



# PARTICIPANTS

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## Section 1

## The Case for Incremental Upgrading



## Summary

### Understanding informal settlements

The term informal settlement in South African policy and legislation, stems from planning terminology. Formal settlements are settlements that are formally planned according to planning norms and standards. Informal settlements do not comply with norms and standards and are therefore called informal. This does not refer to a development where the planning laws and regulations have been bypassed intentionally. Rather the focus is on informal settlements where non-compliance is by poor households who have occupied the land for a range of reasons including that affordable land and housing products are scarce and complying with planning regulations is expensive.

The number of informal settlements in South Africa has increased significantly since 1994 from 300 to 2,700 settlements. The 2011 census indicates that there are approximately 1.25 million households or 8.6% of all households in South Africa living in these informal settlement. The impact of living in an informal settlement on a household includes:

- Due to the fact that the settlement is illegal and informal the household has uncertain occupational rights and there is no legal basis for the household to invest in home improvements.
- As tenure is insecure the household lives in uncertainty and faces the possibility of being evicted.
- Many settlements are located on land that is not suitable for residential development. This often gives households daily discomfort, inconvenience and fear of disaster. In addition shacks are usually constructed from building materials that burn easily.
- Households often do not have access to services, or have access to only very basic services and therefore have to spend time walking, carrying water, travelling and waiting when they could be using their time more productively (to earn a living). This often results in illness and even death.
- Households are often subject to poverty, crime, violence and social stress.
- There is limited opportunity for play, exercise and creativity, as well as local entrepreneurship.

Informal settlement because of the informality may appear to lack order. However many are highly organised, often with a formal residents' committee structure, rules and regulations that determine who may build their shack in which position, networks and systems of support and community policing. Informal settlements should not, therefore, only be defined by what they lack or what they are not (i.e. not formal, not legal, not authorised, not planned), but also by the important function they perform in the urban system. Informal settlements are often reception areas for impoverished rural-urban migrants. They enable

poor households to access the amenities offered by cities and towns and thus help to reduce or overcome the apartheid spatial pattern.

## **Households in informal settlements have constitutional rights**

Households living in informal settlements have rights in terms of the Constitution including the right to housing (Section 26 (1)), the right to equality (Section 9) and the right to human dignity (Section 10). These rights indicate that the state has an obligation to provide them with decent housing and that no one may be evicted from their home, or have their home demolished, without an order of the court made after considering the relevant circumstances. Most importantly informal settlement residents must be treated like everyone else with the full enjoyment of all rights and freedoms.

Legislation that has been designed to give meaning to these rights are the Housing Act 107 of 1997 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. However, Judge Yacoob stated in the Grootboom ruling in the Constitutional Court in 2000 that mere legislation is not enough. Policies and programmes are required that are reasonable both in their conception and their implementation. A recurring pattern of broken promises, as well as neglected Constitutional obligations on the part of municipalities, have driven many informal settlement communities to desperation. This has resulted in the escalation of protest action over the past decade.

## **What is informal settlement upgrading**

The underlying philosophy of incremental informal settlement upgrading is as follows:

- Informal settlement residents have nowhere else to go and have found a way to make a living where they currently are.
- It is best to incrementally build on what they have already done themselves.
- By building on what people have done and listening to what they need, people's lives can best be improved.
- In this way, they can be integrated into the town or city.
- This means residents are partners in the upgrading process and stakeholders in the town or city.

The informal settlement upgrading approach that is outlined on this website is embedded in legislation and policy. It recognises that informal settlement upgrading is a statutory obligation for a municipality and is a crucial component of a municipality's housing strategy. As such it should not be treated as optional.

There is a strong recognition that informal settlement upgrading is a social process, involving people who already inhabit the land and who therefore have to be partners in the upgrading process. This aspect is called co-production. This means that informal settlement communities need to be actively engaged at key levels in the formulation of a strategy and project plans.

It is necessary to adopt a radically different approach to addressing the informal settlement challenge in South Africa: a programme-wide municipal approach. The new approach is based on the need, the desire and the duty to include all informal settlements into the state's service delivery programmes, and recognises that meaningful developmental improvements need to be provided to all informal settlements as rapidly as possible. This applies even where formalisation may not be possible in the short-term and the municipality must provide interim and incremental services.

Historically most informal settlements received little or no developmental assistance, whilst a few received a high level of investment, usually in the form of conventional subsidised housing. The focus was on housing projects to deliver houses to people on the list. This meant that residents of some informal settlements got a lot and others got nothing, or very little.

The intention of the programmatic approach is to move away from the historical pattern where only a few settlements benefited from relatively high level of state investment, towards a more inclusive and incremental situation where all or most settlements benefit by means of meaningful quality-of-life improvements. This new approach requires that the municipality should develop an informal settlement upgrading strategy and programme at municipal level, as well as detailed plans for each individual settlement that responds to the unique circumstances and needs of that settlement.

This website provides tools and processes to be applied at both of these levels.

## **Informal settlements cannot be ignored**

According to the Housing Act 107 of 1997 the elimination of slums and slum conditions is to be achieved through establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions (s2 (1) (e) (iii)). This means that existing settlements have to be improved and alternatives provided. We cannot address informal settlements through eviction, removal, policing and tightening of regulations. We cannot ignore the informal settlement situation we face in today's towns and cities.

This website outlines the extensive work that has been undertaken over the past few years towards understanding the policy and legislative framework and the processes and tools that can be applied to the upgrading of informal settlements. The successes and successful case studies are shared, as well as the challenges that need to be overcome.

## Content

This section sets out the definitions and concepts of informal settlements and why they are an emergency in South Africa at present. What is meant by an incremental approach to upgrading informal settlements and why it is a relevant approach is outlined.



### 1. What are informal settlements?

The term informal settlement in South African policy and legislation, stems from planning terminology. Formal settlements are settlements that are formally planned according to planning norms and standards and which have gone through a statutory approval process. The land use and spatial standards are approved and the necessary land rights



obtained before construction starts.



Settlements which have not gone through the statutory approval processes and don't comply with norms and standards are therefore called informal. This does not refer to a development where the planning laws and regulations have been bypassed intentionally. Rather the focus is on informal settlements where non-compliance is by poor households who have occupied the land for a range of

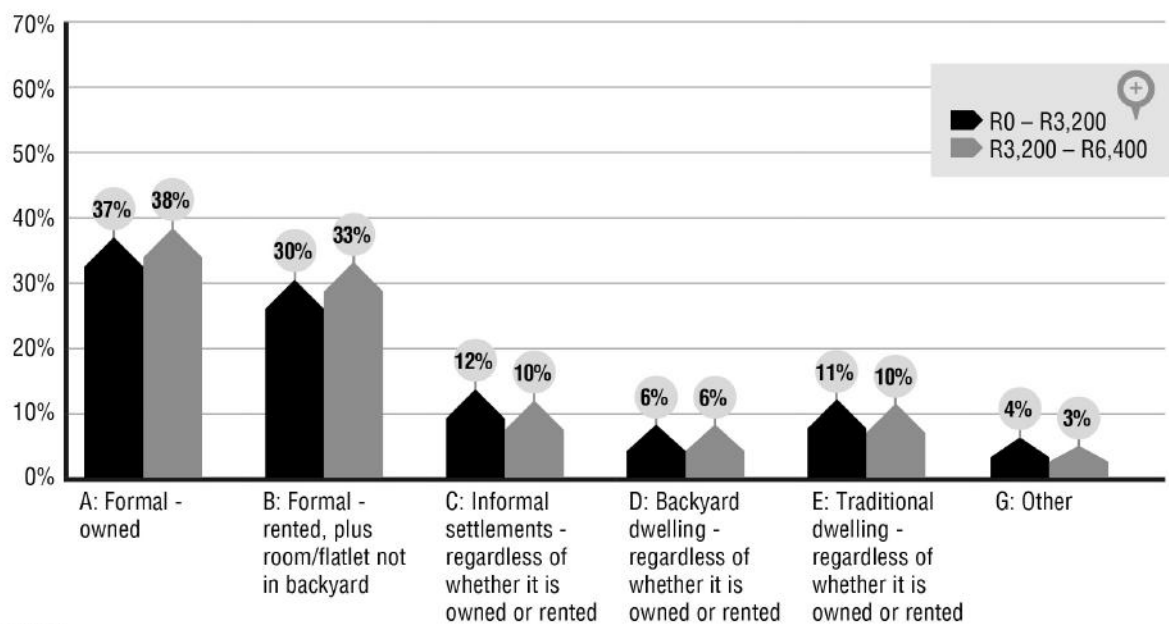
reasons including that affordable land and housing products are scarce and complying with planning regulations is expensive.



## 2. Who lives in informal settlements?

According to Census 2011, 44% of households in South Africa earn below R3 200 per month and a further 19% earn between R3 200 and R6 400. The housing circumstances of these households are shown in the figure below. As is evident in the figure more than two thirds are living in formal circumstances either on an ownership or rental basis. Particularly in the income category below R3 200, the level of ownership is a result of the governments housing subsidy programme. However there is still a significant percentage who are living in informal conditions either in informal settlements, backyard, or traditional dwellings.

HOUSING CIRCUMSTANCES OF HOUSEHOLDS EARNING BELOW R6,400 IN SOUTH AFRICA (%)



SOURCE: SA CENSUS, 2011

**The number of informal settlements** in South Africa has increased significantly since 1994 when it was estimated that there were 300 settlements. Today this number has grown to approximately 2700 settlements. The 2011 census indicates that there are approximately 1.25 million households or 8.6% of all households in South Africa living in an informal settlement. These households are living in extremely poor conditions, which are often life-threatening.

**Many different kinds of households live in informal settlements.** Research undertaken by the Housing Development Agency (HDA)<sup>1</sup> found that:

- 18% are nuclear families (mother, father, children);
- 11% are a single-parent household (no spouse);
- 24% include extended family members (grandparents, grandchildren, relatives, in-laws or individuals who are not related);

<sup>1</sup>HAD 2013

- The remainder (47%) are made up of single people, unrelated people sharing or households without children.

This means that the housing needs of households in informal settlements are very diverse, some needing only small dwellings, others requiring several rooms.

**Children in informal settlements:** The HDA research also found that slightly fewer than one million children live in informal settlements. Of these, 2% or 20 000 are orphans, having lost both parents and 81% have both parents alive. Of all children living in informal settlements the large majority (88%) attend school and 12% do not go to school.



**Migrants:** While there is a belief that informal settlements are populated predominantly by foreign migrants, this is not the case. Stats SA<sup>2</sup> released data

on migration based on the 2011 Census indicating that of the people under the age of 35 years who moved to urban areas from 2001 to 2011, only 3% moved from across the border. Most migration is internal to South Africa. The highest migration is out of the Eastern Cape into Gauteng.

Migrating households maintain ties with their friends and relatives in the places they migrated from and some of their friends and relatives may join them at a later stage.

Some households will lock up their shacks and be absent for several months.

New migrants often become tenants in informal settlements (renting a shack or a room in a shack). The HDA research found that 17% of shacks in informal settlements are rented<sup>3</sup>. The diversity and complexity of households' migration status has implications for their housing needs.

### **Informal settlements and the housing backlog**

The 2012 National Development Plan (NDP) estimated that there are 2.1 million households or 14.5% of households making up the official housing backlog. In addition there are 1.9 million or 13.3% households who are on government waiting lists for housing.

It is increasingly being recognised that using housing circumstance information from the census is a more accurate way to determine the number of households that need to be assisted by government. Nevertheless the NDP estimates do reflect a commitment by government to provide assistance, particularly in respect of those households who are on the waiting lists.

<sup>2</sup>StatsSA, 2012.

<sup>3</sup>HAD, 2013 page 17

## 3. Informal settlements are an emergency

### 3.1 How living in an informal settlement impacts on households

In the South African Housing Code, the Upgrading of Informal Settlements Programme (UISP) currently uses five criteria to identify informal settlements (known as the UISP criteria). To qualify for UISP an informal settlement has to meet one or more of these criteria. Set out below are the criteria and how they impact on the households living in an informal settlement.

Policy and legislation is discussed in more detail in Section 3.

1. **Illegality and informality.** Illegality and informality refer to the settlement not being formally planned and permission to use the land not having been obtained from the land owner; nor has there been any authorisation for the construction of dwellings by the municipality. In law this is referred to as unlawful occupation. This means that although the householders have certain occupational rights (as unlawful occupiers) there is no legal basis for the household to invest in home improvements.
2. **Insecure tenure.** Insecure tenure refers to the future of the settlement being uncertain with no secure, long-term rights to occupation. There are only very limited rights for the household to continue living there. The household lives in uncertainty and faces the possibility of being evicted in the future. This means that it is not possible for the household to plan ahead.
3. **Inappropriate locations.** Many settlements are located on land that is not suitable for residential development, for example steep slopes, flood plains, unstable soil, lack of access to main roads, or proximity to harmful land-uses (such as radio-active mine dumps, hazardous dump sites, dangerous infrastructure). The inappropriateness of the location often gives households daily discomfort, inconvenience and fear of disaster.
4. **Limited investment by the public sector.** Households in the settlement have access to no services, or only very basic services (taps and toilets), no street lights, roads and paths are not surfaced, refuse is not collected, the distances to clinics, schools, post offices and police stations are long, and there are no postal addresses and delivery. As a result, householders have to spend much time walking, carrying water, travelling and waiting when they could be using their time more productively (to earn a living).
5. **Poverty, vulnerability and social stress.** In informal settlements the level of education is low, individuals experience long periods of unemployment, those with informal jobs are poorly paid and their jobs are insecure, households do not have enough income for food and to make basic home improvements to their dwellings (such as better insulation, better ventilation, more space, better protection from moisture and better protection from noise). This has health consequences.

Tenure security is discussed in more detail in Section 7.



Householders are also often exploited by loan sharks, unethical businesses, slum- or shack-lords who charge high rents, or ruthless politicians making irresponsible threats or promises.

### 3.2 The negative consequences of living in informal settlements

Informal settlements can make life difficult or dangerous for households in a variety of ways.



- **Refuse collection**

- Currently 48%, or less than half, of households in informal settlements have their refuse removed at least once a week.
- This means that there is a large amount of refuse both within households and public areas, which results in people in informal settlements being exposed to high levels of rat and cockroach infestations, bad smells and health threats caused by uncollected refuse.



- **Sanitation**

- Currently only 32% of households in informal settlements have access to at least a pit latrine.
- This means that the vast majority of people in informal settlements still have to use the open veld, bushes or plastic bags. This exposes them to disease and also to abuse.



- **Access to water**

- Currently 72% of households in informal settlements have access to a water tap less than 200m from their shack.
- This means that almost a third of the households in informal settlements do not have adequate access to water and as a result struggle to manage basic hygiene. Many diseases spread quicker when people are not able to wash themselves.

- **Street lighting**

- While there is no data on the extent to which street lights occur in informal settlements, it is noted that this is a critical factor in ensuring safety.
- People living in informal settlements may travel long distances to work or may start work very early or get home very late. They have to navigate the settlement in the dark. Women, particularly, are vulnerable to rape after dark.

- **Access to electricity and the threat of fire**

- Currently 43% of households in informal settlements have access to electricity.

- Those that do not have access are forced to use alternative fuels (wood, coal, paraffin and candles) which can easily cause fires. In many instances households buy electricity from neighbours (using extension cords) usually paying much more than the municipal charges.
- Shacks are usually constructed from building materials that burn easily. In addition shacks are often built very close to each other, which means that fire spreads easily.
- The lack of a safe power source/supply, and the widespread use of candles, paraffin or gas particularly in small, crowded spaces means they can easily tip over or spill creating a higher potential for burns, or fire.
- Nationally there are ten shack fires each day, causing over 200 deaths per year.
- Shack fires, when they occur, spread rapidly and can affect a large number of dwellings, if not the entire informal settlement.
- Shack dwellers live in constant fear of losing belongings, loved ones or their own life.



- **Health**

- There are high levels of illness within informal settlements.
- Building materials which are not weatherproof let in rain, cold and wind.
- Poor stormwater drainage, together with poor waste water and rubbish disposal systems, result in high levels of vermin and mosquitoes which facilitates the spread of infection and/or disease.
- Poor access to clean water and good sanitation makes it difficult and time-consuming to maintain good hygiene standards.
- Some informal settlements are located on land that is severely polluted (for example a high content of toxins and chemicals in the air, soil or water) which is a severe threat to the occupants health.
- The lack of access to adequate basic services (as set out above), as well as to the lack of privacy and dignity for those living in informal settlements, makes it very difficult for people living in informal settlements to stay healthy.
- For the same reasons it is also difficult for parents or guardians in informal settlements to ensure their children are healthy.
- In informal settlements the annual HIV incidence rate is 7%. In contrast, in formal urban areas the annual HIV incidence rate is only 1.8%. There are also ten times more infants who die of diarrhoea in informal areas than in formal areas.



- **Exposure to crime and violence**
  - A lack of good lighting in shared spaces and on pathways or roads and a lack of good surveillance at certain times and in certain places can foster a high crime rate.
- **Limited opportunity for play, exercise and creativity, as well as local entrepreneurship**
  - A lack of private and public space for diverse activities which provide opportunities for recreation, positive social interaction and managing frustration (such as sport, games, art). This leaves few alternatives and often results in more anti-social activities such as drinking and drug-taking, and associated problems such as violent behaviour.
  - A concentration of people with very low income levels, low levels of job security, and little money to spend in the neighbourhood to support local businesses and improve services and facilities. This concentration of poverty often results in insecurity and instability and limited opportunity for local entrepreneurship.
- **Low quality facilities**
  - There is a shortage of facilities, for example many child-care facilities in informal settlements are informal and unregistered. These facilities vary in quality, but many are not able to access support to improve and provide better care, due to their informal and non-compliant status<sup>4</sup>.



The conditions prevalent in informal settlements highlight the difficulties that confront people living there and result in many people, who are living in informal settlements, being depressed, experiencing high tension and being subject to conflict and abuse.

A number of the conditions identified above are obvious problems for an informal settlement upgrading project to address, such as poor access to water and sanitation. But there are also other problems identified in the list above that are more to do with social and economic issues. These need particular attention, and additional strategies to improve the situation.

Poverty and unemployment is discussed in more detail in Section 2.

<sup>4</sup>PPT and HDA 2014

### **Why conditions in informal settlements contribute to a higher HIV prevalence.**

There are a broad range of reasons why HIV/Aids prevalence is higher in informal settlements than in formal areas that relate to physical conditions and social and economic factors.

With respect to physical conditions:

Poor access to water, sanitation and hygiene can reduce immune resistance and increase viral load.

The lack of electric lights makes public spaces less safe with respect to crime at night, particularly for women. A woman who is raped stands a higher risk of contracting HIV from an HIV-positive perpetrator due to the associated violence.

Social factors include the fact that families often live in just one room. This means that household members are exposed to private and intimate activities such as tending to a sick person, or adults having sex.

Economic factors include that in the context of a lack of social cohesion and support, with people being mobile and vulnerable (with low or no income), transactional sex and sex work become ways in which young women support themselves. These women are especially at risk as their life circumstances make it less likely for them to be able to negotiate safer sex.

(Adapted from Ambert et al 2007 and Thomas 2014)

### **3.3 Positive aspects of informal settlements**

While there are many negative consequences to living in an informal settlement as set out above, informality or informal does not necessarily mean that settlements are chaotic or lack order. Many informal settlements are highly organised, often with a formal residents' committee structure, rules and regulations that determine who may build their shack in which position, networks and systems of support and community policing.





Informal settlements should not, therefore, only be defined by what they lack or what they are not (i.e. not formal, not legal, not authorised, not planned). There are also positive sides to informal settlements.

- One can observe innovation and ingenuity in many of the solutions households have come up with for themselves, for instance in the construction of their shacks.
- Informal settlements tend to be flexible; space can be found to accommodate more people when needed, houses can be expanded over time and the use of the structures (whether for living or for income generation) can change or be mixed. Informal settlements can also be responsive to people's incomes, to their need to earn an informal income, and to people's need to socialise. However, the degree of responsiveness can vary considerably from one informal settlement to the next.
- Informal settlements provide a way of living that is affordable to those earning the least.
- Informal settlements display many signs of hope for a better life. One often sees that informal settlement residents have invested in an electrical appliance (perhaps second-hand) in the hope of being connected to electricity in the future.
- Informal settlements generally display high levels of social interaction – people greet and talk to one another.
- Neighbours in informal settlements tend to know one another well and engage in reciprocity, which means helping one another as and when needed and according to their abilities.

## 4. What are the rights of people living in informal settlements?

### 4.1 Rights in the 1996 Constitution

The content of the South Africa Constitution is the result of a long process of careful negotiation. Every aspect of the Constitution is important as it binds the state, placing obligations on it that should prevent South Africa from reverting to the situation of repression and human rights violations that were common under the apartheid regime. Further, the Constitution, which contains the Bill of Rights, is in line with international human rights standards.



Several sections of the Constitution have relevance for informal settlements and the state's obligation in relation to this form of dwelling. The most important ones are discussed below.



## Section 26 (1): The right to housing

*Everyone has the right to have access to adequate housing.* Most people in informal settlements do not actually have this. They live in informal settlements because there is not enough adequate housing available. However, they cannot demand a house from the government immediately, because the right to housing is qualified by the next section.

*The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.* This means that the state may not neglect informal settlements. The state is obliged to enact relevant laws, develop programmes and projects, and to make good use of tax payers' money to realise the right as quickly as possible. Because there will be a delay, meaning people will have to resort to informal ways of living until enough adequate housing is available, the Constitution gives protection to homes in informal settlements in the next section.

*No one may be evicted from their home, or have their home demolished, without an order of the court made after considering the relevant circumstances. No legislation may permit arbitrary evictions.* This means that all homes, even if they are in informal settlements are protected by the law.

Nobody may remove the occupants or demolish the house without first getting a court to consider whether it is fair to do so. Only if the court considers it is fair, will it issue a court order.



## Section 9: The right to equality

*Everyone is equal before the law and has the right to equal protection and benefit of the law.* This means that informal settlement residents must be treated like everyone else. They may not be treated as second class citizens. In fact, they have to be treated with priority, as is evident from the next section.

Equality includes the full enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. Given the legacy of apartheid which disadvantaged those living in informal settlements today, measures have to be taken to redress this situation.

## Section 10: The right to human dignity

*Everyone has inherent dignity and the right to have their dignity respected and protected.* A home in an informal settlement provides a level of dignity that may not be taken away. But dignity also relates to having access to adequate sanitation, not having to walk through piles of refuse or puddles of water to get to work or home, or when fetching water. In these respects the state has a positive duty to ensure dignity through providing basic services as a minimum.

### Where do we begin realising these rights?

An example of legislation that has been designed to give meaning to these rights is the Housing Act 107 of 1997 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

However, Judge Yacoob stated in the Grootboom ruling in the Constitutional Court in 2000 that mere legislation is not enough. Policies and programmes are required that are reasonable both in their conception and their implementation<sup>5</sup>. This means that the state is obliged to develop reasonable (meaning sensible, relevant, good) policies and programmes, and that it must make sure these are properly implemented. This can be tested in the courts (the so-called reasonableness test).

## 4.2 The Constitutional Court cases: implications for the state

Over the years national, provincial and municipal governments in South Africa have made mistakes in applying the rights set out in the Constitution. These errors were brought to the attention of the Constitutional Court. The Court discusses and analyses very carefully what is brought before it and in its judgments it provides clarity, indicating where the state went wrong. The state has to take Constitutional Court judgments very seriously and has to act on the orders that are made.

All statements made in court judgments become law. This is referred to as case law or jurisprudence. Constitutional Court judgments apply to the entire country and all courts. The quotes from Constitutional Court judgments detailed below are now part of the South African law and they bind the state. It is important, therefore, to distil principles out of these statements and always to remember to act according to them. The four key principles are:

**Care** about the people living in informal settlements.

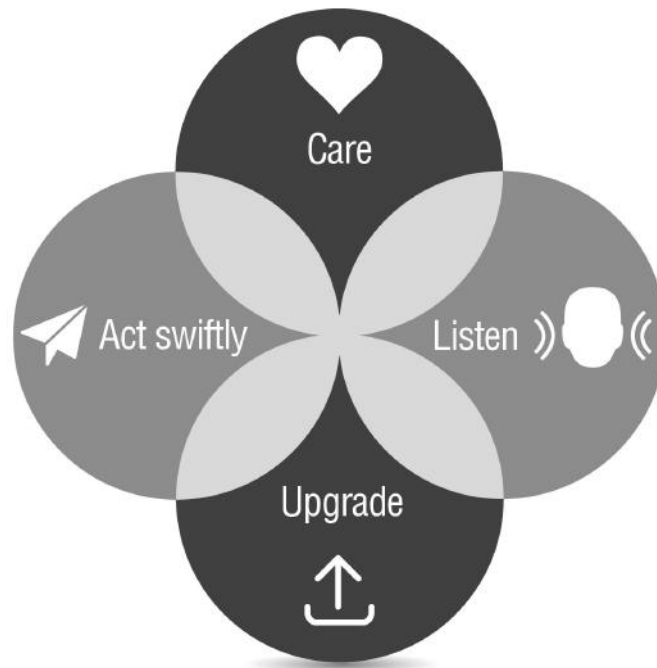
**Listen** to them so as to understand their needs and aspirations.

**Upgrade** the settlements so as to fulfil the requirements of the Constitution.

**Act swiftly** using the best resources you have available.

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<sup>5</sup> Grootboom ruling, s42



### The Grootboom case

In what is known as the Grootboom case, in 2000, the Constitutional Court found that the municipal, provincial and national governments had no programme with which to assist households in intolerable conditions or emergency circumstances, as is the case in many informal settlements that face flooding, fire, eviction, etc. The court ordered that:

*The state's housing programme must provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.*



As a result, the National Department of Housing revised its policy, introducing the programmes for emergency housing and for Upgrading of Informal Settlements.

**The principle that applies here is: Care.**



## PE Municipality case

The Constitutional Court, in what is known as the PE Municipality case provided a detailed interpretation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), emphasising the need to take all aspects of the residents' circumstances into account. The Court found that the municipality had failed to listen to and consider the problems or circumstances of a community which it planned to evict. The court ruled that:

*Government must take seriously the concerns and circumstances of informal settlement residents in planning for a way forward.*

**The principle that applies here is: Listen.**



## The Abahlali case

In 2006 the KwaZulu-Natal Legislature drafted a bill for the 'Elimination and Prevention of Re-Emergence of Slums'. Despite submissions which raised concerns about the constitutionality of this bill, the Legislature enacted it in 2007. The shack dwellers' movement Abahlali baseMjondolo challenged the Act in the High Court, arguing that the Act had reduced the tenure security of all shack dwellers in the province by increasing the state's powers to evict. The High Court ruled in favour of the Act. Abahlali baseMjondolo appealed to the Constitutional Court. In what is known as the Abahlali case, the Constitutional Court ruled in 2009 that Section 16 of the Act, increasing the powers to evict, was unconstitutional. It removed this from the Act. The court ruled that:

*The 'dignified framework' in existing legislation must be used and cannot be changed. The owner or municipality may only evict as a matter of last resort after having taken all possible steps to upgrade. Proper engagement includes 'taking into proper consideration...whether the areas where they live may be upgraded in situ'.*

**The principle that applies here is: Upgrade.**



## Nokotyana case

In what has come to be known as the Nokotyana case, in 2009 the Constitutional Court centred its judgment on the problem of delay (on the part of the provincial government) in establishing feasibility for in situ upgrading. It cited the Constitution on the requirement that all obligations must be performed without delay, and ordered that feasibility for in situ upgrading be established within 14 months. The court ruled:

*Relevant decisions must be taken without delay. It referred to the relevant section of the Constitution (s237): All constitutional obligations must be performed diligently and without delay.*

**The principle that applies here is: Act Swiftly.**

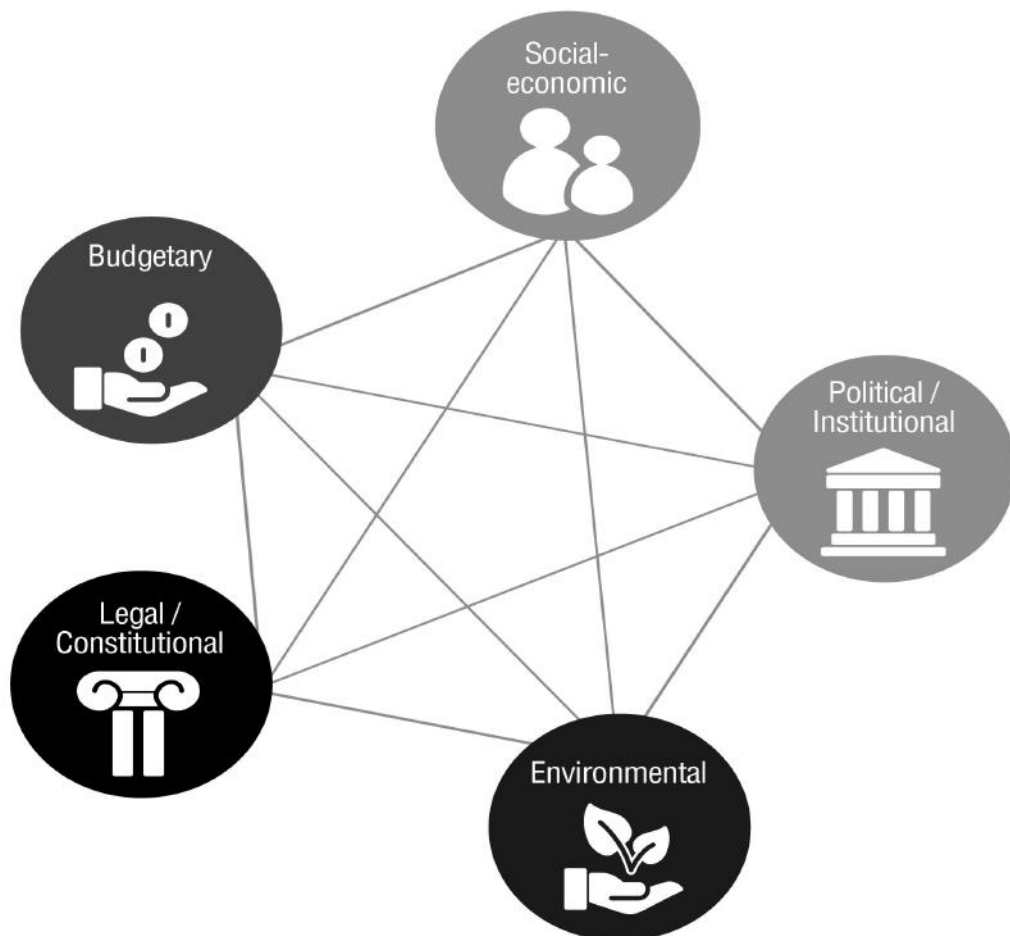


## 5. Informal settlements and the town or city

### 5.1 Relationship between informal settlements and town or city

There are five important ways in which informal settlements relate to, or interact with, the city or town as a whole. These have (1) socio-economic, (2) political/institutional, (3) environmental, (4) legal/constitutional, and (5) budgetary implications for the work of municipalities.

WAYS IN WHICH INFORMAL SETTLEMENTS RELATE TO A TOWN OR CITY



#### Socio-economic

**On the home front.** Informal settlements function as reception areas for impoverished rural-urban migrants. South African urban strategies have shifted to include the concept of absorbing city-ward migration, accepting this as inevitable and also as positive, given that the move to an urban area provides impoverished households with a chance to improve their situation and for society as a whole to progress. Informal settlements play an important role in this absorption.

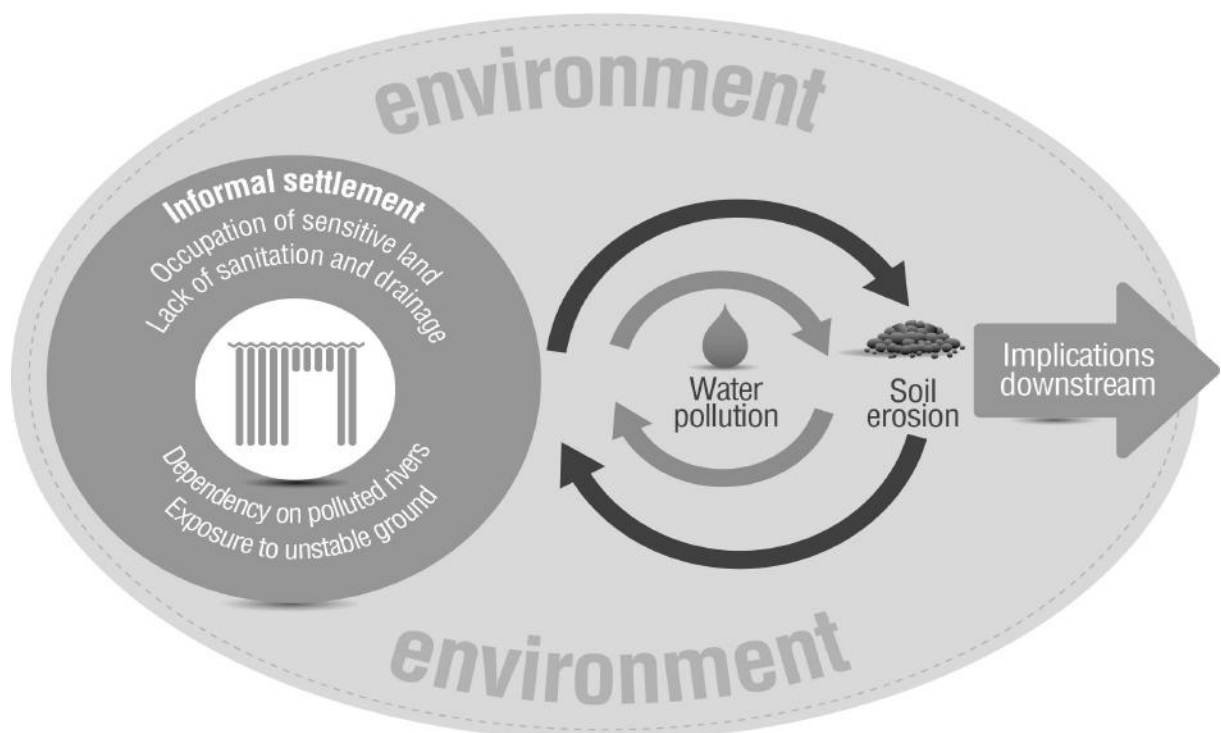


**On the work front.** The South African society and economy depends on casual and low paid labour. Informal settlements provide access to the informal sector and informal labour market. Wages, whether in the formal domestic sector, in the casual labour market, or the informal sector, can only be low if it is possible for the workers to spend very little on their accommodation. By accommodating the town and city's lowest paid workers, informal settlements allow the town or city's economy to function as it does. Informal settlements are tied, therefore, into a larger problem of the society and the economy.

## Environmental

The following diagram shows how informal settlements depend on the environment, have implications for the environment, and in turn are impacted upon by the environment.

INFORMAL SETTLEMENTS AND THE ENVIRONMENT



Informal settlements often occupy sensitive land where the environment is easily disturbed. This means soil could become unstable, natural water courses could become contaminated or polluted, or endangered plant- and animal-life could be damaged. This is because such land has often been set aside, to not be formally developed, but is then neglected and left in such a way that it can be occupied informally.

Unstable soil and polluted water pose risks to the communities. If these settlements remain unserved, the impact of the occupation on the environment is increased and the risk to those living in the informal settlement may also increase.

## Political/institutional

**Overcoming the spatial legacy of apartheid.** Informal settlements enable poor households to access the amenities offered by cities and towns and thus help to reduce or overcome the apartheid spatial pattern, which in the past has determined who lives where, in a town or city. Although informal settlements mostly locate in existing pockets of poverty (near townships), some also locate on well-positioned land or near up-market housing developments. While informal settlements near up-market developments often face eviction threats, they provide their residents access to the social and economic amenities of these developments and also increase the socio-economic and political diversity in wards and regions.

**Voice and representation.** Informal settlements accommodate an important voters' base. This means that politicians often make promises to them in the periods leading up to an election. Ward councillors, though politically elected, have an important role to play in countering this. They formally represent informal settlement communities in municipal councils and have to ensure that councils hear the needs and demands of these communities.

Municipalities and councillors also need to be aware that by law, informal settlement residents may also approach their municipality directly and must be consulted and engaged with meaningfully through mechanisms other than the ward councillor and ward committee structures. Section 16(1) of the Municipal Systems Act 32 of 2000 states that: *A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance.*

A recurring pattern of broken promises, as well as neglected Constitutional obligations on the part of municipalities, have driven many informal settlement communities to desperation. The escalation of protest action over the past decade has led to daily disruptions in the functioning of towns or cities. Increasingly there is a recognition that better mechanisms are needed for municipalities to listen to requests or complaints from communities.

## Legal/Constitutional

As already discussed, informal settlements place legal obligations on the town or city, namely to listen, care, upgrade and act swiftly. This means that state officials and politicians must always respect rights related to homes and occupation of land, meet minimum basic service standards as soon as possible (without unreasonable delay), prevent and respond to disasters as soon as possible, and work swiftly towards a permanent solution.

As we have seen, informal settlement representatives may litigate or legally protest in an attempt to force municipalities to meet their Constitutional obligations. This has led to the kind of judgments mentioned above, some of which have led to policy changes, others that have required municipalities or provinces to change their approach to informal settlements.

## Budgetary

**Indirect implications for budgets.** Many informal settlements have existed for long periods with no direct claims on municipal budgets. The low levels of basic services means that municipalities are not budgeting for these services. However, the absence of these critical services results in ill-health. In turn, diseases and injury burdens the city's health care infrastructure (clinics and hospitals). Not budgeting for adequate basic services in informal settlements, therefore, has cost implications in other sectors.

**Direct implications for budgets.** Managing informal settlements on a temporary basis through interim services can be expensive. Examples of such expenses are chemical toilets or sealed pit latrines, which require regular maintenance, communal taps that are easily damaged leading to leakage and water wastage, and the cost of providing adequate humanitarian responses to disasters such as shack fires. These place ongoing burdens on municipal budgets, which in the long run would be better spent on permanent solutions for the same communities. At the same time municipalities need to find the capital budget to provide basic services and a permanent solution for an informal settlement.

## 5.2 The challenges and opportunities for municipalities

### Turning problems into opportunities

The situation in South Africa with regard to meeting the need for housing is full of challenges and difficulties. *"In the middle of difficulty,"* observed Albert Einstein, *"lies opportunity."*

Some of the best opportunities often originate from problems. An example of this is how people are using their creativity to find alternative sources of energy (solar, wind, nuclear) as a way to solve our energy problems and the problem of global warming.

One of the key characteristics of a successful person is their ability to turn problems into opportunities.

But how do you actually go about turning problems into opportunities? It certainly does not happen automatically. Problems have only the possibility, not the certainty, of becoming opportunities. Positively focused thoughts and actions are necessary to realize those opportunities.

If something is a problem for you, it worries you or annoys you because you care about the situation and the things that are affected. Problems often bring strong feelings and with that comes plenty of potential energy. The key to turning problems into opportunities is to redirect that energy away from exerting a negative influence and toward a more positive orientation.

## 6. The case for incremental upgrading of informal settlements

### 6.1 Key features of incremental informal settlement upgrading

#### The underlying philosophy

The underlying philosophy of incremental informal settlement upgrading is as follows:

- Informal settlement residents have nowhere else to go and have found a way to make a living where they currently are.
- It is best to incrementally build on what they have already done themselves.
- By building on what people have done and listening to what they need, people's lives can best be improved.
- In this way, they can be integrated into the town or city.
- This means residents are partners in the upgrading process and stakeholders in the town or city.

Link to video: A policy and strategy for upgrading

The informal settlement upgrading approach that is outlined on this website is embedded in legislation and policy. It recognises that informal settlement upgrading is a statutory obligation for a municipality and is a crucial component of a municipality's housing strategy. As such it should not be treated as optional.

There is a strong recognition that informal settlement upgrading is a social process, involving people who already inhabit the land and who therefore have to be partners in the upgrading process. This aspect is called co-production. This means that informal settlement communities need to be actively engaged at key levels in the formulation of a strategy and project plans.

Engaging communities is discussed in Section 4.

#### A programmatic approach

It is necessary to adopt a radically different approach to addressing the informal settlement challenge in South Africa: a programme-wide municipal approach. The new approach is based on the need, the desire and the duty to include all informal settlements into the state's service delivery programmes, and recognises that meaningful developmental improvements need to be provided to all informal settlements as rapidly as possible. This applies even where formalisation may not be possible in the short-term and the municipality must provide interim and incremental services.

Historically most informal settlements received little or no developmental assistance, whilst a few received a high level of investment, usually in the form of conventional subsidised or RDP housing. The focus was on housing projects to deliver houses to people on the list. This meant that residents of some informal settlements got a lot and others got nothing, or very little.



The intention of the programmatic approach is to move away from the historical pattern where only a few settlements benefited from relatively high level of state investment, towards a more inclusive and incremental situation where all or most settlements benefit by means of meaningful quality-of-life improvements. This new approach requires that the municipality should develop an informal settlement upgrading strategy and programme at municipal level, as well as detailed plans for each individual settlement that responds to the unique circumstances and needs of that settlement.

The programme approach is covered in Section 5.

Settlement response plans are covered in Section 10.

What this means is that municipalities should be undertaking informal settlement upgrading at two levels:

- **A programme level**, which focuses on all of the informal settlements within its jurisdiction;
- **A settlement level**, which focuses on a specific informal settlement.

Programme level	✓
Settlement level	✓

This website provides tools and processes to be applied at both of these levels.

The key elements of a programmatic approach to incremental upgrading are:

- **Services:** Depending on the nature and future of an informal settlement, services are provided on the basis whereby initially emergency or very basic services are provided and these are then upgraded over time until such time as a full service level is achieved. The extent and time taken to incrementally upgrade the services depends on the sustainability of the municipality i.e. operations and maintenance costs.
- **Tenure:** Like services, tenure commences with the recognition of the informal settlement and is incrementally upgraded over time to interim tenure and then more formal tenure types such as leasehold and freehold.
- **Social and community facilities:** Initially very limited facilities are provided and these can be part-time (such as mobile clinics or libraries). Over time these should be upgraded so that the settlement has full access to public facilities. Support programmes such as skills development, business support and health and hygiene education should be brought in as budgets become available.
- **Human-centred and environmentally sustainable planning layout:** As a settlement is upgraded over time the focus should be on creating safe, good quality neighbourhoods where the maximum use of renewable resources is made.

Services are discussed in more detail in Section 8.

Tenure is discussed in more detail in Section 7.

Social and community facilities are discussed in more detail in Section 13.



- **Top-structures:** Households are provided with a serviced site and should be supported to build formal structures over time in terms of their own resources.

Top-structures are discussed in more detail in Section 9.

## Key terms for informal settlement upgrading:

Upgrading:	improving
In situ (Latin):	on site, in the original position
In situ upgrading:	improving without moving
Incremental upgrading:	improving (without moving) gradually over time.

## Intervention types related to upgrading

The incremental approach to upgrading is not the only intervention type. There are a number of other interventions that can be applied when undertaking informal settlement upgrading as set out below. This website will explain the benefits of incremental upgrading, but will also show where other intervention types should be applied.

- **Enumeration.** Enumeration is a process of surveying the community. It usually includes shack counting and numbering, administration of a questionnaire to capture all the relevant information about each household and mapping of the settlement to identify assets and risks. It is best practice to involve community members in gathering the information and capturing the data. Community-driven enumeration exercises constitute a resourceful and empowering process of data collection and profiling informal settlement demographics and assets.
- **Re-blocking.** This is an initial interim intervention to better organise the informal settlement layout so that emergency vehicles can enter and basic services can be introduced. In dense and poorly laid out informal settlements, re-blocking can enable later in situ upgrading.
- **Rollover upgrading.** This approach involves moving households off the land into a temporary relocation area (TRA) nearby, dismantling the shacks, then developing the site with formal sites and services (and sometimes houses) and allowing the same households to move back. Rollover upgrading is required where land has to be rehabilitated, for instance through major earthworks.
- **Formalisation.** This is a process of changing an informal settlement into a formal (legal and officially approved) settlement. Formalisation is an approach which provinces and municipalities developed for informal settlements before the Upgrading of Informal Settlements Programme (UISP) was introduced into the Housing Code in 2004, but the term remains in use and is sometimes used interchangeably with upgrading.

Re-blocking is discussed in more detail in Section 10.

Rollover upgrading is discussed in more detail in Section 10.

However, it is important to understand the difference. Formalisation makes use of the project-linked subsidy for housing and works towards changing the settlement to the extent that formal township establishment is possible.

- **Relocation:** Most informal settlement upgrading projects involve some relocation. While UISP and the law all require in situ upgrading wherever possible, a well-planned and responsive in situ upgrade might still require some households to be moved. This needs to be minimized, and the affected households need to be involved in the decision-making over their relocation.
- **Redevelopment.** This approach involves relocating the original residents, dismantling the shacks, and developing the land for a different purpose. Technically, this should not be confused with upgrading. Politically and legally it is difficult to justify an informal settlement redevelopment. However, there are instances where the land occupied by the informal settlement poses a danger to the residents as it is unsuitable for development, and it would be extremely expensive to rehabilitate.

Relocation is discussed in more detail in Section 6.

## 6.2 Constraints of conventional housing delivery

Conventional housing development comprises formal houses with basic services. This form of housing for very poor households is provided by government through the national housing subsidy programme (often called BNG houses) and is criticized on several grounds. Some relate to the burdens it places on government, others relate to the experience of those to whom the houses are allocated and who live in them. Below are a few of the main concerns that have been raised, and their implications.

### Concerns relating to the constraints of the state

1. **Cost of the house.** The cost of providing a formal house with basic services is very high. Increasingly it is being recognised that government does not have sufficient funds to sustain this form of delivery. There are increases in building costs and the cost of land. It would require R878 bn to house everyone on the current backlog and given that the 2014/15 budget was R30.5 bn, it would take over 30 years.
2. **High maintenance costs.** Conventional service lines have to be extended over long distances to reach peripheral locations, and to reach each house in a low density layout. It is expensive to install such conventional services and it results in high maintenance costs to the municipality.



3. **Difficulties in paying for service charges and rates.** Many households who are the recipients of subsidy houses are unable to pay for services and municipal rates. Accordingly the cost of providing basic services in terms of indigent policy falls on the municipality. In addition the municipality does not recover any of the costs of servicing and maintaining infrastructure in these areas.
4. **Limited resources and capacity.** Particularly in smaller municipalities there are limited resources and capacity (e.g. professional skills) that negatively affect the ability of the government to deliver formal housing developments.
5. **The housing backlog.** Despite the successes of government in providing formal housing, the backlog remains significant and increases annually as people migrate to the cities and the population grows. Urbanisation is irreversible. South Africa is now an urban country and Census 2011 records that 60% of the population is urban.
6. **Frustration with the perceived slow pace of delivery.** In 2008 there were an average of two service delivery protests a month; in 2013 there was an average of 18 per month. Rising levels of frustration become a security risk to the country.

### Concerns relating to the experiences of those living in the houses

1. **The developments are often purely residential and become poverty traps** as a result of the distance to potential places of work, the absence of any economic infrastructure within the settlements, zoning schemes that prohibit home-based businesses, and layouts that do not generate the concentrated pedestrian traffic that provide opportunities for viable street trading.
2. The developments are usually **a long distance from the beneficiary's previous place of residence.** The new residents find themselves far away from their friends, family and the networks they depend on for help, and through which they socialise. The time and cost of travel reduces their ability to maintain these important networks, resulting in disruptions in their lives.
3. The development layouts are characterized by **low density** (the houses are placed relatively far apart), repetitive layouts and the assumption that residents own a car or will soon own a car. This creates long distances for pedestrians to walk and high transportation costs.
4. The designs of the houses are **uniform and standardized**, based on one-size-fits-all. This reduces the sense of ownership of these houses and makes the houses unsuitable for particular needs such as those of extended families or of households needing to run a business from home.



## 6.3 Policy shifts towards informal settlement upgrading

### Human settlement policy and legislation

The housing policy called Breaking New Ground (BNG), adopted by cabinet in 2004, was the first policy document that recognised the challenge of informal settlements and announced *a new funding mechanism for informal settlement upgrading*. Despite this, very few in situ upgrading projects were planned and implemented in the first years following BNG. Instead, there was a mistaken focus on informal settlement eradication.

Policy and legislation is discussed in Section 3.

Over time government has come to realise that this approach was not in line with its Constitutional obligations and was one of the factors causing dissatisfaction and protest in informal settlements. It realised that instead it needed to act swiftly to improve people's lives within informal settlements.

As a result, the state committed itself to informal settlement upgrading through the Outcome 8 policy document (2010) and is in the process of building capacity for this approach through the National Upgrading Support Programme (NUSP). Implementation is now gaining momentum across South Africa. The commitment to upgrading informal settlements has dedicated support from key departments, agencies and legislation:

- Housing Development Agency (HDA)
- National Planning Commission (Presidency)
- Medium-Term Strategic Framework (targets for 2019) (Presidency)
- Spatial Planning and Land Use Management Act no 16 of 2013 (SPLUMA) (Department of Land Affairs and Rural Development).

### Support in the planning framework

In the past few years there has been increasing support in respect of the planning framework for informal settlements upgrading. The recent Spatial Planning and Land Use Management Act (SPLUMA) requires national and provincial government and municipalities to prepare spatial development frameworks that include informal settlements and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere.

### Support from various government funding mechanisms

There is a range of funding mechanisms that provinces and municipalities can apply to undertake informal settlement upgrading, including:

- Upgrading of Informal Settlements Programme (Part 3, 2009 Housing Code) (Department of Human Settlements);
- Urban Settlements Development Grant (USDG)(Treasury);
- Municipal Infrastructure Development Grant (Treasury).

## 7. Informal settlements cannot be ignored

### Understanding and responding to arguments against upgrading

According to the Housing Act 107 of 1997 the elimination of slums and slum conditions is to be achieved through establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions (s2 (1) (e) (iii)). This means that existing settlements have to be improved and alternatives provided. We cannot address informal settlements through eviction, removal, policing and tightening of regulations. We cannot ignore the informal settlement situation we face in today's towns and cities.

### Government's current approach

Government has committed to a long-term vision and commitment for the second phase of the democratic transition. This is captured in the National Development Plan (NDP) of 2012. The Implementation framework of the NDP is the Medium-Term Strategic Framework (MTSF). This lists commitments which the government has made for its political term up to 2019. The commitments include the following:

- Radical economic transformation;
- Rural development;
- Access to adequate human settlements and quality basic services;
- Education, healthcare, social security, corruption-fighting, social cohesion.

Below are some of the 2019 targets in the MTSF, against which government's performance will be measured:

- Approximately 1.4 million more households living in new or improved housing conditions;
- Informal settlement upgrading will be expanded to cover 750 000 households, ensuring basic services and infrastructure in some 2 200 informal settlements.

This means that there is recognition of the urgency and commitment to going to scale or reaching the large numbers of households living in informal settlements.

There are additional MTSF targets for 2019, which also support informal settlement upgrading:

- 1.4 million households connected to the electricity grid and 105 000 to receive non-grid connections;
- 90% of households to have access to a functional water and sanitation service;
- 49 municipalities to be assigned or accredited with the housing function (note that this is a requirement for a municipality to carry out informal settlement upgrading);
- Increase in the level of trust and confidence in government.



This indicates that there is potential to make a huge difference to people living in informal settlements in the period up to 2019.

## What more will it take to get ahead of the informal settlement problem?

- There is a need for champions (rather than opportunists) among communities, officials, politicians, consultants, NGOs.
- There is a need for a collective belief that the problem can be overcome.
- There is a need for active participation by all.
- There is a need for trust that the poor can play their part.
- There is a need for trust in the upgrading process.
- There is a need for commitment to push the boundaries of what is possible.

This website outlines the extensive work that has been undertaken over the past few years towards understanding the policy and legislative framework and the processes and tools that can be applied to the upgrading of informal settlements. The successes and successful case studies will be shared, as well as the challenges that need to be overcome.

Link to video:  
Informal settlement  
upgrading – Lindi's  
story

## References and Resources

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### Videos:

- Video: Buffalo City: A Policy and Strategy for Upgrading (Afesis and NDHS)
- Video: Informal Settlement Upgrading – Lindi's Story (Afesis and NDHS)

### Useful Links:

- Interview (film clip) with Constitutional law expert Pierre de Vos (UCT) on what the Constitution can do to address inequality (20 min) (August, 2014)<http://sacsis.org.za/site/article/2117?frommailing=1>
- NUSP Resource Kit: <http://www.upgradingsupport.org/content/page/nusp-resource-kit>
- Dolomite explained – useful and accessible online document on the website of the Council for Geosciences  
[http://www.geoscience.org.za/index.php?option=com\\_content&view=article&id=994:sinkholes-and-subsidences&catid=165&Itemid=167&showall=&limitstart](http://www.geoscience.org.za/index.php?option=com_content&view=article&id=994:sinkholes-and-subsidences&catid=165&Itemid=167&showall=&limitstart)
- SERI Community Practice Notes: <http://www.seri-sa.org/index.php/research-7/community-practice-notes>
- SERI Evictions and alternative accommodation in South Africa:  
[http://abahlali.org/wp-content/uploads/2008/04/Evictions\\_Jurisprudence\\_Nov13.pdf](http://abahlali.org/wp-content/uploads/2008/04/Evictions_Jurisprudence_Nov13.pdf)

- Informal electrification in South Africa: Experience, opportunities and challenges Sustainable Energy Africa): [http://www.cityenergy.org.za/uploads/resource\\_258.pdf](http://www.cityenergy.org.za/uploads/resource_258.pdf)
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