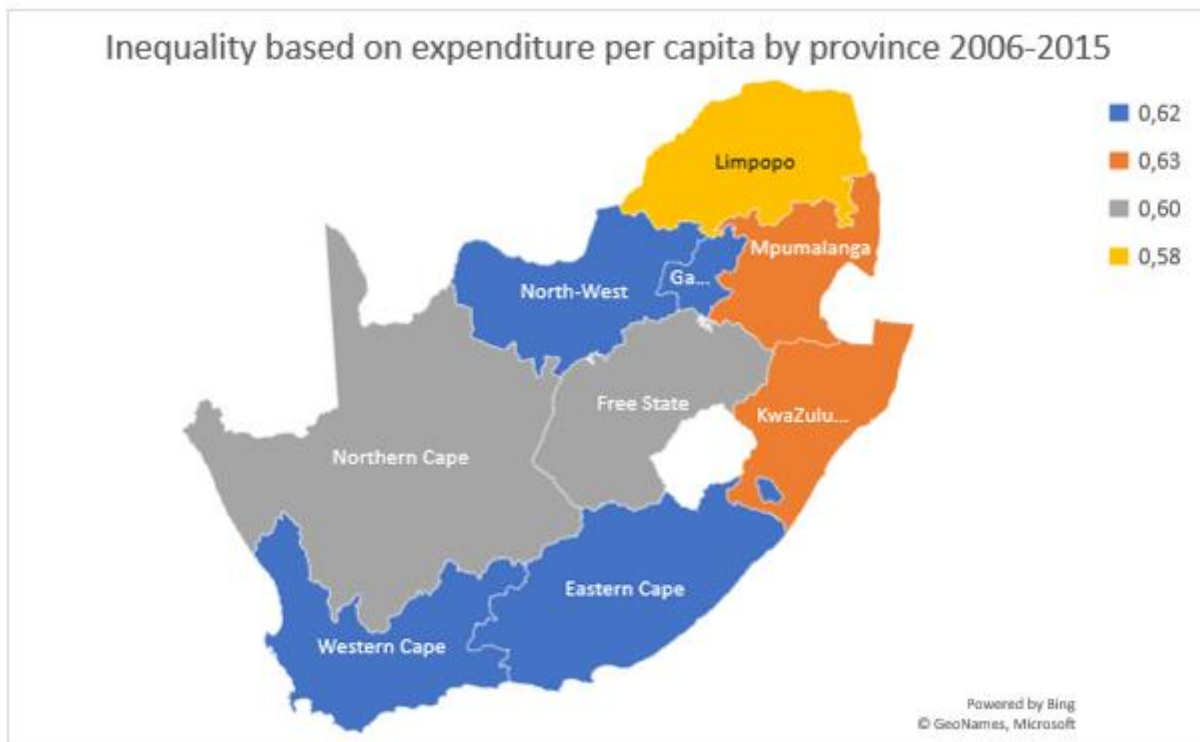
<sup>6</sup> OPERA Framework: Outcomes; Policy Effort; Resource Allocation; and, Assessment. The framework was developed by the Washington based Centre for Economic and Social Rights which is a simple and comprehensive four-step guide to analyse various aspects of the obligation to fulfil economic and social rights. The framework incorporates different measures for specific human rights principles and standards by framing them around the four levels of analysis. Guide is available online at: <https://www.cesr.org/opera-framework>

<sup>7</sup> According to the London School of Economics and OXFAM, the international Multidimensional Inequality Framework (MIF) "provides a systematic approach to measuring and analysing inequalities, and for identifying causes and potential solutions. It has been developed through a collaboration between experts at the LSE and OXFAM." In addition, LSE and OXFAM describe the MIF that it was aimed to "measure inequality in individual well-being, reflecting the fact that our lives have many important dimensions: our health, our relationships, and our safety, our ability to have influence, our knowledge, and many other dimensions including financial security." Furthermore, the MIF draws on Amartya Sen's capability approach to provide a clear methodology to assess well-being. It allows us to examine differences in people's capabilities to live the kind of life they have reason to value. Available online at: <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/09/Final-Multidimensional-Inequality-Framework-110918.pdf>

<sup>8</sup> Oxfam. 2018. Reward Work, Not Wealth. Available online at: <https://www.oxfam.org/en/research/reward-work-not-wealth>

limit people’s access to effective legal remedies because of the capture of legal and political institutions by powerful individuals and entities.

**Figure 1.1: Inequality measures based on expenditure per capita by province 2006-2015 (Average)**



Source: Statistics South Africa Inequality Trends, 2018; *Own calculations*

In assessing developmental progress made over the past 25 years, South Africa’s Voluntary National Review (VNR) on SDGs acknowledges that “South Africa is one of the countries with the highest levels of income inequality in the world”.<sup>9</sup> Statistics South Africa Inequality Trends report demonstrates that the income gap between the previously advantaged and disadvantaged has continued to widen earning South Africa the label of the most unequal country in the world in income inequality terms. The Inequality Trends report further demonstrates that between 2006 to 2015 South Africa averaged 0.65 with a slight decrease from 0.67 to 0.65 (2% decrease) on the Gini-coefficient.

#### 4. The State of the Right to Health in Gauteng

However, beyond simply focusing on the per capita gaps between the haves and have nots as discussed in the previous section, inequalities have broadened to access and quality of services provided in economic and social rights sector. The multidimensional indicators of inequality in South Africa are still broadly defined by geographical location, income levels, levels of education, and the continuing historical injustices of the past. For example, public health care system in the country which largely services previously disadvantaged South Africans experiences challenges of overcrowding, low doctor/nurse and patient ratio, poor or lack of service, poor governance and maladministration and collapsing infrastructure. The private health sector on the other

<sup>9</sup> Statistics South Africa. 2019. Sustainable Development Goals – Country Report 2019. Available online at: [http://www.statssa.gov.za/MDG/SDGs\\_Country\\_Report\\_2019\\_South\\_Africa.pdf](http://www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf)

hand caters for the majority previously advantaged populations and an emerging Black middle class and it still largely inaccessible for majority South African due to unaffordability.

#### 4.1 Legal Framework on the Right to Healthcare

South Africa is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The country ratified the ICESCR on January 18, 2015 more than 21 years since the country signed the covenant in 1994. The Covenant came into force on 12 April 2015 and South Africa submitted its first state party report to the Committee on ESCR in October 2019. The right to health is a term used to refer to a series of freedoms and entitlements commonly enunciated in human rights law on the topic of human health<sup>10</sup>. In the words of the Committee on Economic, Social and Cultural Rights (CESCR)<sup>11</sup> it is, “a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest standard of health”<sup>12</sup>. This includes health care and underlying social determinants of health such as food, water, occupational and environmental conditions amongst others<sup>13</sup>.

Freedoms inherent in this right include the following, which are also relevant to access to medicine; namely, sexual and reproductive freedom (access to contraceptives), non-consensual medical treatment (freedom to refuse medication and presumably freedom to choose medication), freedom from non-consensual experimentation<sup>14</sup>.

The CESCR established the Availability, Accessibility, Acceptability and Quality criteria (4AQ) in relation to the right to health:

- Availability requires that health goods amongst other health facilities and services be available to those who need them<sup>15</sup>.
- Accessibility has three dimensions to it; namely, information, physical and economic accessibility<sup>16</sup>. There is an obligation on the state to make health goods accessible without discrimination, on listed or analogous grounds. Moreover, vulnerable or marginalised groups should especially receive state support<sup>17</sup>.
- Acceptability requires that health goods respect medical ethics and should be culturally appropriate and improve on the health status of the patient<sup>18</sup>.

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<sup>10</sup> General Comment 14 paragraph 8-9

<sup>11</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its State Parties. The Committee was established under UN Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United National ECOSOC in Part IV of the Covenant.

<sup>12</sup> General Comment 14 paragraph 9

<sup>13</sup> General Comment 14 paragraph 11

<sup>14</sup> General Comment 14 paragraph 8

<sup>15</sup> General Comment 14 paragraph 14 (a)

<sup>16</sup> Information accessibility requires that relevant health information is accessible, that people are entitled to seek, receive and impart ideas and information on health issues; however, personal data should always be kept confidential. Physical accessibility requires that health goods should be within safe physical reach for all, particularly, the vulnerable and marginalised; specifically, health goods should be available in rural areas as well as urban areas. Economic accessibility requires that health goods should also be affordable to all. Further services whether privately or publicly provided, should be affordable to all including the socially disadvantaged.

<sup>17</sup> General Comment 14 paragraph 12 (b)

<sup>18</sup> General Comment 14 paragraph 12 (c)

South Africa is also state part to the African Charter on Human and Peoples' Rights<sup>19</sup>. Article 16<sup>20</sup> of the African Charter states: "Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick." The right to health is an inclusive right that encompasses both health care and the underlying determinants of health.

The right to health care is one of several socio-economics rights enshrined in the South Africa Constitution Act 108 of 1996. Section 27(1) states that: "Everyone has the right to have access to health care services, including reproductive health care." (b) "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"<sup>21</sup>. In other words, the Constitution in line with international and regional treaties on the right to health, obligates the states to progressively realise the universal right of access to all in South Africa.

#### 4.2 Inequalities in Healthcare

Inequalities in health have received considerable attention from health scientists and development economists. In South Africa, inequalities exist in socio-economic status and in access to basic social services between population groups, provinces, and socio-economic groups are typical and extensive and these help to exacerbate inequalities in health. While health systems, together with the wider social determinants of health, are relevant in seeking to improve health status and health inequalities, those that need good quality health care seldom get it.

Studies on the burden of ill-health in South Africa have shown consistently that, relative to the wealthy, the poor suffer more from disease and violence. The poor face many predisposing factors that are recognized as social determinants of ill-health but also they often cannot afford to seek care when ill.

The health system has relevance to the social determinants of health and plays an important role in improving health status and addressing health inequalities<sup>22</sup>. However, which suggests that the availability of good quality health care is inversely related to the need for it in the population it serves, seems to prevail in many countries. In South Africa, the distribution of health service utilisation and of the benefits from using services is skewed in favour of the rich for most public facilities, especially hospitals, and across all private sector services<sup>23</sup>.

The country's health care system carries the burden of providing services to almost 71.2% of the population who are overwhelmingly poor and Black, while a smaller proportion of the population 27.4%, overwhelmingly well-off and White benefit from immediate access to health care professionals and relevant technological resources through the private health care sector<sup>24</sup>. In Gauteng, the deeply entrenched unequal health care systems are no exception, despite the province being the most developed with the highest GDP per capita in the country. The structural inequalities in the health care sector are demonstrated in Table 1.1 below between provinces and between public and private health care institutions.

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<sup>19</sup> The African Charter on Human and Peoples Rights (also known as the Banjul Charter) is an international human rights instruments that is intended to promote and protect human rights and basic freedoms in the African Continent.

<sup>20</sup> Available online at: <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>21</sup> The Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>22</sup> Gilson, L, Doherty J, Loewenson R, Francis V. 2007. Challenging inequity through health systems: Final report of the World Health Organisation Commission on the Social Determinants of Health's Knowledge Network on Health Systems. Available online at:

<sup>23</sup> Ataguba J, McIntrye, D. 2009. Financing and benefit incidence in the South African health system: Preliminary Results. Health Economics Unit, University of Cape Town.

<sup>24</sup> Statistics South Africa General Household Survey 2017.

**Table 1.1: Level of satisfaction with public and private health care facilities by province, 2017<sup>25</sup>**

Level of Satisfaction with healthcare institution	Province									
	Public Health care institutions									
	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
Very satisfied	48,3	59,1	40,7	48,1	46,9	46,7	55,8	62,3	75,1	55,1
Somewhat satisfied	22,1	30,2	28,2	23,0	34,0	27,6	26,8	24,2	14,9	26,7
Neither satisfied or dissatisfied	11,3	4,6	7,6	10,9	12,5	7,2	8,7	5,3	4,2	8,4
Somewhat dissatisfied	6,8	3,8	4,8	9,5	3,2	6,4	3,9	4,3	4,1	4,5
Very dissatisfied	11,5	2,3	9,1	8,6	3,4	12,1	4,9	4,0	1,7	5,3
Private Healthcare institutions										
Very satisfied	93,2	96,0	86,9	86,6	86,6	90,9	92,0	95,0	93,2	91,5
Somewhat dissatisfied	3,7	3,4	7,0	8,3	10,6	7,2	5,8	2,7	3,5	5,8
Neither satisfied or dissatisfied	1,0	0,2	3,9	2,4	2,0	0,5	1,4	1,3	1,8	1,4
Somewhat dissatisfied	0,9	0,5	0,4	1,4	0,6	1,1	0,5	0,0	0,6	0,7
Very dissatisfied	1,3	0,0	1,7	1,3	0,3	0,3	0,4	1,0	0,9	0,6

### 4.3 State of the right to health care in Gauteng: Two-tiered healthcare system

In its concluding observations to South Africa’s state party report, the Committee on Economic, Social and Cultural Rights concluded that “While noting that the State party aims to achieve universal health-care coverage through the adoption of the National Health Insurance Bill, the Committee is concerned at the large disparities between the public and private health-care systems, with the public system at a disadvantage in relation to the number of medical professionals, medical equipment and medical expenditure, as well as between rural and urban areas in registering with the National Health Insurance Fund and accessing health-care services”<sup>26</sup>.

Table 1.1 demonstrates that 55.8% of the Gauteng citizens are “Very satisfied” with the services provided at public health care institutions in the province and 92.0% of private health care institutions are very satisfied with the services provided at private health care institutions. These figures demonstrate the two-tiered health care systems that exist in the province and a further indicator of the deep structural inequalities that exist in the health care sector. In his 2019 State of the Province Address, Premier David Makhura acknowledges that “the public healthcare system in our province faces tremendous pressures and challenges. In the eyes of citizens, our healthcare also faces a crisis of believability. I have heard many stories, during Ntirhisano, from

<sup>25</sup> Statistics South Africa General Household Survey.

<sup>26</sup> Committee on Economic, Social and Cultural Rights 2018.



citizens who have gone into health facilities never hoping to come out alive. This is an area of profound challenges in terms of service delivery and needs to be fixed now”.

Despite the challenges highlighted by the premier in the public healthcare sector, a number of province’s citizens rely on accessing primary healthcare facilities in their communities. Table 1.2 below demonstrates that Gauteng province had the greatest number of people who accessed public clinics as the first point of consultation when falling ill or requiring medical treatment. This is partly due to a number of social determinants, such as distance to travel to primary healthcare (cost of public transport or walking distance).

**Table 1.2: Households normal place of consultation by province<sup>27</sup>**

Place of Consultation	Thousands									
		WC	EC	NC	FS	KZN	NW	GP	MP	LP
Public Sector	Public hospital	247	117	20	48	179	56	273	E70	117
	Public clinic	761	1211	218	489	2033	818	2692	872	1194
Private Sector	Private hospital	67	9	3	9	16	22	121	6	4
	Private Clinic	19	10	4	18	20	4	94	9	20
	Private Doctor/Specialist	704	287	81	269	529	229	1426	268	175

In her 2019 Budget Speech<sup>28</sup> to address the challenges highlighted by the Premier, the Member of Executive Council for Finance in Gauteng prioritised:

- R30 billion to fund personnel budget, which includes R346 million for employment of interns and R310 million for the absorption of Community Health Workers;
- R17 billion to fund the goods and services this includes the carry through costs of R1.6 billion per annum commitment so that the Department of Health can pay off its accruals; and,
- R148 million for the Cuban Doctor programme.

These priorities partly address the overhead challenges without addressing the structural inequities and deep-seated challenges in the provincial public healthcare system. For examples, the Treatment Action Campaign in the state of health report in Gauteng draw data from the Office of Health Standards and Compliance (OHSC) report on the state of primary healthcare facilities which found out that out of the 52 clinics inspected only 12% performed at 50% which is below the 80% threshold that primary health care facilities should score to claim an acceptable level of care<sup>29</sup>.

**Table 1.3: Number of Clinics in Gauteng Performing above 80% threshold of OHSC acceptable level of care**

Number of Facilities	Rate of Performance
5	Clinics performed below 20%
17	Clinics performed between 20-29%

<sup>27</sup> Statistics South Africa General Household Survey 2017.

<sup>28</sup> Provincial Budget 2019

<sup>29</sup> Treatment Action Campaign 2018.

16	Clinics performed 30-39%
8	Clinics performed between 40-49%
2	Clinics performed between 50-59%
1	Clinics performed between 60-69%
2	Clinics performed between 70-79%
1	Clinic performed above the required standards to claim an acceptable level of care.

This is in contradiction to the statement made by the premier in his 2019 SOPA that “we have the highest number of clinics (75%) that meet the highest national core standard of ideal clinic. These clinics are clean, open on time, well run, have reduced waiting times and have the high rates of medicine availability”<sup>30</sup>.

In addition to the contradictions in the expenditure priorities and successes as highlighted by the Premier, Gauteng public clinics still fall far short of meeting the Ideal Clinic Realisation and Maintenance (ICRM)<sup>31</sup> programme. Table 1.3 and Table 1.4 below demonstrates the number of clinics that meet the ICRM standards by province in preparation for the implementation of the National Health Insurance.

**Table 1.4: Percentage of Ideal Number of Clinics: National Health Insurance**

Province	Total number of Primary Healthcare facilities	No. of Ideal clinics	% of Ideal clinics
	2015/2016	2015/2016	2015/2016
Eastern Cape	771	14	2%
Free State	221	22	10%
Gauteng	367	89	24%
Kwazulu Natal	600	141	24%
Limpopo	477	27	6%
Mpumalanga	288	19	7%
North West	314	7	2%
Northern Cape	164	3	2%
Western Cape	275	-	-

<sup>30</sup> State of Province Address 2019.

<sup>31</sup> An Ideal Clinic is defined as a clinic with good infrastructure, adequate staff, adequate medicine and supplies, good administrative processes, and sufficient adequate bulk supplies. It uses applicable clinical policies, protocol and guidelines, and it harnesses partner and stakeholder support. An ideal Clinic also collaborates with other government departments, the private sector and non-governmental organisations to address the social determinants in health. Integrated Clinical Services Management is to respond to the growing burden of chronic diseases in South Africa in an efficient and cost effective manner. Available online at: <https://www.idealhealthfacility.org.za/>

The Treatment Action Campaign in its 2018 Spotlight<sup>32</sup> on healthcare in Gauteng found the following areas of concern in the public health sector in the province:

- Critical shortage of human resources;
- Hospitals in a state of dysfunction;
- Dire state of facility infrastructure and medical equipment missing or in disrepair;
- HIV and TB response falls short of meeting targets;
- Poor TB response control at health facilities;
- Rights violations of people with mental conditions;
- Financial maladministration and budgetary issues;
- Poorly functioning accountability structures;
- Migrants unable to access healthcare; and,
- Dire state of emergency medical services.

#### 4.4 Reaching the furthest behind: South African Human Rights Commissions Investigations of Violations of the right to health

The South African Human Rights Commission (SAHRC) Act 40 of 2013 provides it with powers to:

- Investigate and report on the observance of human rights;
- Take steps and secure appropriate redress where human rights have been violated;
- Carry out research; and,
- Educate.

To demonstrate the impact of the two-tiered health care system in Gauteng, Table 1.4 below draws from the SAHRC Complaints handling procedure and site inspections conducted between 2018 and 2019. During this period the Commission conducted site inspections to 11 hospitals and primary health care facilities to investigate alleged human rights violations in the health sector in the province. Table 1.4 also provides the outcomes of the investigations and the commitments from the provincial government officials in addressing the alleged human rights violations.

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<sup>32</sup> Treatment Action Campaign. 2018. State of Provincial Healthcare System Spotlight on Gauteng. Available online at: <https://tac.org.za/files/tac-gauteng-state-of-health-report-may-2018.pdf>

**Table 1.5: Right to access to healthcare violations investigated by the Human Rights Commission (Gauteng Provincial Office)<sup>33</sup>**

Name of Hospital	Year	Nature of Complaint	Outcome
1. Steve Biko Oncology Ward <sup>34</sup>	May 2018	<ul style="list-style-type: none"> <li>• The Commission initiated an investigation at Steve Biko Academic Hospital following a media report alleging that the hospital's oncology ward was under capacitated and on the verge of collapse.</li> <li>• There are allegedly about 934 cancer patients who are awaiting radiation treatment at the hospital and the hospital's failure to recruit an adequate number of staff and repair the broken down machines has resulted in a backlog in terms of patients awaiting treatment.</li> </ul>	<ul style="list-style-type: none"> <li>• The Gauteng MEC of Infrastructure Development, Tasneem Motara<sup>35</sup> intervened 1 year after The Commission conducted the inspection.</li> <li>• The MEC dispatched a joint team of officials from her department and the provincial department of health to assess and resolve the widely reported problems at the oncology ward of the busy Steve Biko Academic Hospital in Pretoria.</li> </ul>

<sup>33</sup>

<sup>34</sup> South African Human Rights Commission. Media Advisory: SAHRC to conduct a site inspection of Steve Biko Academic Hospital following allegations of a collapsed oncology ward, 01 June 2018. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1355-media-advisory-sahrc-to-conduct-a-site-inspection-of-steve-biko-academic-hospital-following-allegations-of-a-collapsed-oncology-ward>

<sup>35</sup> South African Human Rights Commission. Gauteng Infrastructure MEC Motara intervenes at Steve Biko Academic Hospital. 2019. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1959-gauteng-infrastructure-mec-motara-intervenes-at-steve-biko-academic-hospital>



2. Charlotte Maxeke Academic Hospital <sup>36</sup>	June 2018	<ul style="list-style-type: none"> <li>• In May 2018, the South African Human Rights Commission (“Commission”) initiated an investigation at Charlotte Maxeke Academic Hospital following several reports alleging that there was a shortage of radiation oncologists at the hospital’s oncology ward, a breakdown of vital cancer treatment machines and delays in the provision of health care services to approximately 500 cancer patients who are awaiting radiation treatment.</li> </ul>	<ul style="list-style-type: none"> <li>• The South African Human Rights Commission (SAHRC)<sup>37</sup> held an inquiry into the disruptive protest at Charlotte Maxeke Academic Hospital. Hundreds of workers shut down the hospital over unpaid bonuses.</li> </ul>
3. Jubilee District Hospital <sup>38</sup>	July 2018	<ul style="list-style-type: none"> <li>• The South Africa Human Rights Commission Gauteng Provincial Office visited Hammanskraal this after residents complained that the water in the area could be contaminated with cholera and poor health care services at Jubilee District Hospital.</li> <li>• The residents allege that the City of Tshwane and Jubilee Hospital have violated their right to human dignity, clean environment, and access to water, health and access to information by its failure to provide them with clean water</li> </ul>	<ul style="list-style-type: none"> <li>• No outcome recorded internally or in the media.</li> </ul>

<sup>36</sup> South African Human Rights Commission. Press Release: SAHRC to conduct a site inspection at Charlotte Maxeke Academic Hospital following allegations of oncology crisis, 06 June 2018. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1359-press-release-sahrc-to-conduct-a-site-inspection-at-charlotte-maxeke-academic-hospital-following-allegations-of-oncology-crisis>

<sup>37</sup> South African Human Rights Commission. Press Release: SAHRC holds an inquiry into the recent disruptive protest at Charlotte Maxeke Academic Hospital. Undated. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1408-sahrc-holds-an-inquiry-into-the-recent-disruptive-protest-at-charlotte-maxeke-academic-hospital>

<sup>38</sup> South African Human Rights Commission. Media Alert: SAHRC Gauteng Provincial Office to visit Hammanskraal and Jubilee District Hospital following allegations of supply of contaminated water to residents and poor service delivery at the hospital. 16 July 2018. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1437-media-alert-sahrc-gauteng-provincial-office-to-visit-hammanskraal-and-jubilee-district-hospital-following-allegations-of-supply-of-contaminated-water-to-residents-poor-service-delivery-at-the-hospital>

		and to administer measures aimed at ensuring that their right to water and healthcare is realised.	
4. Thelle Mogoerane District Hospital <sup>39</sup>	September 2018	<ul style="list-style-type: none"> <li>• The South African Human Rights Commission (SAHRC) conducted a site inspection at the Thelle Mogoerane Hospital, in Vosloorus, following the deaths of six new-born babies<sup>40</sup>.</li> <li>• It follows the outbreak of Klebsiella pneumonia at the hospital and allegations that overcrowding in the hospital's neonatal unit played a role in the outbreak and spreading of the bacteria.</li> <li>• Troubles of overcrowding at the Thelle Mogoerane Hospital, especially in the neonatal ward<sup>41</sup>, have been an ongoing concern for staff at the hospital.</li> <li>• "As organised labour, we have always been crying about overcrowding at the hospital but our cries have always fallen on deaf ears," union representative</li> </ul>	<ul style="list-style-type: none"> <li>• MEC for Health<sup>42</sup> in Gauteng province said that the department would reward good work and excellence, and those accused of wrongdoing would be held to account or re-trained.</li> <li>• Masuku said a human resources programme had been rolled out at health facilities across Gauteng among a set of solutions.</li> </ul>

<sup>39</sup> South African Human Rights Commission. Overcrowding Not a New Problem at Thelle Mogoerane Hospital-Staff tells SAHRC during site inspection. 20 September 2018. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1569-overcrowding-not-a-new-problem-at-thelle-mogoerane-hospital-staff-tells-sahrc-during-site-inspection>

<sup>40</sup> Eyewitness News. 2018. SAHRC to Inspect Thelle Mogoerane in wake of Baby Deaths. Available online at: <https://ewn.co.za/2018/09/19/sahrc-to-inspect-thelle-mogoerane-hospital-in-wake-of-baby-deaths>

<sup>41</sup> Sesona, N. Overcrowding not a new problem at Thelle Mogoerane Hospital – staff tells SAHRC during site inspection. 19 September 2018, News24. Available online at: <https://www.news24.com/SouthAfrica/News/overcrowding-not-a-new-problem-at-thelle-mogoerane-hospital-staff-tells-sahrc-during-site-inspection-20180919>

<sup>42</sup> Nkululeko, N. It's been hard, but we're going to get things right: new Gauteng health MEC promises big changes. 26 July 2019, Timeslive. Available online at: <https://www.timeslive.co.za/news/south-africa/2019-07-26-its-been-hard-but-were-going-to-get-things-right-new-gauteng-health-mec-promises-big-changes/>

		<p>Lebohang Nkoana told the commission during the inspection.</p> <ul style="list-style-type: none"> <li>• He gave an example of a ward that had no air conditioning but housed patients most of whom have tuberculosis, which then exposed staff members to the disease.</li> <li>• He said a nurse was recently treated for TB as a result. "We have a psych unit here but it's overcrowded and then patients are taken towards where they don't belong. When you take a psych patient to another ward without supervision it's a danger to them and other staff and patients," he said.</li> <li>• Nkoana said because of overcrowding and lack of permanent staff, the hospital was outsourcing nurses from agencies to help.</li> </ul>	
5. Rahima Moosa Mother and Child Hospital <sup>43</sup>	November 2018	<ul style="list-style-type: none"> <li>• The investigation at the Rahima Moosa Hospital followed after a necrotising enterocolitis outbreak at the hospital took the lives of nine infants from March to July 2018.</li> <li>• Necrotising Enterocolitis occurs mostly in premature new-borns and causes a portion of the bowel to die. The cause of the disease is unclear, but it has also been linked to birth asphyxia and congenital heart disease. Complications which could develop include short-gut syndrome and</li> </ul>	<ul style="list-style-type: none"> <li>• Management of the Rahima Moosa Mother and Child Hospital in Coronationville, Johannesburg, conceded that it violated patients' rights to high-quality healthcare after nine babies died there earlier in 2018.</li> <li>• Memorandum of Action was proposed by the South African Human Rights Commission with the provincial department of health and a task team was established. The SA Human Rights Commission (SAHRC)</li> </ul>

<sup>43</sup> South African Human Rights Commission. Rahima Moosa Hospital: The hospital has violated the right to access to health. 08 November 2018. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc>

		<p>developmental delay. In some cases, the effects can be reversed through surgery.</p> <ul style="list-style-type: none"> <li>• Hospital management had complained of problems at the facility, including staff shortages, a lack of equipment, space and beds.</li> <li>• Management also complained of a high absenteeism rate as staff were demotivated and overworked due to the ratio of patients per nurse.</li> <li>• Rahima Moosa was originally built decades ago to serve people nearby but has seen an influx of patients from all over Johannesburg. It does not have an intensive-care unit for patients, a laboratory service or 24-hour blood bank on site.</li> <li>• Approximately 13,000 babies are delivered at the hospital a year, translating into nearly 1,100 babies a month.</li> </ul>	<p>said that it would not issue an "adverse" report on Gauteng's health department after its probe into baby deaths, long waits for life-saving cancer treatment, and overcrowding and critical staff shortages at hospitals.<sup>44</sup></p>
6. Chris Hani Baragwanath Academic Hospital <sup>45</sup>	May 2019	<ul style="list-style-type: none"> <li>• Six psychiatric patients are tied to their beds in two tiny, dimly lit cubicles in the emergency ward of South Africa's biggest hospital, where the country's dire healthcare crisis is starkly evident.</li> <li>• Some of the group are restrained using just medical bandages, while one screaming female patient is tied to a bed that is itself haphazardly secured to a pillar.</li> </ul>	<ul style="list-style-type: none"> <li>• No outcome or follow-up recorded in the media</li> </ul>

<sup>44</sup> Katharine, C. Gauteng health department avoids "adverse" report but must fix problems-SAHRC. 02 April 2019. Available online at:

<https://www.timeslive.co.za/news/south-africa/2019-04-02-gauteng-health-department-avoids-adverse-report-but-must-fix-problems-sahrc/>

<sup>45</sup> South African Human Rights Commission. Failing health system in spotlight ahead of vote. 01 May 2019. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1877-failing-health-system-in-spotlight-ahead-of-vote>



		<ul style="list-style-type: none"> <li>• The scenes at the vast Chris Hani Baragwanath Hospital, in the township of Soweto outside Johannesburg, provoke little visible reaction from hurried staff or from other patients.</li> <li>• Staff say the hospital always has serious mental health cases in its casualty unit waiting for a bed.</li> <li>• According to a doctor who wished to remain anonymous, some are left for three days with little food and water -- one sign of chronic lack of resources in South Africa's healthcare system, which has been a political battlefield ahead of the May 8 general election.</li> </ul>	
7. Dr. George Mukhari Academic Hospital <sup>46</sup>	June 2019	<ul style="list-style-type: none"> <li>• Following a complaint lodged by the Public Servants Association alleging the neglect of patients and ill treatment of hospital staff by hospital management.</li> <li>• The Commission's investigation seeks to interrogate a number of issues, including access to healthcare services and the quality of treatment and care at the hospital.</li> <li>• The PSA alleged the psychiatric ward was overcrowded, mental health patients did not have proper beds and blankets, with some having to sleep on</li> </ul>	<ul style="list-style-type: none"> <li>• The hospital's acting CEO, Professor John Ndimande, conceded that there had been issues concerning the psychiatric ward, but said they were being tackled. He added that one of the issues was the contractor, but that improvements have been made.<sup>47</sup></li> <li>• The Health Compact<sup>48</sup> was launched at Dr. George Mukhari Hospital in June 2019 and it is expected to contribute to the improvement of the public healthcare system so that many more South Africans can access</li> </ul>

<sup>46</sup> South African Human Rights Commission. SAHRC says it is not satisfied by what it saw at Dr. George Mukhari Hospital. Available online at:

<https://www.sahrc.org.za/index.php/sahrc-media/news/item/1958-sahrc-says-it-is-not-satisfied-by-what-it-saw-at-dr-george-mukhari-hospital>

<sup>47</sup> The South African Human Rights Commission. SAHRC says it is not satisfied by what it saw at Dr. George Mukhari Hospital. Available online at:

<https://www.sahrc.org.za/index.php/sahrc-media/news/item/1958-sahrc-says-it-is-not-satisfied-by-what-it-saw-at-dr-george-mukhari-hospital>

<sup>48</sup> Thabo, M. Compact will ensure quality healthcare – Ramaphosa. 25 July 2019, Health E-news. Available online at: <https://health-e.org.za/2019/07/25/compact-will-ensure-quality-healthcare-says-ramaphosa/>

		<p>the floor. There were also not enough ablution facilities.</p> <ul style="list-style-type: none"> <li>• It also complained about construction work at the ward, with patients having to endure the ongoing noise.</li> </ul>	<p>quality care – and lead healthy and productive lives.</p> <ul style="list-style-type: none"> <li>• There would be an active partnership between the Presidency and government departments to ensure accountability and stakeholders are expected to report annually to the president on the progress made in improving the health system.</li> <li>• Mkhize also said the Health Compact would assist in the implementation of critical tasks, such as providing the financing model for the NHI as well as infrastructure upgrading for health facilities to enable the rollout of the NHI in the next phase of implementation.</li> </ul>
8. Mamelodi Hospital <sup>49</sup>	June 2019	<ul style="list-style-type: none"> <li>• The South African Human Rights Commission conducted a site inspection of the Mamelodi Hospital on Tuesday, 11 June 2019, as it continues with its investigation into the public health system in the province.</li> <li>• The Commission’s investigation seeks to examine a number of factors, including the quality and access to healthcare services for vulnerable groups, human resources, physical infrastructure and equipment at the hospital.</li> </ul>	<ul style="list-style-type: none"> <li>• The Gauteng department of health has compensated Martha Marais, the pensioner who was tied to a bench at Mamelodi Hospital while she was waiting to receive treatment<sup>50</sup>.</li> <li>• The settlement agreement was reached through a mediation process with the SA Human Rights Commission (SAHRC).</li> </ul>

<sup>49</sup> South African Human Rights Commission. Media Advisory: The SAHRC to conduct a site inspection of Mamelodi Hospital following numerous complaints of ill-treatment of patients by medical staff. Available online: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1947-media-advisory-the-sahrc-to-conduct-a-site-inspection-of-mamelodi-hospital-following-numerous-complaints-of-ill-treatment-of-patients-by-medical-staff>

<sup>50</sup> Celebelihle, B. What you need to know about Martha Marais’ compensation after Mamelodi Hospital abuse. 06 January 2020. Available online at: <https://www.timeslive.co.za/news/south-africa/2020-01-06-what-you-need-to-know-about-martha-marais-compensation-after-mamelodi-hospital-abuse/>

		<ul style="list-style-type: none"> <li>The investigation follows the harrowing video showing Mrs Martha Marais chained underneath a Mamelodi Hospital bench. The Commission will use this site visit to engage with all relevant stakeholders concerning the above issues.</li> </ul>	
9. Stanza Bopape Clinic <sup>51</sup>	July 2019	<ul style="list-style-type: none"> <li>Officials from the South African Human Rights Commission (SAHRC) visited the Stanza Bopape Clinic in Mamelodi after a mother claimed she was forced to give birth outside the facility when she was refused help.</li> <li>Elina Maseko, aged 45, was already in labour when she was allegedly told to go to a hospital because she had a high-risk pregnancy.</li> <li>With the help of a relative, she delivered the baby outside the clinic.</li> <li>Gauteng manager at the commission Buang Jones<sup>52</sup> said on Monday that the Stanza Bopape Community Health Centre in Mamelodi was not up to standard.</li> <li>"There is no proper ventilation, the clinic does not have a quality assurance manager. The manager of the facility</li> </ul>	<ul style="list-style-type: none"> <li>The Gauteng health department<sup>53</sup> launched an inquiry after a heavily pregnant woman said she was turned away at a clinic in Pretoria and had to give birth at the gates of the facility.</li> <li>The Gauteng department of health confirmed that the nurses pleaded guilty to charges of misconduct after they refused to attend to 46-year-old Elina Maseko at Mamelodi East's Stanza Bopape Clinic on June 30<sup>54</sup>.</li> </ul>

<sup>51</sup> South African Human Rights Commission. SAHRC to visit Mamelodi clinic where woman forced to give birth outside. 08 July 2019. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/2025-sahrc-to-visit-mamelodi-clinic-where-woman-forced-to-give-birth-outside>

<sup>52</sup> Kgaugelo, M. Nurses 'burnt out' at clinic that turned away pregnant woman, says SAHRC. 08 July 2019, Timeslive. Available online at: <https://www.timeslive.co.za/news/south-africa/2019-07-08-nurses-burnt-out-at-clinic-that-turned-away-pregnant-woman-says-sahrc/>

<sup>53</sup> Iavan, P. Pretoria clinic faces probe after pregnant woman gives birth at gates. 03 July 2019, Timeslive. Available online at: <https://www.timeslive.co.za/news/south-africa/2019-07-03-pretoria-clinic-faces-probe-after-pregnant-woman-gives-birth-at-gates/>

<sup>54</sup> Thomo, N. Nurses fired after birth outside clinic. 23 October 2019, Sowetan. Available online at: <https://www.sowetanlive.co.za/news/south-africa/2019-10-23-nurses-fired-after-birth-outside-clinic/>

		<p>was conveniently not present," said Jones after visiting the clinic on Monday.</p> <ul style="list-style-type: none"> <li>• He said that there was sufficient land adjacent to the clinic that could be developed to expand the facility, "as the maternity ward is too small. No filing system. Staff shortage. Maternity ward only has eight beds. Only two midwives and a student nurse. No administrative support, [they] only have one computer</li> </ul>	
Bheki Mlangeni District Hospital <sup>55</sup>	10 July 2019	<ul style="list-style-type: none"> <li>• The Bheki Mlangeni district hospital in Soweto is still facing critical staff and bed shortages which impacts service delivery.</li> <li>• Since it was opened in 2014, the 300 bed medical health facility has been limping from crisis to crisis.</li> </ul>	<ul style="list-style-type: none"> <li>• The Commission's Buang Jones says they'll engage with all relevant stakeholders to ensure a fully-funded turnaround plan is put in place to arrest these challenges.</li> </ul>

<sup>55</sup> Tshepo, P. Bheki Mlangeni hospital still facing critical staff and bed shortages. 10 July 2019, SABC. Available online at: <http://www.sabcnews.com/sabcnews/bheki-mlangeni-hospital-still-facing-critical-staff-and-bed-shortages/>



## 5. Right to adequate standard of living: Right to Housing, Water and Sanitation

Inequalities have continued to persist in spatial planning policies 26 years since the end of apartheid through the provision of low-cost houses (popularly known as RDPs). The state has continued to perpetuate spatial planning by constructing new low-cost houses far away from economic and job opportunities. The provision for low-cost housing is also riddled with corruption and backlogs dating back almost 25 years ago. The perpetuation of the unequal spatial planning inhibits social mobility for beneficiaries and their dependents to break the cycle of intergenerational poverty due to high transport costs, lack of access to technological developments (applications for jobs, funding opportunities to start small medium enterprises and applications for accessing schools and institutions of higher learning<sup>56</sup>). Access to core services such as water, sanitation and basic services has improved for majority of South Africans. In 2002, only 62% of South Africans had access to improved services and this figure rose to 82% by 2017<sup>57</sup>. However, widespread service provision for these core services has not contributed to economic and developmental transformation in spatially disconnected areas where a majority of the urban poor live.

This is demonstrated in the Quality of Life Survey 2018 where respondents were asked to rate the enjoyment of rights and services depending on where they live in the Johannesburg metro (dwelling, water, sanitation, energy, waste, roads, health, safety). The distribution of satisfaction reflects a north-south divide where the poor live on the south side and the working and middle class live in the north<sup>58</sup>. Overall, this demonstrates the city's duality, where the highest levels of deprivation are in the south (notwithstanding some affluent areas) compared to high levels of affluence in the north.

A 2018 OECD report "A Broken Social Elevator? How to Promote Social Mobility"<sup>59</sup> shows that mobility is limited in many countries people at the bottom of the income ladder have little chances of moving upward, while those from well-off families and social strata are almost guaranteed to retain their privileged positions – the social elevator is broken. In addition, the report adds that a broken social elevator has harmful economic, social and political consequences. Lack of upward mobility implies that many talents are missed out, the tax base and social welfare systems become overburdened, and which in turn undermines potential economic growth. It also reduces life satisfaction, well-being, and social cohesion. These are the realities that define a majority of South Africans and Gauteng residents

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<sup>56</sup> Media articles quoted parents who were frustrated with the Gauteng Department of Basic Education online registration system as they did not have access to internet or were limited by high data costs and some were quoted as being frustrated by children being placed in schools far from where they lived making it expensive for children to travel to and from school. In addition majority of institutions of higher learning do no longer accept walk-in applications except in exceptional circumstances and most post-school graduates are encouraged to apply online before the closing dates and applications for funding through the National Financial Aid Scheme can only be accessed through an online application. This further contributes to frustrations by parents and learners that these opportunities are not accessible to them and the costs of data and transport to apply at internet cafes further compound their challenges.

<sup>57</sup> Statistics South Africa. 2018. General Household Survey. Available online at: <http://www.statssa.gov.za/publications/P0318/P03182017.pdf>

<sup>58</sup> Gauteng City Region Observatory. 2018. Quality of Life Survey IV: Social Cohesion. Available online at: [https://www.gcro.ac.za/m/documents/GCRO\\_Data\\_Brief\\_8\\_February\\_2018\\_QoL\\_IV\\_Social\\_Cohesion.pdf](https://www.gcro.ac.za/m/documents/GCRO_Data_Brief_8_February_2018_QoL_IV_Social_Cohesion.pdf)

<sup>59</sup> OECD. 2018. A Broken Social? How to promote social mobility: Overview and main findings. Available online at: <https://www.oecd.org/social/soc/Social-mobility-2018-Overview-MainFindings.pdf>

who reside on the periphery of main economic opportunities due to poor spatial planning, and a collapsing water and sanitation infrastructure denying them their rights as enshrined in the Bill of Rights.

## 5.2 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.<sup>60</sup> The right has, however been narrowed in the ICESCR, Article 11 enjoins State Parties to the Covenant to recognize the right of everyone to an adequate standard of living for himself and his family<sup>61</sup> and to the continuous improvement in their living conditions. This right further encompasses subsidiary rights to clothing, adequate housing, adequate food and freedom from hunger<sup>62</sup>. The CESCR has provided further guidance on the interpretation of the Covenant in General Comments 4, 7, and 16.

In General Comment 4, the Committee acknowledges the resource constrains and challenges faced by State Parties and the “disturbingly large gap between the standards set in Article 11 (1) of the Covenant and the situation prevailing in many parts of the world.”<sup>63</sup> However, this does not absolve State Parties to fulfil the right to adequate housing. The Committee in General Comment 4 stipulates that “regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, 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.”<sup>64</sup> The Committee 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.”<sup>65</sup>

In determining the adequacy of the right of housing, the Committee developed this criterion in addition to complementing the social, economic, cultural, climatic and ecological factors to be considered to assess the enjoyment of the right using the following<sup>66</sup>:

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<sup>60</sup> The UDHR stipulates that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Available online at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>61</sup> CESCR in General Comment 4 clarifies the concept of himself and his family by acknowledging that the concepts reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant (ICESCR) was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right of individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with Article 2(2) of the Covenant, not be subject to any form of discrimination.

<sup>62</sup> ICESCR Article 11 Available online at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

<sup>63</sup> General Comment 4 paragraph 6

<sup>64</sup> General Comment 4 paragraph 10

<sup>65</sup> General Comment 4

<sup>66</sup> General Comment 4 paragraph 8

- Legal security of tenure: “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. State parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”<sup>67</sup>
- Availability of services, materials, facilities and infrastructure: “An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”<sup>68</sup>
- Affordability: “Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by State parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. State parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.”<sup>69</sup>
- Habitability: “Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages State parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analysis; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.”<sup>70</sup>
- Accessibility: “Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”<sup>71</sup>
- Location: “Adequate housing must be in a location which allows access to employment options, healthcare services, schools, childcare centres and other social facilities. This is true

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<sup>67</sup> General Comment 4 paragraph 8 (a)

<sup>68</sup> General Comment 4 paragraph 8 (b)

<sup>69</sup> General Comment 4 paragraph 8 (c)

<sup>70</sup> General Comment 4 paragraph 8 (d)

<sup>71</sup> General Comment 4 paragraph 8 (e)

both in large cities and in rural areas where the temporal and financial costs of getting to and from place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”<sup>72</sup>

- Cultural adequacy: “The way housing is constructed the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”<sup>73</sup>

The interdependence of the right to housing and health, access to water and sanitation cannot be overemphasised. In addition, these rights demonstrates the indivisibility and interdependence between civil and political rights (right to life, dignity and non-discrimination) with economic, social and cultural rights.

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.
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.

### 5.3 State of the right to housing in Gauteng: Inequalities in Spatial Planning

In its Conclusion observations to South Africa’s State party report in October 2018, the Committee noted that it was “concerned at the large number of people living in inadequate housing, including those in informal settlements, without access to basic services; the growing number of informal settlements in urban areas due to rapid urbanization; and the decrease in the number of social housing units provided by the State Party.” In addition, the Committee noted that it “is also concerned at the reports of illegal evictions and the excessive use of force during evictions, as well as evictions taking place without municipalities offering suitable alternative accommodation.”

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<sup>72</sup> General Comment 4 paragraph 8 (f)

<sup>73</sup> General Comment 4 paragraph 8 (g)



The Committee recommended that the South Africa government should:

- (a) Intensify its efforts to improving housing conditions to meet increasing demand, including by continuing to provide adequate social housing in urban areas and to upgrade housing conditions in informal settlements.
- (b) Ensure that evictions are carried out only as a last resort, without the use of force and in compliance with international standards.

In concluding its SDGs Voluntary National Review report in July 2019, the South African government acknowledged that: “South Africa has failed to address inappropriate spatial patterns that limit growth and impair welfare. Cities suffer from fragmentation, with poorer neighbourhoods far from centres of employment, large settlement that, due to location and informal legal status, are difficult to connect to basic services, and poorly integrated transit systems that do not provide smooth connections between bus and rail services and result in over served and underserved communities.”

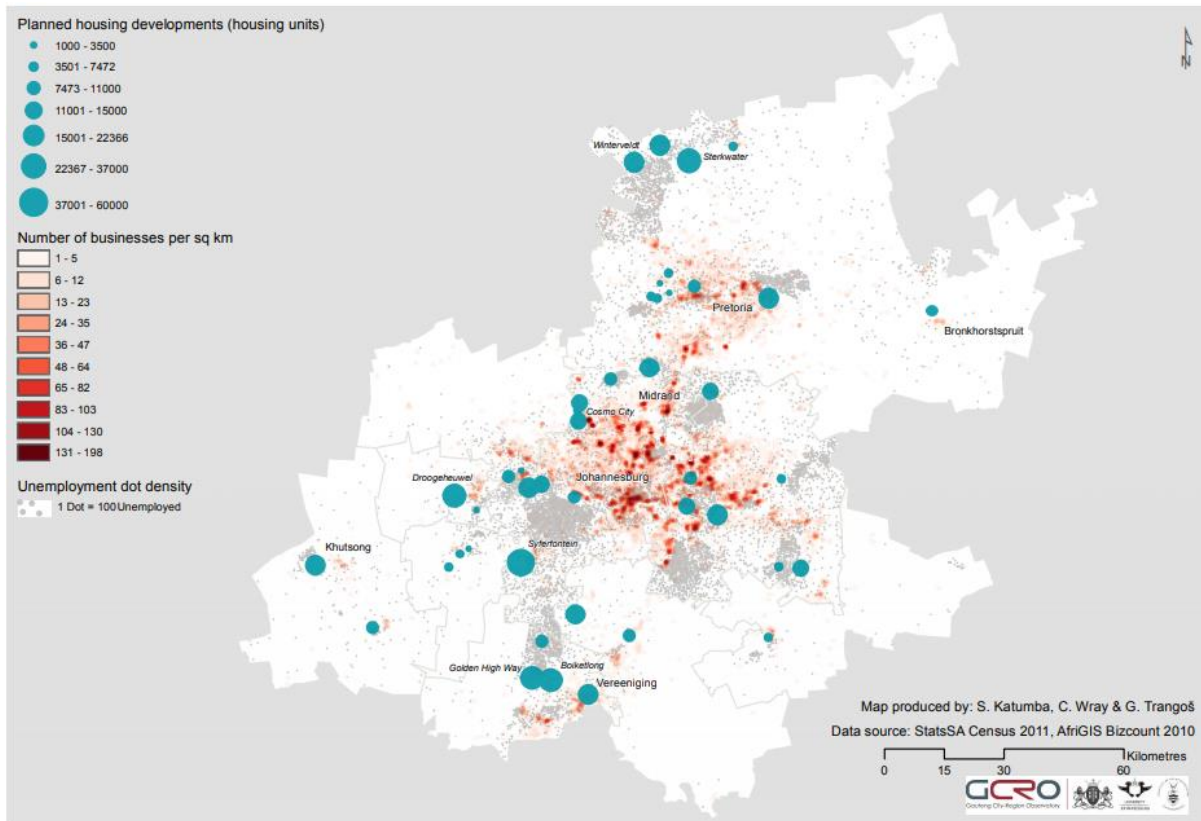
In the same report the South African government further recommended that “addressing these issues requires greater and more efficiently planned infrastructure investment, the location of subsidized housing in leafy suburbs and urban centres, and policies that emphasize support and provision of legal rights of informal settlers.” In his 2019 State of the Provincial Addresses the Premier of Gauteng describes the post-apartheid spatial planning policy that “there are 31 mega human settlements<sup>74</sup> planned for our province in the next five years – 10 are already under construction, 11 in detailed planning and the remaining 10 at a conceptual state. These projects will contribute significantly to reducing the housing backlog.”<sup>75</sup>

## Figure 1.2 Location of planned mega projects housing projects in context

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<sup>74</sup> The new spatial policy the Mega Projects: Clusters and New Cities signals a policy shift away from the RDP housing model towards large scale integrated human settlements. The project is aimed at yielding no less than 15000 units either as an existing development cluster or as a new nodal development project.

<sup>75</sup> David Makhura. 2019. State of the Province Address, February 2019. Available Online at: <http://gpl.gov.za/state-of-the-province-address-2019/>



**Source:** Gauteng City-Region Observatory, 2015, Location of planned mega housing projects in context<sup>76</sup>

However, the Gauteng City-Region Observatory raises some challenges with the implementation of this policy. The first concern is that the planned mega-cities are located nearer to high unemployment areas (peri-urban communities) but they still present a barrier for unemployed people to easily access economic opportunities as they are far from them (See Figure 1.2). To counter this concern the policy seeks to create ‘economically self-sufficient cities’, the challenge that this present is that there is no coordination between the Department of Small Business Development to provide support to small medium enterprises that could create job opportunities in these newly built cities. In addition, they are dependent on all the economic factors, such as consistent and reliable electricity generation, entrepreneurial skills and ability to incentivise job-seekers to work in the new cities instead of moving to already established economic hubs in the province.

The Gauteng City-Region Observatory further notes that “if the Mega projects are not successful in generating economic activity internally they will place more people on the outer edge of the existing urban extent even further away from where most of the jobs are.”

<sup>76</sup> GCR0. 2015. The map shows the location of the planned mega housing projects. It shows the distribution of the unemployed population of Gauteng based on Census 2011. Each grey dot represents 100 unemployed people. Second, it maps the distribution of existing businesses in the form of a hot spot density layer, the deeper the red shading the greater the number of businesses per square km. Third, it indicates the location of the planned Mega Projects (in blue dots). The size of the dot represents the proposed size of the project, with some such as Syferfontein projected to have as many as 60 000 housing units. Available online at: <https://www.gcro.ac.za/outputs/map-of-the-month/detail/the-location-of-planned-mega-housing-projects-in-context/>

## 5.4 South African Human Rights Commission Intervention into right to adequate standard of living- The case of Alexandra Renewal Project

Press Release<sup>77</sup>

03 May 2019

Human Rights Commission, Public Protector to Begin Probe Into Alexandra Renewal Project Violations

The South African Human Rights Commission (SAHRC) will on Friday conduct a joint inspection in Alexandra, Johannesburg, together with the office of the Public Protector, as they begin their probe concerning the Alexandra Renewal Project (ARP).

The programme was meant to address urbanisation and housing challenges in South Africa. The estimated budget for the ARP in 2011, which was for the development of Alexandra, was R1.3bn over seven years.

Alexandra, one of South Africa's oldest townships, was shut down completely last month when residents took to the streets, demanding services from the DA-led municipality. Several roads leading in and out of Alexandra were blockaded with rubble, burning tyres and rocks.

During this time, the ANC and DA were caught up in a blame game, with the DA in Gauteng claiming that the Alexandra protests had been orchestrated by the governing party to influence the upcoming elections.

President Cyril Ramaphosa visited the area during the heated protests and followed up his meeting by setting up an "intergovernmental forum" in an attempt to deal with the grievances raised by residents.

The forum will include ministers of the Departments of Cooperative Governance and Traditional Affairs, Human Settlements, Water and Sanitation, Environmental Affairs, Home Affairs, Police, Rural Development and Land Reform.

The team's aim will be to interface with the provincial and local government leadership, the MECs responsible for the portfolios names above, as well as the mayor of Johannesburg.

### Key findings by the Commission from the Alexandra Renewal Project Site Inspection

1. Lack of service delivery in general;
2. Lack of refuse removal;
3. Illegal electricity connections;
4. Illegal structures being and the City of Johannesburg doing nothing to enforce the relevant by-laws;
5. Lack of police presence and resultant high levels of crime; and,

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<sup>77</sup> South African Human Rights Commission. 2019. Human Rights Commission, Public Protector to Begin Probe Into Alexandra Renewal Project Violations. Available online at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1934-human-rights-commission-public-protector-to-begin-probe-into-alexandra-renewal-project-violations>

6. Lack of a proper fire fighting service as the area station is understaffed and under-resourced.

The failure of providing adequate housing provision and basic services in Alexandra Township are indicative of the structural challenges that have persisted over the past 26 years in delivering of multi-billion rands investment projects. The backlog in the low-cost housing provision, poor coordination between local, provincial and national governments and the rising tensions in communities that are left behind when projects of this magnitude are promised and not delivered. This further perpetuates a culture of violent service delivery protests as communities in the province feel neglected and their rights trampled upon by political office bearers. Therefore, the Gauteng Provincial Government should invest should ensure that the envisaged mega projects are developed through a clear coordination mechanism and clearly communication about who the beneficiaries of the project will be.

Another lesson from the Alexandra Renewal Project for the mega cities project is the establishment of a forum to support public, private and civil society stakeholder engagement which could create a more civic ownership, improve transparency and create wider buy-in, shielding long-term transformation projects from the political winds of change.

## 6. Conclusion

In its concluding observations, the Committee on ESCR raised the concern that “the State party is among the most unequal countries in the world; market inequalities, before tax and redistribution, are even more striking”<sup>78</sup>. The National Development Plan aims to reduce the Gini coefficient from 0.69 to 0.60. It is now 5 years since South Africa ratified the ICESCR and signed up to the Sustainable Development Goals. However, what the 2018 and 2019 State of Human Rights report in Gauteng has demonstrated is that majority of marginalised communities who live on the periphery of South Africa’s smallest and urbanized province continue to be left behind. The right to adequate standard of living (health, housing and water and sanitation) in the province is relatively better compared to other rural provinces, however, there are systemic challenges that need a concerted effort from the national and provincial governments if the province is ready to tackle the structural inequalities, poverty and unemployment. The human rights violations that were found by the Commission demonstrate that the state is still falling far short of meeting its human rights obligations to protect, promote and fulfil the enjoyment of the right to healthcare for the majority of Gauteng citizens.

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<sup>78</sup> CESCR Concluding observations on the initial report of South Africa.