STATE OF EVICTIONS REPORT IN SOUTH AFRICA 2014

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Numerous eviction incidents occurred in South Africa during 2014, as a result of which many people were left homeless despite the legal safeguards that should protect them. The courts also decided a number of eviction cases and applications in that year. This study examines these incidents and cases with a view to reviewing the state of eviction in South Africa in 2014 and drawing lessons and conclusions from it.

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Foreword

The Dullah Omar Institute was established in 1990 and works to realise the democratic values and human rights enshrined in the Constitution of the Republic of South Africa. It forms part of the Law Faculty at the University of the Western Cape. The Institute is founded on the belief that the constitutional order must promote good governance, socio-economic development and the protection of the rights of vulnerable and disadvantaged groups. It has five main projects, namely: the Children's Rights Project; the Civil Society Prison Reform Initiative (CSPRI); the Multi-Level Government Initiative (MLGI); the Parliamentary Programme; and the Socio-Economic Rights Project (SERP). This study is a product of the Socio-Economic Rights Project.

The Socio-Economic Rights Project engages in applied research and focuses on the realisation of the socio-economic rights of groups and communities living in poverty. The Project was formed in 1997 with the aim of promoting the effective implementation, monitoring and enforcement of the socio-economic rights enshrined in the Bill of Rights in the Constitution of South Africa. It seeks to ensure that socio-economic rights are accessible to, and enjoyed by, everyone, particularly those groups and communities afflicted by poverty.

The Project participates in a range of activities, including applied research; publications; advocacy and monitoring; hosting workshops, seminars and conferences; developing resource and educational materials; and supporting public interest litigation.

This study falls within the Project's activities relating to publication, advocacy and research.

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Executive Summary

This study is the product of research into eviction cases and incidents in South Africa during 2014. It aims to ascertain the number and frequency of evictions in the country. It will serve as an advocacy tool for policy-makers at national and provincial levels. This research allows the Socio-Economic Rights Project at the Community Law Centre to document violations of the housing rights of vulnerable and marginalised groups in informal settlements. In turn, it enables the Centre, through the Project, to analyse the state's obligations in realising the right to access housing, with reference in particular to evictions carried out by government departments or institutions and by non-state actors.

The study involved researching the state of evictions in South Africa during 2014; reviewing newspaper and other reports from the media; analysing court decisions; and making contact with civil society organisations that deal with housing issues.

Along with providing an account of the state of evictions in South Africa during 2014, it focuses on the extent of compliance with due process (the applicable law) during evictions.

In terms of the applicable law, namely the 1996 Constitution of South Africa and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998, evictions from illegally occupied premises can only be carried out pursuant to a court order that is granted if it is just and equitable to carry out the eviction after considering all the circumstances.

The study finds that the majority of the evictions surveyed might not have been legal despite the fact that the applicable law provides protection against wrongful eviction. As the report will show, the events that occurred in 2014 suggest that legal safeguards could not protect the majority of illegal occupiers from illegal eviction. In a number of instances, there were attempts to carry out evictions using a court order that was not in fact an eviction order. For example, an interdict disguised as intended to prevent illegal occupations could be used to evict people who occupied properties illegally. In the majority of such instances, the occupants had to rely on court orders to enjoy the protection afforded by the law. Unfortunately, the affected people might already have suffered rights violations by the time the eviction was halted.

Thus, although the applicable law provides protection against wrongful eviction, the events of 2014 show that illegal evictions still occurred in South Africa in that year.

The study finds that the evictions were rather frequent. In certain provinces, such as Gauteng, evictions were reported to have been taking place 'constantly'. In locations like Cato Crest in eThekwini Municipality in Durban, evictions had taken place 12 times by June 2014. In such

areas, whenever the structures that had been erected illegally had been demolished, the dwellers would immediately begin the process of erecting new shacks only for the authorities to demolish them again. In some areas, such as inner Johannesburg, evictions were reported to have occurred between 10 and 20 times a month. The study also observes that evictions had occurred every month from January until November 2014. Accordingly, it finds that evictions were frequent rather than occasional. It also finds that the number of those evicted could be as high as over 300 people and over 800 families. In certain instances, the evictions involved the forced relocation of communities. For example, the June Lwandle eviction resulted in the removal of more than 800 families, which effectively cleared the area they occupied. Meanwhile, the June 2014 evictions in Cato Crest resulted in about 300 people being left homeless, and about 350 residents were removed during the July 2014 Zandspruit evictions.

In the light of the foregoing, the study considers it incumbent upon South Africa to look at ways of reducing the incidents of illegal evictions in 2015 and beyond. This could be achieved, inter alia, by ensuring that evictions are carried out only after obtaining an eviction order from the court which rules that it is fair, just and equitable to effect that eviction.

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1 General introduction and background

The South Africa Constitution and relevant legislation recognise the right of access to housing.[1]Every person in South Africa is expected to enjoy this right. A number of people have found themselves living in informal settlements where they erect shacks. These people include those who settle in areas 'illegally'. Every person has the right of access to housing, including those in informal settlements and 'illegal occupation', but it is not expected that people resort to illegal means in exercising this right. Because they lack access to housing, people often erect shacks or other structures on lands belonging to private persons or entities, government and local municipalities. As a result, South Africa continues to witness forced evictions where persons who are in illegal occupation of land are forcefully removed. People are also evicted from land for reasons relating to urban development and planning, such as the construction of roads, railway lines and buildings. Thus, while in certain instances persons are evicted to make way for urban development projects, in others cases they are evicted because they occupy the land illegally.

This study investigates a number of incidents, court challenges, applications and decisions relating to evictions that took place in South Africa in 2014. An outline is given below of the study's aims, scope and methodology as well as the conceptual legal framework that is applicable in the context of evictions in South Africa. This is followed by a detailed discussion of particular eviction incidents that occurred or were prevented from occurring. Analysis is also provided of the court cases and applications relating to evictions that were litigated during 2014. The study examines pertinent issues arising from particular eviction cases, draws conclusions from this analysis, and makes recommendations.

2 Aims, scope and methodology

This study sets out to determine the state of evictions in South Africa in 2014. It gives an account of particular eviction incidents, including the number of persons that were evicted in each case, and analyses the main legal and policy issues that arose during particular evictions. It focuses on evictions of people from their 'homes', dwellings and lands in circumstances relating to illegal occupation of land. While it does not look at evictions that took place due to non-compliance with tenancy agreements, it does briefly consider evictions of persons or

[1] Thelegal framework is briefly discussed in 3 below.

farmworkers from farms. The study focuses more on the factual details of eviction incidents and cases that occurred in 2014than on the legal or policy issues relating to evictions. Nonetheless, legal issues will be explored as they cannot be disconnected from the factual details.

The study examines eviction incidents that have been documented. Accordingly, it engages with media reports in newspapers; websites of non-governmental organisations that deal with and report on eviction issues; government reports and press releases; and the views of individuals from civil society organisations. In December 2014 and January 2015 individuals were consulted via telephone and email from organisations such as the Legal Resource Centre;the Centre for Applied Legal Studies (CALS); and the Socio-Economic Rights Institute of South Africa (SERI). These conversations focused on details of the eviction incidents and cases that these organisations were involved with or documented in 2014.The study predominantly relied on desk and internet research: consulting newspapers, online media sources, and reports from NGOs and educational research institutions. The information was checked for accuracy before being used. A possible limitation of the study could be that it focuses only on eviction incidents and cases that have been documented. Nonetheless, it provides a credible picture of the 'state' of evictions in South Africa.

3 Conceptual framework

This report predominantly looks at evictions of individuals from premises that they occupied illegally. This section discusses the conceptual framework pertaining to evictions from a legal perspective. The applicable legal framework addresses the rights and duties of property owners, the state and the individuals facing an eviction. Firstly, the framework recognises that the rights of the owners of occupied premises would have to be balanced against the rights of the occupiers who should not be rendered homeless by eviction. This is because South Africa's Constitution,[2]on the one hand, protects the right to property by prohibiting deprivation of property or its use except as per the law of general application in section 25. On the other hand, the Constitution also protects individuals from being evicted from their homes or having their homes demolished without a court order that has been issued after taking into account the circumstances in section 26(3). The provision in section 26also prohibits enactment of legislation that seeks to effect arbitrary evictions.

[2] Act 108 of 1996 (as it was previously cited).

South Africa has put in place legislation which provides for safeguards in evicting dwellers who occupy premises illegally. Styled the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act [PIE Act],[3]this legislation gives effect to the contents of section 26(3) of the Constitution by elaborating on the provision. The PIE Act provides a comprehensive description of the circumstances in which illegal occupiers may be evicted by a court order. The Act requires a court deciding an eviction application to take into consideration a number of factors. These include whether the occupiers fall into vulnerable groups such as children, the elderly, female-headed households, or persons with disabilities.[4]The PIE Act further requires that courts issue an eviction order only if an eviction would be just and equitable.[5]This decision is arrived at after considering all pertinent circumstances.[6]The PIE Act obliges courts to consider a number of other factors, including the length of time the occupiers have been in occupation and the availability of alternative accommodation or alternative accommodation provided by the state in situations where the occupiers are unable to find such accommodation on their own.[7]The PIE Act is significant insofar as evictions from illegally occupied lands is concerned since, as the Constitutional Court decided in the case of *Zulu and Others v eThekwini Municipality* in 2014 (discussed in 5.2 below), an eviction or demolition order that is issued by a court without adhering to the PIE Act would be unconstitutional.[8]

It is noteworthy that although evictions and demolitions might also occur in terms of other legislation, such as laws aimed at protecting the health and safety of residents or laws that manage disasters, the evictions must be done in a manner that is consistent with section 26(3) of the Constitution.[9] With regard to the eviction of illegal occupiers, then, compliance with the PIE Act is mandatory.

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[3] Act 19 of 1998.
[4] See s. 4(6) & (7).
[5] See s. 4(6) & (7).
[6] See generally s. 6(1).
[7] See s. 6(3) & s. 4(9).
[8] (CCT 108/13) [2014] ZACC 17; 2014 (4) SA 590 (CC); 2014 (8) BCLR 971 (CC).
[9]See Olivia Road case (*Occupiers of 51 Olivia Road v City of Johannesburg*) CCT 24/07, [2008] ZACC 1; *Pheko v Ekurhuleni Metropolitan Municipality*(CCT 19/11) [2011] ZACC 34, 2012 (2) SA 598 (CC), 2012 (4) BCLR 388 (CC) (discussed in 5 below); *Schubart Park Residents Association v City of Tshwane Metropolitan Municipality* (CCT 23/12) [2012] ZACC 26.

South African courts have developed a body of jurisprudence that needs to be satisfied to complement the procedural dictates of the PIE Act. First, courts must be fully informed of all pertinent circumstances before reaching its decision on whether an eviction would be just and equitable, as per the case of *PE Municipality v Various Occupiers* decided by the Constitutional Court.[10] Secondly, there should be meaningful engagement with all parties, engagement that is honest, proactive, and geared towards finding a solution acceptable to all concerned. The principle behind the process of meaningful engagement is to give people facing eviction from their homes an opportunity to participate in resolving the eviction dispute. The engagement can take the form of mediation overseen by a third party or it can be done through a structured process prescribed by a court. Furthermore, local authorities or municipalities must be made party to the court proceedings so that they can provide information on the availability and nature of alternative accommodation. The cases that have alluded to these requirements include *Sailing Queen Investments v Occupants La Coleen Court*[11]and *In City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others.*[12]

The requirement for alternative accommodation reinforces the principle that an eviction should not render a person homeless. Hence, relevant state agencies should make provision for alternative accommodation for those facing homelessness. Indeed, the *Grootboom* case judgment by the Constitutional Court had already declared, in October 2000, that emergency shelter must be provided to individuals 'with no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations'.[13] Thus, in *City of Johannesburg versus Blue Moonlight*,[14] the Constitutional Court reiterated that local authorities should have plans and budgets in place for housing emergencies and must ensure adequate provision of alternative accommodation for individuals facing homelessness. The *Blue Moonlight* case highlighted the reason for compelling state organs such as municipalities to become parties to eviction court proceedings where private landowners seek to evict occupiers. In this regard, the Constitutional Court emphasised that the duty to provide alternative accommodation is equally

[10](CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).
[11] (4480 / 07) [2008] ZAGPHC 15; 2008 (6) BCLR 666 (W) (25 January 2008).
[12] (SCA) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206.
[13]Government of the Republic of South Africa and Others v Grootboom and Others [2000] ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC).
[14]City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150.

applicable in cases where a private landowner applies for the eviction of an unlawful occupier as in cases where an organ of state evicts people from its land.

Hence, when the private landowner is not in a position to provide alternative accommodation, the state organs must be ready to step in. This is because it is the duty of the state to provide emergency housing and this duty automatically arises if an eviction by a private entity renders individuals homeless. In such cases, the state organ such as a municipality would be required to carry out an investigation and compile its findings in a report to be submitted to the courts. The report should deal with the potential impact of the eviction on vulnerable groups such as the elderly, children, persons with disabilities, and households headed by women. It should further deal with efforts to facilitate mediation or meaningful engagement between all parties concerned. In addition, the report must outline the steps taken to secure alternative accommodation for those who face homelessness arising from the eviction. Nonetheless, the decisions in these court cases suggest that even private landowners must ensure that there is provision for alternative accommodation before proceeding with an eviction.

With regard to meaningful engagement, the cases of *Occupiers of 51 Olivia Road v City of Johannesburg*[15]and *Residents of Joe Slovo v Thubelisha Homes*[16]are relevant. The engagement could consist of thorough negotiations involving all parties such as communities, private landowners, municipal officials, and the organisations that might be supporting them. The engagement should seek to resolve the eviction conundrum in good faith. It was mentioned in the case of *Port Elizabeth Municipality v Various Occupiers*, for example, that mediation or face-to-face negotiations imply 'respect for the dignity and agency of all the parties involved, particularly those facing homelessness'.

It is noteworthy that both the requirement for meaningful engagement and alternative accommodation will be taken into consideration by the courts in deciding whether the eviction would be just and equitable. Above all, the fundamental legal requirement relating to the eviction of illegal occupiers is that any eviction of individuals from their homes or any demolition of homes should only be done in accordance with a court order which must be issued after the court has considered all the relevant circumstances. These circumstances

[15] [2008] ZACC 1.
[16]Residents of Joe Slovo Community, Western Cape v Thebelisha Homes and Others (CCT 22/08) [2011] ZACC 8; 2011 (7) BCLR 723 (CC).

include health and safety concerns; whether alternative accommodation is available; whether meaningful engagement has occurred; and whether the needs of vulnerable groups such as children and persons with disabilities have been adequately catered for. Individuals might need to be temporarily evacuated from their homes in a real emergency situation. In such cases, the authorities should not demolish the homes for such individuals without a court order and the individuals must be allowed to return to their homes as soon as possible.

In summary, evictions of illegal occupiers must be carried out in accordance with section 26(3) of the Constitution and the PIE Act. Any illegal occupiers threatened by an eviction or home demolition are guaranteed constitutional protection against being evicted or having their homes demolished without a court order issued after considering all the circumstances. With this legal context in place, we can now proceed to critically examine various eviction incidents that occurred in South Africa in 2014.[17]

4 Eviction incidents in 2014

4.1 Marikana informal settlement in Philippi East

Mrs Irish Fischer's land: 7-8 January 2014

There were two eviction incidents in 2014 in Philippi, Cape Town, in the Western Cape. This section discusses the first set of evictions carried out in the 'Marikana' informal settlement on land owned by Irish Fischer in Philippi East in January 2014. The second eviction incident occurred in the other section of Philippi on Erf 149 in August 2014 and is discussed in4.10 below.

It was reported that on 7 and 8 January 2014, acting on the basis of an interdict, the Anti-Land Invasion Unit (ALIU) demolished 47 shacks that had been erected at Marikana informal settlement on land belonging to a private owner, Mrs Irish Fischer, which was located next to where the August evictions would take place. This action gave rise to a number of applications

[17] For further discussion on the pertinent legal framework, see Dube L'Eviction from illegally occupied land' available at *http://www.cfcr.org.za/index.php/latest/294-article-eviction-from-illegally-occupied-land* (accessed 29 October 2015); Liebenberg S 'What the law has to say about evictions'*Mail & Guardian:* 1 September 2014, available at*http://mg.co.za/article/2014-09-01-what-the-law-has-to-say-about-evictions* (accessed 29 October 2015).

for an interdict by Mrs Fischer and the City, on the one hand, and the occupants (shack dwellers), on the other hand, from the Western Cape High Court. The applications and counter-applications went all the way to the Supreme Court of Appeal (SCA). As discussed in 5.8 below, the High Court ruled against the City and Mrs Fischer; while, on appeal, the SCA set aside the High Court order and remitted the matter back to the High Court for oral evidence. Subsequently, the Constitutional Court denied the shack dwellers leave to appeal the SCA decision. Until the High Court ruled again and their appeals had been exhausted, the occupiers remained vulnerable to eviction.

[It is noteworthy that on 27 November 2014 the High Court finally issued a 'consent' interdict, which predominantly went in favour of the residents, who had been joined in the matter by other intervening occupants around September 2014. However, the twists and turns relating to the evictions seem bound to continue as the protection against the eviction of the original Marikana shack dwellers might in fact be only provisional. This is the case because the City's Mayco member for Human Settlements, Siyabulela Mamkeli, confirmed that the landowner was in the process of obtaining an eviction order which, if granted, would allow for the removal of the people settled on the plot.[18]]

4.2 The major Cato Crest evictions: Madlala Village community in Lamontville

Madlala Village community: on or around 13 February 2014

There were about three major eviction incidents during 2014 in the Cato Crest area alone in eThekwini Municipality in Durban. This section discusses the first set which occurred in Madlala village, while the other two are explained in separate sections below. The first major set of evictions commenced in 2013 during the December festive period.[19]It was reported that about 40 houses were demolished at the Marikana land occupation in Cato Crest on 24 December 2013.[20]

[18]Knoetze D 'Evictions by the back door'*Ground Up* 1 December 2014.
[19]'Illegal Evictions in Cato Crest'*Abahlali baseMjondolo* 24 December2013.
[20]'Illegal Evictions in Cato Crest'*Abahlali baseMjondolo* 24 December2013.

The events surrounding the evictions continued until June 2014.[21] They also involved a number of court applications. The lands involved belonged to the eThekwini Municipality. The shack dwellers association in the area, Abahlali baseMjondolo, was actively involved as they tried to defend the evicted persons. The evictions were reportedly done pursuant to a court order obtained by the KwaZulu-Natal MEC for Human Settlements and Public Works from the Durban High Court around 28 March 2013. This order allowed the municipality to 'prevent any persons from invading and/or occupying and/or undertaking the construction of any structures' on land within the jurisdiction, and to remove materials placed on the land.

The shack dwellers challenged the order's interpretation and the matter went to the Constitutional Court. The case is discussed in 5.2 below;[22]suffice to state that the ruling by the Constitutional Court predominantly went in favour of the shack dwellers. This is because the Court declared that using the order for evictions was unacceptable, although the municipality denied that it had done so. Justice Johann van der Westhuizen found that the order violated the Constitution and was therefore invalid.

However, the majority judgment, which has binding effect, did not pronounce on the order's legality. The Court referred the matter back to the High Court and hence the case was awaiting further proceedings there.[23]The shack dwellers had the feeling, shared by the Court, that the Municipality would 'suspend' all evictions until the determination of the High Court proceedings. However, it would appear that the Municipality proceeded with the evictions just weeks after the Constitutional Court judgment.[24] Apparently, during the period that the matter was being heard at the Constitutional Court and close to the delivery of the ruling, evictions were carried out in the area. It was reported that evictions were carried out in Madlala Village community in Lamontville on or around 13 February 2014, just a day after the hearing at the Constitutional Court where the shack dwellers were challenging the 28 March 2013 'eviction' order.[25]

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[21]'The Marikana Land Occupation in Cato Crest is Under Attack despite the Constitutional Court Ruling'*Abahlali baseMjondolo* 22 June 2014.
[22] Zulu and 389 Others v eThekwini Municipality and Others [2014] ZACC 17.
[23]'Shack dwellers' movement to contest forced evictions'*Mail & Guardian* 24 June 2014.
[24]'Shack dwellers' movement to contest forced evictions'*Mail & Guardian* 24 June 2014.
[25]'Evictions in Madlala Village the day after they were in the Constitutional Court'*Abahlali baseMjondolo* 13 February 2014.

4.3 Lwandle and Nomzamo evictions

Lwandle, Strand in Cape Town and Nomzamo: 1-2 June 2014

This eviction was carried out around 1 and 2 June 2014 pursuant to a court order (an interdict) obtained by the South Africa National Roads Agency Limited (SANRAL), the owner(s) of the pertinent land. The land is located in Lwandle and Nomzamo, along the N2 in Strand in Cape Town. The order was granted by the Western Cape High Court around January 2014. The evicted people reacted with violence, which began on 2 June 2014 following the enforcement of the order 'purported to be an eviction order'. Apparently, the interdict was directed against any person or structure erected on the land that breached the order after it was served.[26]

The Western Cape Premier stated that the people had been squatting on parts of SANRAL's land for years and that the City of Cape Town had regularly warned SANRAL to prevent further unlawful settlement on its land, but this was to no avail. SANRAL indicated that the occupied land had been earmarked for the re-routing of the N2. The court order/interdict had authorised the sheriff and the South African Police Service (SAPS) to give effect to its provisions. The people protested against the evictions, throwing petrol bombs and burning tyres while law enforcement officers tried to restore order. It was reported that people tried desperately to save their possessions while their homes were dismantled on the morning of 2 and 3 June 2014.[27]As a result of the destruction of the Lwandle settlement during this eviction, hundreds of families were left homeless.[28]

SANRAL had contended that the residents were occupying 'private land' that was part of a national road. They further stated that they had given the community notice of impending evictions in January 2014 and that they had made agreements with the City of Cape Town to develop property in order to relocate Lwandle community members. On its part,the provincial government contended that the City had been negotiating with SANRAL to buy and upgrade the land, but when the City rejected SANRAL's proposal ofe-tolls, SANRAL pulled out of the negations and evicted the people.[29]

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[26]'Petrol bombs fly during Cape Town evictions'*News24* 3 March 2014.
[27]'Tensions high as Strand evictions continue'*News24* 3 March 2014.
[28]'South Africans protest #SANRALEvictions'*ALJAZEERA* 3 June 2014.
[29]'Tensions high as Strand evictions continue'*News24* 3 March 2014.

It was further stated that people had been squatting on this patch of land next to the N2 highway, near Somerset West, for years, but the land falls within a road reserve that SANRAL needed for an e-tolling project, which was due to begin in six months (December 2014). Hence, as the start date of the e-tolling project drew closer, SANRAL obtained a court interdict to evict the squatters and prevent further 'occupation' of the land.[30]SANRAL indicated that they had engaged with the City since 2003 about relocating the squatters to alternative accommodation or serviced sites. However, they stated that the 'deliberate inaction of the city brought this process to an abrupt end', resulting in further invasion of the land. As a result, SANRAL had no option but to obtain an interdict from the High Court in order to prevent further land invasions.[31]

Following an inquiry instituted by the national government's Minister of Human Settlement, a number of factual issues arose from the evictions.[32] First, it transpired that SANRAL obtained the material order/interdict from the Western Cape High Court on 24 January 2014. The order was specifically aimed at preventing the imminent invasion or occupation of the land. Thus it was not an eviction order *per se* as it did not authorise the eviction or removal of people or their structures that were already on the land.

However, it was found that SANRAL had used the order to effect mass removal of families. Hence, the evictions were done pursuant to an interim interdict that was limited to preventing further invasion. Since SANRAL did not have an eviction order, they should be regarded as having failed to follow 'the due processes of the law' as set out in the PIE Act. The Inquiry also found that the community had occupied the land illegally. The report on the findings of the commission of inquiry was submitted to the Minister on 8 October 2014. The Minister delivered a speech in Parliament on the report where she indicated that she would submit the report to

[30]'Lwandle evictions: what went wrong?'*News24* 13 June 2014.
[31]'Transport Minister Peters apologises for Lwandle evictions'*Mail & Guardian*3 June 2014.
[32]'Lwandle mass evictions illegal – Sisulu'*News24* 23 October 2014; 'Lwandle mass evictions illegal: Sisulu'*SABC* 23 October 2014; 'Sisulu plans inquiry into Lwandle evictions processes'*Mail & Guardian* 10 June 2014; 'Sisulu appoints commission to investigate Lwandle evictions'*Mail & Guardian* 5 June 2014.

the Parliament's Human Settlements Portfolio Committee.[33] Thus the government's interpretation of the report's findings was that the eviction was illegal.[34]

The eviction resulted in the removal of more than 800 families.[35] The area is said to be about the size of six football fields and was literally cleared in two days. The eviction process involved demolishing shacks and razing them to the ground, with the result that many people lost their personal possessions. It was reported that 'they were left with nothing but the clothes they were wearing'.[36]

The Cape Town Mayor, Patricia de Lille, confirmed on 5 June 2014 that 'We have agreed that SANRAL must take responsibility for rebuilding 849 structures and at the size of 6 metres by 3 metres.' The mayor promised to build a long-term housing settlement in Macassar for the people, although it was pointed out that the first sites would not be ready until November 2015.[37]

4.4 First Avenue, Alexandra evictions

First Avenue, Alexandra, Johannesburg: on or around 4 June 2014

There were two eviction incidents that occurred in the Alexander (Alexandra) location during 2014. This section discusses the first incident (in the First Avenue section), while the second incident (in Botshabelo section) is discussed in 4.16 below. The first was an eviction by the owner of privately owned land with the help of the Red Ants – a private security firm – in First Avenue, Alexandra, in Johannesburg.[38] It was reported that the 'brutal eviction' resulted in the removal of 25 families[39]and that it was carried out by members of the Johannesburg Metro Police and Red Ants who evicted dozens of families living in two abandoned factories on or

[33]'Lwandle mass evictions illegal – Sisulu'*News24* 23 October 2014; 'Lwandle mass evictions illegal: Sisulu'*SABC* 23 October 2014.
[34] [It is noteworthy that the report of the findings had been released by December 2014].
[35]'Lwandle evictees still without land'*Mail & Guardian* 10 June 2014.
[36]'Politics the 'real story' behind Lwandle evictions, says Zille'*Mail & Guardian* 9 June 2014; 'SAHRC investigates Lwandle evictions'*Mail & Guardian* 8 June 2014.
[37]'Lwandle evictions: what went wrong?'*News24* 13 June 2014.
[38]'Evicted Alex residents cry for more help'*Alex News* 7 June 2014.
[39]'Evicted Alex families face bleak conditions'*Eye Witness News* June 2014; 'Lwandle evictions: what went wrong?' *News24*13 June 2014.

around 4 June 2014. It was estimated that 100 families were living on the premises that stood 200 and 203 and that some occupants had lived there since 2000.[40]

It was reported that the owners engaged the Red Ants to evict the settlers and that the Police were called in to ensure that the situation did not 'turn nasty'. The eviction was said to have been carried out when most of the occupants were at work. Their property was found strewn all over the street to the extent that the two streets had to be cordoned off from traffic. Indeed, the process resulted in the closure of First Avenue and Arkwright Avenue in Alexandra. When the occupants arrived back from work, they found that a lot of their possessions were missing, with some claiming that they had lost their life savings. The eviction can also be faulted for its timing as it was done 'just days before a "brutal" cold front' was 'expected to hit South Africa'.

It was also reported that the eviction was done pursuant to a court order, which had 'been served for people to abandon factories which were occupied illegally'. However, there was no alternative accommodation provided prior to the evictions, and the government only considered this after the evictions.[41] The Department of Human Settlements, Cooperative Governance and Traditional Affairs, in conjunction with the City of Johannesburg, had announced on 5 June that they would be providing shelter for the evictees of Alexandra Township.[42]

The residents of the informal settlement had reportedly lived in the area for ten years prior to the eviction. They appeared to hint that they initially paid rent to the owner of the premises based on the original agreement. While they admitted to stopping their rent payments, they were quick to explain that this because their landlord had reneged on his original commitment to provide electricity, water and sanitary facilities.[43] Another report stated that they had paid rent ranging from R250 to R500 on time until a disagreement with the landlord a couple of

[40]'Red Ants evict Alex families'*eNCA News* 4 June 2014.
[41]'Evicted Alex residents cry for more help'*Alex News* 7 June 2014.
[42]'More Evictions: Gauteng to Provide Temporary Accommodation for Evictees'*The Public News Hub* 7 June 2014.
[43]'More Evictions: Gauteng to Provide Temporary Accommodation for Evictees'*The Public News Hub* 7 June 2014.

years before, when he reneged on an agreement to improve their living conditions by replacing the wooden shacks, upgrading toilets, improving water supply and connecting electricity.[44]

The Gauteng MEC for Human Settlement, Jacob Mamabolo, said that his department had intended to challenge the eviction and had instructed the department's lawyers to scrutinise the eviction order with a view to finding any loopholes in it and how this could be used to the advantage of the people.[45] The Department indicated that they would launch an investigation into the evictions. It was reported that the owners had used an interdict/eviction order issued in 2011 by the Magistrate's Court for people living on the premises. The identity of the property owner was unclear and an attorney representing the evicted residents said the original attorneys representing the business owner in the 2011 court proceedings could not be traced. The Department stated that its lawyers would scrutinise the court judgment/order.[46]

On the other hand, the Department of Human Settlement, Cooperative Governance and Traditional Affairs had announced on 4 June 2014 that they would provide accommodation for the evictees, especially in the light of the prevailing harsh weather conditions. It was further established that the Department had contracted a service provider to build temporary structures to house the people.[47]

Indeed, the response by the government was commendable as it was reported that on 25 June 2014 Mr Mamabolo handed over 10 temporary units intended to serve as a disaster relief housing that would in the interim be used to house the community that had been evicted from the Marlboro Industrial Area. These structures were family-sized units of 5 by 12 meters with a galvanized frame and walls built of fibre cement and polystyrene.The MEC hoped that the residents would not stay in them for more than 12 months.[48]

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[44]'Evicted Alex residents cry for more help'*Alex News* 7 June 2014.
[45]'More Evictions: Gauteng to Provide Temporary Accommodation for Evictees'*The Public News Hub* 7 June 2014.
[46]'MEC wants Alex eviction investigation'*eNCA News* 5 June 2014.
[47]'More Evictions: Gauteng to Provide Temporary Accommodation for Evictees'*The Public News Hub* 7 June 2014.
[48]'Statement by Gauteng Human Settlements, MEC Jacob Mamabolo delivers on promises to evicted community of Alexandra (25 June 2014)' *Polity.ac.za* [no date].

4.5 General Johannesburg evictions

General Johannesburg evictions: pending by or around 9-10 June 2014

It was reported that on 9 and 10 June 2014 over 1000 occupiers of several inner city Johannesburg buildings were facing eviction. The residents were occupying six buildings under bad conditions, including lack of sanitary facilities. The residents had requested the High Court in Johannesburg to declare that the City of Johannesburg had failed to discharge its constitutional obligations to provide temporary accommodation to poor people facing eviction. The Socio-Economic Rights Institute of South Africa (SERI)had accused the City of Johannesburg of failing to provide alternative accommodation for persons that had been evicted since 2011.

Apparently, the City had suspended nearly 30 pending evictions since it sought to first create an eviction model that conformed to the requirements of the law and constitutional obligations. One such model was referred to as the managed care model, which was implemented by the City for the first time at Ekuthuleni Shelter and aimed to change residents into 'employable and rent-paying individuals within six months of entering the shelter'. It was suggested by the City that private property owners found it easy to skirt around evictions since they realised that the obligation to provide alternative accommodation for evicted people fell on the City. This reportedly led to an increase of evictions which would reach between 10 and 20 incidents a month.[49]

4.6 The major Cato Crest eviction: Cato Crest's Marikana Land Occupation

Cato Crest's Marikana Land Occupation: 21-24 June 2014

The first set of evictions in Cato Crest in eThekwini Municipality that occurred in Madlala village in February 2014 was discussed in 4.2 above. This section discusses the second set of evictions; the third set is discussed in 4.11 below. As highlighted in 4.2, these evictions relate to the major eviction incidents in the Cato Crest area which can be traced to 2013, when court proceedings. As already noted, the Madlala evictions were carried out in February 2014 just a day after the parties had returned from the Constitutional Court where the matter had been heard. The Court issued its decision on 6 June 2014. During the period immediately following the Constitutional Court ruling in the case of *Zulu and Others v eThekwini Municipality and Others* (discussed in 5.2

[49]'City of Jo'burg blamed for not providing homes for evictees'*Mail & Guardian* 12 June 2014.

below)[50] evictions were carried out in Cato Crest. On 22 June 2014 the eThekwini Municipality evicted people at the Marikana Land Occupation, destroying 18 shacks. It was alleged that the evictions were carried out without a court order and despite the ruling of the Constitutional Court on 6 June 2014.[51]

On 1 and 2 September 2013 residents in Cato Crest were evicted by the Municipality. On 2 September they challenged the evictions in the Durban High Court and gained an interdict against the evictions. Yet over September and October the Municipality continued with the evictions, and various court applications were made. Then it transpired that the KwaZulu-Natal MEC for Human Settlements and Public Works had in his possession the order of 28 March 2013, which was used to effect the evictions of 24 December 2013 in Cato Crest, as discussed in 4.2 above. Thus the eviction battle relating to this order went all the way to the Constitutional Court.[52] Even after the Court ruling, the Municipality went ahead with the evictions on 21-24 June 2014.

The June 2014 evictions, which were alleged to have been forceful, took place in two informal settlements near Durban. It was reported that eThekwini Municipality destroyed more than 100 shacks in Cato Crest's Marikana Land Occupation and Lamontville's Madlala Village over the weekend of 21-22 June. The shack dwellers' movement, Abahlali baseMjondolo, claimed that about 300 people were left homeless. It was alleged that the Land Invasion Unit had arrived on the morning of Sunday June 22 armed and without court orders, and that they did not want to engage with any of the residents.

The evictions were marred by violence and protests and were labelled as 'brutal' as the Invasion Control Unit was heavily armed and used tear gas to disperse the crowds. Members of SAPS were also present. The alleged force that was used resulted in injuries and did not consider vulnerable people such as women and children. It was reported that soon after the evictions had taken place residents blockaded roads and began a 'normal' rebuilding process. It was

[50] [2014] ZACC 17.
[51]'The Marikana Land Occupation in Cato Crest is Under Attack despite the Constitutional Court Ruling'*Abahlali baseMjondolo* 22 June 2014.
[52]'Abahlali baseMjondolo and 30 Others v eThekwini Municipality andOthers ('Cato Crest')' SERI [no date].

understood that the people rebuilt their shacks because they had nowhere else to go. Similar evictions had taken place in Cato Crest 12 times and had thus become a routine.[53]

It was reported by an Abahlali press release that about 50 or 70 shacks were demolished in Madlala Village in Lamontville despite the June 6 court ruling that went in favour of Madlala Village residents. The evictions were carried out on 21 June 2014 and the demolition of the 70 shacks left hundreds of people homeless in 'the harsh conditions of the winter season'. It was alleged that the Municipality did not produce a particular court order authorising the evictions. The shack dwellers' association stated that 70 families and 300 people were affected by the evictions.[54]

4.7 Zandspruit and Honeydew evictions

Zandspruit and Honeydew, Johannesburg: on or around 7-9 July 2014

These evictions occurred in Zandspruit and Honeydew in the west of Johannesburg in early July 2014. They involved evictions from a townhouse complex and the removal of shacks and structures erected in the area. The land in Honeydew belonged to a private entity. It was reported that the land had townhouses that were being rented by the evicted people from Jika Properties, a property investment and development company based in Braamfontein. The townhouses formed a complex in Honeydew and the residents were deemed to be in 'illegal occupation' thereof.[55]

The evictions in Zandspruit were said to have been part of 'a municipality-mandated initiative to remove 60 half-constructed and unoccupied shacks from the settlement'. It was understood that the 'community had asked' the municipality to remove the shacks because they were being built by illegal immigrants whom they did not know, and that the community was also concerned that the new shacks were being built on land earmarked for Reconstruction and Development Programme (RDP) housing, of which shack-dwellers in Zandspruit would likely have been recipients.

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[53]'Shack dwellers' movement to contest forced evictions'*Mail & Guardian* 24 June 2014.
[54]'Illegal Evictions in Madlala Village, Lamontville'*Abahlali baseMjondolo* 21 June 2014.
[55]'Dozens evicted from their home without an eviction notice'*Roodepoort Northsider* 8 July 2014.

Accounts suggest that the residents had occupied a piece of private land illegally in January 2014. The Metro Police stated that the demolitions were lawful since the building had been erected illegally and they had served notices about the evictions two weeks before. The Sheriff stated that the evictions were carried out after a court order had been issued.[56] However, the residents disputed these versions, particularly that of the police.

The residents tried to resist the evictions through protests and demonstrations. An estimated 200 angry Zandspruit residents tried to barricade the intersection of Beyers Naude Drive and Peter Road, hurling rocks at passing motorists and setting tyres alight in the middle of the road. The situation became calmer after the police arrived and fired rubber bullets.[57]

The eviction involved the removal of about 350 residents and the destruction of about 55 shacks, although other sources allege the number was closer to 114.[58] In Mbhele Section of the Zandspruit informal settlement, more than 60 families were reportedly evicted on the morning of 7 July 2014.[59] Another report put the number of shacks destroyed at 60, with 300 people, including small children, left homeless.[60] The City of Johannesburg surprisingly did not regard the process as an eviction but 'an operation aimed at removing illegal structures being built on a land earmarked for a housing development in the area'. While the evictions in Cape Town (discussed in 4.3 above) were carried out using the police, those in Gauteng were entrusted to an 'eviction firm' known by their red uniforms as the Red Ants. The Red Ants were backed by metro police. During the eviction, the Red Ants also dismantled informal traders' stalls on the fringes of the settlement. It was reported that about 14 illegal trading shacks were destroyed.[61]

As was the case with the Lwandle evictions, the timing and forceful nature of these evictions overlooked the rights and plight of the settlers. It was reported that the eviction was carried out at the time of a cold front and involved the destruction of personal possessions. People complained of having to sleep outside in the freezing cold, with no blankets to keep toddlers

[56]'Honeydew evictees scramble for housing'*Eye Witness News* 7 July 2014.
[57]'Rubber bullets fired in Zandspruit: Locals are fuming following a second day of evictions and demolitions in the community'*Eye Witness News* 7 August 2014.
[58]'Red Ants evict Zandspruit residents as cold intensifies'*SABC News* 10 July 2014; 'Trouble brews in Zandspruit as shacks are demolished'*Roodepoort Northsider* 8 July 2014.
[59]'Zandspruit residents left out in the cold'*eNCA News* 9 July 2014.
[60]'Zandspruit residents spend night in sub-zero temperatures (video)'*The Citizen* 9 July 2014.
[61]'Zandspruit illegal traders demolished too'*Roodepoort Northsider* 10 July 2014; 'Traders targeted on Day 3 of Zandspruit evictions'*Randburg SUN* 10 July 2014.

warm; an informal trader and father of a six-year-old child said he did not know how he was going to feed his family.[62]One report noted that the evictions took place 'During one of the coldest weeks to hit the province' and that 'residents were forcibly removed from their homes and forced to spend freezing nights on the streets.' The temperatures were expected to reach -4 degrees that night.[63] Above all, the eviction claimed one life as a six-month-old baby was said to have died at DR Yusuf Dadoo hospital in Krugersdorp after allegedly sustaining injuries when the Red Ants demolished a shack while the baby and mother were inside.[64] There were also injuries sustained when the police fired rubber bullets and allegedly beat protesting residents.

It would appear there was no alternative accommodation provided or eviction notice served before the evictions were carried out. A ward committee member, Toby Dubazane, confirmed that no eviction notice had at any stage been presented to residents. Indeed, it was reported that the evicted residents had been referred to a pastor of a local church for alternative accommodation, but, according to Economic Freedom Fighters (EFF) member Lucia Mamburu, their attempts to seek shelter were unsuccessful.[65] There were also efforts to resort to the local schools and see if they would be willing to accommodate the homeless families.[66]

Subsequently, the provincial government and the Red Ants reached a signed agreement to ensure due legal process during evictions. Amongst other things, it was agreed that the Red Ants would give 48-hour notice before carrying out an eviction in Gauteng.[67] The notices had to be clear and distributed with instructions informing residents on what to do. It was also agreed that they would have to identify vulnerable groups, such as children and the elderly, before carrying out the eviction. The agreement was signed by Gauteng's housing MEC and the Red Ants on 14 July, one week after the evictions.[68] The Provincial department also reached an agreement with the Sheriff whereby it was agreed that the sheriffs would share with the department all pending eviction orders.[69] It was further reported that the working relation

[62]'Red Ants evict Zandspruit residents as cold intensifies'*SABC News* 10 July 2014.
[63]'Illegal Evictions Zandspruit' *Impophomo* 9 July 2014.
[64]'Baby dies as red ants demolish shacks in Zandspruit'*Roodepoort Northsider* 10 July 2014.
[65]'Councillor speaks on Zandspruit evictions'*Roodepoort Northsider*10 July 2014.
[66]'Zandspruit residents spend night in sub-zero temperatures (video)'*The Citizen* 9 July 2014.
[67]'Red Ants will have to issue 48-hour eviction notices'*Business Day Live* 14 July 2014.
[68]'Eviction processes distasteful "distasteful": MEC'*The New Age* 11 June 2014; 'Mamabolo, Red Ants sign eviction agreement'*The Citizen* 14 July2014.
[69]'Sheriffs to cooperate with Gauteng Housing on evictions'*SA News* 3 July 2014.

between the Red Ants and government prevented the 'wrongful' eviction of 30 people in Jeppe, Johannesburg, around the same period.[70]

4.8 Uganda settlement evictions

Uganda settlement near Isipingo in the South of Durban: on or around 29 July 2014

These evictions were reportedly carried out by the eThekwini Municipal Land Invasion Unit in the Uganda settlement near Isipingo in the south of Durban on 29 July 2014. They involved the demolition of shacks. It was reported that about seven families were evicted and that the Municipality did not produce any court order authorising the eviction. The families had apparently lived in the Uganda settlement for three years prior to the eviction. It was alleged that the Land Invasion Unit indicated that they would come back to evict more families that were occupying shacks that had been marked with 'X'. Apparently, the Uganda settlement was said to have been one of the settlements where RDP houses had been built a few years before 2014. As with the other eviction incidents, it was expected that the affected persons would rebuild the shacks.[71]

4.9 Castle Blaney evictions

Castle Blaney, near Hillbrow, next to Park Station in Johannesburg:on 25 August 2014

This incident involved an eviction from a privately owned building by the owners using the Red Ants as the 'evicting agents'. The factual background shows that the liquidator of Castle Blaney, Christiaan de Wet, had applied for the eviction order, which was granted by Judge Haseena Mayat on 12 May 2014. The City and the provincial Human Settlement Department collaborated to ensure that the eviction was carried out 'legally' and in a humane manner. However, the process ended up being violent. The residents at the Castle Blaney building tried to resist the eviction and this resulted in injuries being sustained. Local police and metro officials were

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[70]'Mamabolo, Red Ants sign eviction agreement'*The Citizen* 14 July 2014. The Johannesburg Municipality had carried out evictions of people in Jeppe around 4 July 2013 and the Inkatha Freedom Party (IFP) were amongst the commentators that had condemned the evictions. See 'IFP Inner City Constituency Concerned by Johannesburg Municipality's Forced Eviction of Jeppe Town Residents'Inkatha Freedom Party 4 July 2013.

[71]'Illegal evictions in Isipingo, all criminal charges dismissed against the Ridgeview Twelve'*Abahlali baseMjondolo* 30 July 2014.

deployed on site to restore peace and order that afternoon.[72]The Gauteng Human Settlement Department confirmed that 10 people were injured in a confrontation between residents and sheriffs at flats in Joubert Park, Johannesburg, following evictions carried out on 25 August 2014. This happened when shots were fired from the flat towards the crowd that included sheriffs. The MEC for the Department of Human Settlements said the Department had advised residents to leave the building before the eviction date, circulating' early warning pamphlets to alert everyone on time and to advise residents to co-operate with the removal companies.'[73]

It was reported that during the eviction, which lasted the whole day, residents won a court case challenging the eviction. However, the Red Ants returned after three weeks to continue with the evictions. It transpired that residents deliberately resorted to violence as a means of preventing evictions, a measure the provincial government condemned.[74]

It was alleged that there was no alternative accommodation provided. However, it was reported that the Department had been in constant contact with the Sheriff and all parties involved in trying to ensure that residents were advised to leave the building before the eviction date as well as to make other arrangements to seek alternative accommodation with neighbours, relatives or friends. The provincial government observed that the eviction was legal since it was conducted in a fair and just manner; in respect of court notices, the Department circulated early warning pamphlets the previous week to alert everyone and advise residents to co-operate with the removal companies employed by the Sheriff to execute the evictions; and the Department also deployed its officials on site to monitor the process.[75]

[72]'MEC condemns eviction violence in the Johannesburg inner-city'*South African Government* 25 August 2014.
[73]'Ten injured in Joburg eviction chaos'*SABC News* 26 August 2014; 'Ten injured in Joubert Park eviction scuffle'*Times Live* 25 August 2014.
[74]'MEC condemns eviction violence in the Johannesburg inner-city'*South African Government* 25 August 2014.
[75]'MEC condemns eviction violence in the Johannesburg inner-city'*South African Government* 25 Aug 2014.

The Department pointed out that the establishment of a Provincial Evictions Task Team had resulted in a new trend in which parties were now allowing the Department to mediate through the Housing Rental Tribunal to help avert pending evictions.[76]

4.10 Philippi evictions on Erf 149 in Philippi East

Philippi evictions [on Erf 149 in Philippi East]: on or around 10-11 August 2014

There were two eviction incidents in Philippi, Cape Town, in 2014. The first was carried out in January in the 'Marikana' informal settlement in Philippi East on the land belonging to Iris Fischer, and the second took place in August in another part of Philippi, on Erf 159.

The Philippi East Erf 149 evictions and demolitions were carried out by the Anti-Land Invasion Unit (ALIU) which destroyed shacks following the City of Cape Town's own criteria for the demolitions. The criteria referred to 'uncompleted' or 'vacant' dwellings. It was reported that the land occupation, which started on Erf 149 in Philippi East around 5-7 August, had grown exponentially. It was rumoured that individuals that were too poor to afford rent had come from near and far to stake their claim to the land. Consequently, evictions, violent clashes and arrests once again took place.[77][It had been reported that before the ALIU and police arrived, the land adjacent to the established Marikana settlement was abuzz with activity. Scores of shacks, in various stages of completion, were being erected. The first round of shack demolitions took place on 10 August 2014.[78]]

Since 10 August, law enforcement officers, supported by riot police, had reportedly pulled down and removed more than 200 hundred structures. The City stated that these were not evictions but that they were merely preventing further occupation by removing 'unoccupied and incomplete' structures –not homes.[79]It was reported that the incidents followed a routine in which the ALIU would demolish a shack in 60 seconds, only for the people to rebuild it in two days, and that resistance by residents would be met by force by metro police and SAPS, who were equipped with shotguns, body armour, stun grenades, shields and helmets. The police

[76]'MEC condemns eviction violence in the Johannesburg inner-city'*South African Government* 25 Aug 2014.
[77]Knoetze D 'Philippi: an eviction by any other name'*Ground up* 15 August 2014.
[78]'Cops beat, humiliate evicted shack dwellers'*Mail & Guardian* 11 August 2014.
[79]'Cops beat, humiliate evicted shack dwellers'*Mail & Guardian* 11 August 2014.

would pounce on and neutralise individual residents,as well as use rubber bullets and grenades when the resistors were numerous, out of reach and throwing stones.[80]

Nonetheless, it was reported that the land occupiers were breaking the law since the land (Erf 149) was private and the owner had obtained an interim interdict from the High Court on 7 August. The order was against structures being erected and settled in. However, it was conceded that the interdict was not an eviction order and hence could not be used to evict people but only to prevent further occupations.[81]

These evictions did not seem to have achieved the desired effect since the residents continued to erect the shacks after the demolition. In addition, the occupation appeared to have been co-ordinated, with residents perhaps sensing that their shacks were less likely to be demolished if they were erected in large numbers. It was reported that '[b]y the time the police and the ALIU pulled out of the informal settlement, many of the newly built shacks were still standing.'[82]

A 'blame game' ensued as to which state actor was responsible for the evictions. The SAPS and City of Cape Town law enforcement officers accused each other of carrying out the demolition of shacks. The police and the South African Board for Sheriffs contradicted the City of Cape Town's version of version of events on August 11. The board denied that any of its officials were involved in the dozens of shack demolitions off Symphony Way in Philippi, while the police claimed that City law enforcement officers had carried out the evictions.[83]

Ultimately, the evictions in Philippi followed a familiar sequence of events whereby private landowners obtained an interdict against the erection of structures and the SAPS assisted the sheriff of the court to enforce the interdict with the support of the City's law enforcement officers. Residents, in turn, resisted the evictions and shack demolitions and continued to erect new shacks on the land on the grounds that they had no money to pay rent. One Marikana resident, Themba Nothununu, who had lived there since April 2013 and had been liaising with the new occupiers, observed that 'There is no money for rent, so when people hear there is an

[80]Knoetze D 'Philippi: an eviction by any other name'*Ground up* 15 August 2014.
[81]Knoetze D 'Philippi: an eviction by any other name'*GroundUp* 15 August 2014.
[82]'Cops beat, humiliate evicted shack dwellers'*Mail & Guardian* 11 August 2014.
[83]'Law enforcement bounces around blame for Philippi evictions'*Mail & Guardian* 1 September 2014.

opportunity and a space to put a shack of their own, they come and do so. It is simple survival, not cheap politics.'[84]

4.11 The major Cato Crest evictions–Nqobile in Marikana Land Occupation

Nqobile section of the Marikana Land Occupation: on 10 September 2014

First set of evictions in eThekwini Municipality was carried out in February 2014, as discussed in 4.2 above; whilst the second set was carried out in June 2014, as discussed in 4.6. This section discusses the second set of evictions that was carried out by the Municipality near a plot of private land. It was reported that on 10 September 2014, 11 shacks were demolished in the Nqobile section of the Marikana Land Occupation in Cato Crest. These shacks were built in May 2014. This eviction reportedly happened as a result of a complaint by a private businessman located nearby. It was reported that the Land Invasions Unit arrived with firearms and threatened to shoot any protesters. It was alleged that they refused to show any eviction order authorising the eviction. The occupation and the resultant evictions reportedly resulted in three deaths since the occupation in May 2014.[85]

4.12 Chris Hani section evictions

Chris Hani section of eNsimbini: on or around 1 September 2014

These evictions were reportedly carried out at around 10 o'clock on or around 11 September 2014 by the Land Invasions Control Unit in the Chris Hani Land Occupation in eNsimbini. Five shacks were demolished. The dwellers had occupied the land in February 2013. It was reported that the shacks that were demolished were new and they had been built about two weeks prior to the evictions by people who were renting nearby and had decided to join the occupation to avoid having to pay rent. It was alleged that there was no court order authorising the eThekwini Municipality to carry out these evictions. The shacks were demolished when their occupants were at work and hence there was no confrontation.[86]

4.13 Sisonke Village evictions

Sisonke Village, near Lamontville in Durban: on 30 September 2014

[84]'Law enforcement bounces around blame for Philippi evictions'*Mail & Guardian* 1 September 2014.
[85]'Evictions at the Chris Hani & Marikana Land Occupations'*Abahlali baseMjondolo* 12 September 2014.
[86]'Evictions at the Chris Hani & Marikana Land Occupations'*Abahlali baseMjondolo* 12 September 2014.

It was reported that the Land Invasion Unit, which had allegedly been accompanied by local African National Congress (ANC) members, evicted about 30 families in Sisonke Village, formerly known as Madlala Village, on 30 September 2014. The Unit did not produce any court order authorising the eviction. It was reported that the Unit had been replaced by a task team around 28 September which was expected to carry out evictions 'in favour of the ANC'. Prior to this, it had been alleged that there had been an eviction in Marikana Land Occupation in Cato Crest on Friday 26 September which involved the demolition of shacks.[87]

4.14 Friendship Town eviction

Friendship Town residents in Ekurhuleni Municipality [a pending eviction incident]: early October 2014

This was a pending eviction incident in which about 60 tenants were facing eviction from the flats they were occupying in early October 2014. The tenants were planning protests against the evictions. It was reported that the flats had been developed as part of a low-cost housing scheme and a government subsidy had been promised to residents who wanted to rent or buy the flats. However, by 2014 the identity of the owners could not be ascertained. Nonetheless, evictions were pending. The office of the MEC for Housing had undertaken to explore legal means aimed at finding a solution to the problem. The Department advised the residents to refrain from violence and stated that they would carry out an investigation to identify the owners and liaise with the Ekurhuleni Municipality.[88]

4.15 Nellmapius evictions

Nellmapius, east of Pretoria: on or around 9 November 2014

The eviction incident in Nellmapius is related to the evictions that occurred in Malemaville around 25 November. The Malemaville incident is discussed in 4.17 below. These two sets of evictions appear to have emanated from a deliberate 'land-grab' practice that is discussed here and in 4.17.

The eviction incident in Nellmapius, east of Pretoria, involved a clash between police and metro police and residents who tried to illegally take occupation on 9 November 2014 by erecting

[87]'Another political eviction in Sisonke Village, near Lamontville'*Abahlali baseMjondolo* 1 October 2014.
[88]'Pending evictions cause protest'*Midrand Reporter* 7 October 2014.

shacks on the land. The clash escalated on 10 November 2014 and went on for two days. Police and metro police maintained a large presence in the area to control the land invasion and fired rubber bullets at the crowd of residents to force them to disperse. People were reportedly tired of waiting for RDP houses, but wanted land on which to build their own houses. An ANC Gauteng spokesman, Dumisa Ntuli, said that the land had been earmarked for low-cost housing development.[89]

4.16 Botshabelo section, Alexandra evictions

Botshabelo section in Alexandra, north of Johannesburg: on or around 14 November 2014

The first eviction incident that occurred in the Alexandra location (First Avenue) was discussed in 4.4 above. A further incident took place in November 2014 in Alexandra location. The eviction process was violent and resulted in injuries. This eviction was on municipal land. Four people, including a four-year-old child, were injured when police clashed with residents of Botshabelo section in Alexandra, north of Johannesburg on the night of 14 November 2014. The four-year-old child was taken to intensive care after being hit by a rubber bullet. Three other people were shot and 11 people were arrested during the fracas as police evicted over 200 families from a municipal housing project in the area.

Community members stated they had moved into the apartments around June/July 2014 since the flats had been standing empty for nearly two years. The residents of Botshabelo section in Alexander refused to leave before government engaged with them. Eventually, the 'homeless' were forcefully removed by the police from the flats along with all their belongings. The procedure for the eviction was also questioned on the basis that the residents were given a two-hour notice, the eviction order did not show a date and was not signed.[90]

4.17 Malemaville evictions

Malemaville, next to the N4 highway in Pretoria: on or around 25 November 2014

This eviction incident in Malemavilleoccurred on 25 November 2014 and involved setting alight shacks on illegally occupied land by the City of Tshwane. The City had obtained a court order to

[89]'Update: "Land grab" protesters clash with police'*eNCA News* 12 November 2014.
[90]'Alexandra evictions leave 4-year-old in ICU'*SABC News* 15 November 2014.

demolish the shacks and thus maintained that residents were in contempt of court by staying on the land.

The City had also planned to take legal steps against those illegally occupying land in Pretoria. It sent in metro police and Red Ants eviction squads to demolish the illegal structures. Residents had said that they had lost everything, including their identity documents. However, they had refused to stop (re-)building on the land. The City, nonetheless, reiterated that it would continue to demolish the erected structures with a view to avoiding having to relocate the residents after the structures had mushroomed.[91]

Apparently, as highlighted in 4.15 above, the occupations were part of a deliberate 'land-grab' strategy employed by the residents as a way of 'helping themselves' to land and housing. Residents said they 'had had enough' of officials not taking their housing issues seriously and they thus resorted to 'land grab' tactics.[92]

With respect to the two eviction incidents in Nellmapius (discussed in 4.15 above) and Malemaville, a political blame game took place between the ruling ANC and the opposition EFF whereby the ANC accused the EFF of orchestrating the land grab. The ANC condemned the acts while the EFF stated that the party's members that had taken part in the land grab strategy were acting within 'the [ambit] of EFF policies' since they were 'implementing the EFF policy of expropriation of land' and hence would 'fight to stay on that land'.

EFF leader Julius Malema applauded Nellmapius residents over their move to occupy vacant land near Pretoria earlier in the week of 9-10 November 2014. He said they were acting within their rights. At the time, the City of Tshwane was awaiting a court order to stop the occupation of the so-called Malemaville. Malema was reported to have said, 'We can't exist in a country which has got a lot of land but whose people remain landless.' He encouraged the masses to occupy any land that was 'idle', whether private or public, and indicated that the EFF branches should lead the occupation of such land as it was their 'God-given land'.

The Tshwane metro police confirmed the attempted 'land grab' and said that officers fired rubber bullets after the people occupying the land began throwing stones at them on 10

[91]'City of Tshwane defends fiery Malemaville evictions'*eNCA News* 27 November 2014.
[92]'Malemaville residents defy court order' eNCA News 20 November 2014.

November 2014. The police said they were keeping watch to prevent people occupying the land illegally.

Apparently, the occupation in Mallema-ville had sprouted as it was the people that had failed in their plans to occupy the nearby Nellmapius who resorted to landgrabbing in Malemaville. As stated above, hundreds of residents from nearby Nellmapius had tried to occupy the vacant land next to the N4 highway earlier in that week but they were stopped in their tracks by police who dispersed them with rubber bullets. Since they were stranded on the side of the road with nowhere to go, the residents sought to occupy Malemaville by any means necessary and they said that the disputed land was not being fully utilised by the city. It was in a desperate attempt to stop the 'land grabbing' that City officials asked the courts to include this property as part of an interdict to stop the illegal occupation of all council land. Hence, the City of Tshwane, in relying on the 'mercy' of the courts to help stop land grabs in the city, had obtained a blanket interim court order to prevent the illegal occupation of a number of properties in September 2014, and had included the so-called Malemavillein that list in November 2014. By the time of reporting in November 2014, the blanket court order was still an interim one.

4.18 Lenasia evictions

Lenasia: on an ongoing basis

The evictions in Lenasia were reportedly carried out by the Department of Local Government in Gauteng and involved the eviction and demolition of houses of the communities on an ongoing basis. It is thought that the illegal occupations could to a significant extent be attributed to illegal sale of government land by government employees to communities. The Congress of South African Trade Unions (COSATU) called for an investigation, but there was no meaningful engagement between the Department and the affected families. This resulted in anger and frustration on the part of the affected communities. COSATU had urged the government to put a stop to the evictions and 'to engage with the affected families to find a solution to the challenges' that had led to the eviction'.[93]

4.19 eThekwini municipalitygeneral evictions

General evictions in eThekwini municipality, Durban: a routine

[93]'COSATU Gauteng on the eviction of people in Lenasia'*COSATU*, no date.

The eviction incidents in this case followed the well-established routine in the municipality whereby illegal land invaders erected shacks, prompting the Land Invasion Control Unit to effect demolitions and evictions. It was reported that the 'shanty dwellings' were being erected at a faster rate than the eThekwini Municipality could demolish them. Newcomers into the area were also occupying land that had been earmarked for low-cost housing for local people who had waited many years. The Municipality's Land Invasion Control Unit suspected the shack dwellers' lobby group, Abahlali baseMjondolo, to be amongst the perpetrators of what was termed an 'orchestrated land invasion'. The Unit mentioned that the group had funding from a number of 'sympathetic' international organisations that enabled them to challenge evictions in court on behalf of shack dwellers, thereby preventing evictions being carried out until court processeshad been concluded.

The leader of Abahlali baseMjondolo stated that the organisation only provided protection for people who had lived in shacks for more than 20 years and that the organisation relied on 'sympathetic lawyers to fight "unlawful" evictions'. He pointed out that the Municipality should not blame the organisation for its own failure to find a way to prevent the erection of new shacks in the area.

The Land Invasion Control Unit claimed to have demolished 78 shacks and attended to 10 land invasion cases in the month of August alone.[94]

4.20 Farm evictions

Farm in QwaQwa, Bloemfontein, Free State [Maluti a Phofung local municipality]: on or around 10 June 2014

This farm eviction incident related to a plan by the municipality to evict residents which was brought to the attention of the South African Human Rights Commission (SAHRC) on 10 June 2014. According to the municipality, residents were 'unlawfully occupying' the remainder of Farm Bluegumbosch 199, Ha Tshohanyane, Bokamoso in QwaQwa. The Maluti a Phofung Local Municipality eventually evicted the residents on June 11. The eviction affected hundreds of residents who lived on a farm in QwaQwa, and it was referred to as a 'mass eviction'. The eviction had initially been ordered by the Free State High Court on 17 August 2012. However,

[94]'Shacks pop up in Durban land grab'*IOL News* 6 October 2014.

the residents challenged the order and the matter went all the way to the Constitutional Court. However, the Court dismissed the application for leave to appeal made on behalf of Bokamoso residents on the grounds that it had no prospect of success. The evictions were thus carried out in accordance with the Constitutional Court's ruling. The SAHRC launched an investigation into the eviction process and made a number of findings:

- that the Maluti A Phofung Local Municipality had violated the right to human dignity of the evicted people by providing them with inadequate and unsanitary sanitation facilities;
- that the Municipality had violated the right of access to adequate housing of the evicted people by its failure to provide them with sufficient alternative accommodation that was habitable, accessible and located in close proximity to public amenities and job opportunities; and
- that the Municipality had insufficiently engaged with the community about a range of issues on consequences of eviction including alternative accommodation and relocation and that it was to blame for the general lack of information about future resettlement plans and hence the case of violation of the right of access to information had been made out.

As a result, the Commission made the following recommendations.

- First, the Municipality was directed to provide the evicted persons with adequate alternative accommodation where they could live without the threat of another eviction and with access to basic services such as sanitation, water and refuse services within a period of three months from the date of the finding.
- Secondly, the Municipality was directed to furnish the Commission with a permanent relocation plan for the evicted people within a period of three months from the date of the finding. This plan had to make special arrangements for the elderly, orphaned children, persons with disabilities and other vulnerable or marginalised groups.
- Thirdly, the Municipality was required to enhance community participation and demonstrate some level of transparency in its governance by convening regular feedback sessions every three months relating to access to adequate housing. A copy of the minutes had to be submitted to the Commission.
- Fourthly, the Municipality was urged to apply to the Provincial Department of Human Settlements for provision of emergency housing funding to ameliorate the plight of the evicted persons who had been rendered homeless.

- Fifthly, the Free State Department of Cooperative Governance, Traditional Affairs and Human Settlements was directed to carry out a full social impact assessment of evictions on vulnerable and marginalised groups in the Province within a period of twelve months. A copy of the report had to be submitted to the Commission for review.

- Lastly, the Free State Department of Cooperative Governance, Traditional Affairs and Human Settlements was further directed to develop a human rights-based approach and plan to evictions to guide municipalities in the Province within a period of twelve months. A copy of the plan had to be submitted to the Commission for review.[95]

Western Cape farms: Cape Winelands; West Coast District, Overberg; Eden District; and in the City of Cape Town: between June and November 2014

These farm evictions involved the removal of farm workers and employees from farm lands by farmers. The farmers were predominantly white with the effect that the farms were referred to as white (-owned) farms. The evictions occurred mostly in the Western Cape. The eviction incidents increased after a daily minimum wage of R105 was introduced early in 2013 for the farmers to pay the workers. It was reported that in the past, the farm workers staying on the farm lands used to enjoy other free benefits such as water and electricity. However, due to the minimum wage impositions, coupled with the apparent increases in water and electricity tariffs, it was alleged that the (white) farmers had started making 'life difficult' for farm employees. Workers were required to pay for water and electricity, rent was increased and workers had to foot high transport costs when they went 'to town on a Saturday to shop'. The evictions were alleged to have been part of this strategy of 'making life difficult' for the workers. The eviction incidents that took place were in some cases legal and in others illegal. These controversies were just one of the problems experienced by the agricultural industry.

Between June and November 2014, 163 evictions were reported in the Cape Winelands; 28 in the West Coast District, 22 in the Overberg; 10 in the Eden District; and 24 in the City of Cape Town. Thus there were about 247 farm evictions in the Western Cape within a period of five months in 2014.[96]As the evictions escalated, the government moved in to try and ameliorate the

[95]'Media Statement: SAHRC finds against the municipality in QwaQwa evictions'*South African Human Rights Commission* 23 September 2014; 'QwaQwa farm evictions "violated rights"'*IOL News* 23 September 2014.

[96]'Halt farm evictions, says Skwatsha'*Cape Times* 23 September 2014.

situation.[97] Consultative meetings and negations were held involving the government and the two 'warring' parties.[98]The first one to toss the coin was the Rural Development and Land Reform Deputy Minister, Mcebisi Skwatsha, who called for a moratorium on farm evictions after indicating that the government was concerned about the escalation in farm eviction incidents.[99] In taking this call a step further, the deputy president, who was involved in the negotiations, put in place a moratorium on the farm evictions whereby it was directed that there should be no farm evictions until 'at least' 2015, when 'a follow-up meeting would be held to find "concrete solutions" to the agricultural sector's problems'.[100]

The implication was that there was to be a one-year ban on farm evictions in South Africa. The deputy president announced the ban after he had led a delegation of senior ministers to a meeting with the agricultural and farm labour representatives in Paarl in the Western Cape at the beginning of November 2014. The representatives of the farm workers and employees welcomed the ban. Similarly, COSATU also supported the moratorium.[101]They voiced their displeasure by, among other things, labelling the move as a cheap political manoeuvre by the ruling party, the ANC, and warned that it would do more damage to the agricultural industry.[102]

Newcastle area in KwaZulu-Natal in Free State: unknown date but before end of October 2014

The government issued a media statement on 16 October 2014 calling upon farm workers who had been illegally evicted from farms to contact the Department of Rural Development and Land Reform for assistance. The Department gave a toll free number which the evicted workers could call to receive assistance from a team of legal and mediation personnel appointed by the Department. The statement acknowledged that there had been an upsurge in farm evictions

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[97]'Evictions are a threat to reversing the legacy if the past'*South African Government* 10 October 2014.
[98] See, for example,'Government investigates illegal farm evictions'*eNCA* 23 October 2014.
[99]'Halt farm evictions, says Skwatsha'*Cape Times* 23 September 2014.
[100]'Ramaphosa bans farm evictions in bid to solve unrest'*NEWS24- FIN24* 2 November 2014
[101]'South Africa: COSATU Supports Deputy President Ramaphosa's call for an end to evictions on farms'*allAfrica* 3 November 2014.
[102]'South African VP orders farm eviction freeze, angering whites'*Black Star News* 4 November 2014; 'South Africa veep orders eviction freeze, angering white landowners'*Global Information Network* 11 November 2014; 'Ramaphosa bans farm evictions in bid to solve unrest'*NEWS24- FIN24* 2 November 2014; 'South Africa: COSATU supports Deputy President Ramaphosa's call for an end to Evictions on farms'*allAfrica* 3 November 2014.

around the country, particularly in KwaZulu-Natal in the Newcastle area, in the Free State, and in Cape Winelands. It observed that farm workers and farm dwellers faced many challenges when they were evicted illegally, with their homes often being destroyed upon eviction, while elderly persons were at times 'dumped' on the side of the road by farmers without any assistance or support.[103]

5 Eviction court cases and applications in 2014

5.1 Rustenburg Local Municipality v Vincent Mdango and Others

***Rustenburg Local Municipality v Vincent Mdango* (937/13) ZASCA 83: 30 May 2014**

This matter was decided by the Supreme Court of Appeal (SCA) after an appeal and cross-appeal by both parties against a High Court determination. The matter related to the eviction of people from an area in Rustenburg. The High Court had granted the eviction order but suspended it until the availability of suitable accommodation or land for the settlement of the residents to be evicted.

It would appear the matter emanated from the conduct of the residents. The facts showed that during November 2007, the respondents/residents invaded a number of RDP houses owned by the municipality at Seraleng Township in Rustenburg. These houses were meant to be allocated to applicants who had been approved by the municipality. In September 2011, the municipality launched an application in the North West High Court, Mafikeng, seeking an eviction order for the removal of the occupants from these houses in terms of the provisions of the PIE Act. The MEC for Human Settlement, Public Safety and Liaison in the North West Province and the Minister of Rural Development and Land Reform were also made parties to the High Court matter. The Municipality did not seek any order against the MEC and the Minister. However, the Municipality deposed that it had been advised that no land would be availed for purposes of housing and hence the active participation of the MEC and Minister was vital in finding a solution to the stand-off.

The MEC and Minister did not take part in the litigation. The MEC had filed a notice of opposition but immediately withdrew it after opting to abide by the decision that the court

[103]'Help at hand for farm workers facing illegal eviction'*South African Government News Agency* 17 October 2014.

would reach. Consequently, the High Court found itself in a position where it did not have evidence or information before it regarding the availability of suitable alternative accommodation or land in case the eviction order was to be granted. There was also no information regarding the steps to be taken to ascertain the availability of suitable alternative accommodation and information on various other factors that the court needed to consider before determining an application for an eviction order.

The residents argued that they did not have access to housing but had applied to be considered in the allocation of RDP houses. Prior to this, they had been living in shacks and informal settlements where they continued to be subjected to evictions. When they discovered that the Municipality had allocated the houses to unknown persons, they took occupation of the houses, prompting the Municipality to apply to the High Court for the eviction order.

The High Court found that since the Municipality had not allocated the RDP houses to the occupants, they were occupying the houses illegally. The Court thus had to decide whether it was just and equitable to evict them. However, as noted above, it did not have sufficient information to make a determination on this issue. Hence, it could not be ascertained whether the Municipality could make any plans for the resettlement of the occupants and what steps could be taken to provide alternative accommodation. Nonetheless, the Court granted the eviction order and suspended it pending the availability of suitable accommodation or land for the settlement of the occupants. Both sides were not satisfied with the decision and they appealed and cross-appealed to the SCA. The High Court granted leave to appeal and cross-appeal. Thus the issues before the SCA were whether it was just and favourable to evict the occupants and whether the High Court had erred in suspending the eviction order.

The SCA heard the matter on 9 May 2014 and delivered its judgment on 30 May 2014. The SCA made reference to section 26 of the Constitution, which allows for a dwelling to be demolished on a court order that has been issued after considering all relevant circumstances. Section 26 also prohibits laws that allow arbitrary evictions. The SCA also referred to the PIE Act which provides for the law relating to evictions and giving effect to section 26 of the Constitution. The Court considered section 6 of the PIE Act. The section allows the court to grant an eviction order if it is just and equitable to do so considering all the relevant circumstances. The factors must include whether the unlawful occupier is occupying a building or structure on the land without the consent of the organ of state, and whether it is in the public interest to grant the order. The decision regarding whether it is just and equitable to evict should be done after taking into account the circumstances under which the unlawful occupier occupied the land and erected the

building or structure; the period of unlawful occupation; and the availability to the unlawful occupier of suitable accommodation.

The SCA found itself in a similar position to that faced by the High Court in that it did not have sufficient information before it to determine whether it was just and favourable to evict the occupants. This was due to the fact that the MEC did not provide information on alternative suitable accommodation, while the Municipality had failed to present a report about any steps taken by it to provide alternative suitable accommodation to the occupants. On their part, the occupants had failed to bring to the attention of the High Court their personal circumstances, which would have assisted the court in deciding whether it was just and equitable to evict them.

The SCA referred to its decision in *Ekurhuleni Metropolitan Municipality & another v Various Occupiers, Eden Park Extension 5*,[104]where it was observed that in deciding the question of whether an eviction of an unlawful occupier would be just and equitable, the court must make a value judgment that takes into account all relevant factual, legal and socio-economic circumstances, including whether there had been meaningful engagement regarding the availability and offer of suitable alternative accommodation. The SCA found that it did not have sufficient information to make a finding on the issue. It highlighted that the personal circumstances, 'including the rights and needs of the elderly, children, disabled persons and households headed by women' were not before the Court. Similarly, it found the MEC should have been involved in the litigation to assist the Court in addressing the question of whether evicting the occupants would be just and equitable. Counsel for both parties conceded that there was indeed insufficient information before the Court to address the question and agreed to remit the matter to the High Court for the parties and the MEC to provide the relevant information to enable the court to arrive at a proper finding. This subsequently took place.

In this regard, the SCA ruled that before the hearing of the matter in the High Court, the occupants, the MEC, and the Minister had to file affidavits. The MEC and the Minister had to explain in the affidavits the steps taken to ascertain the availability of suitable alternative accommodation for the occupants and the alternative land or accommodation that would then or in the near future likely become available for the occupants. For their part, the occupants had to explain in detail their personal circumstances including, but not limited to, the rights and

[104] 873/2012) [2013] ZASCA 162; [2014] 1 All SA 386 (SCA); 2014 (3) SA 23 (SCA) (26 November 2013).

needs of the elderly, children, persons with disabilities and households headed by women, and any additional information relevant to a just determination of the matter. The Municipality was also advised to file affidavits explaining the information that they deemed necessary. The SCA granted an 'interim' interdict restraining the eviction of the occupants pending the finalisation of the matter in the High Court.

The SCA decision cannot easily be faulted since both the Municipality and the occupants appreciated the need to give the High Court the opportunity to rehear the matter after it had been provided with the relevant information to enable it to arrive at an informed decision that would be consistent with the letter and spirit of the law in the Constitution and the PIE Act.

5.2 Case of Zulu and 389 Others vs eThekwini Municipality and Others

***Zulu and 389 Others v eThekwini Municipality and Others* [2014] ZACC 17: 6 June 2014**

This case and the decision of the Constitutional Court were discussed briefly above (see 4.2).This section focuses on the determination made by the Constitutional Court in its decision delivered on 6 June 2014.As discussed in 4.2 above, the matter related to the interdict obtained by the MEC for Human Settlements and Public Works that required the prevention of unlawful occupation on municipal land in Durban on 28 March 2013. The order authorised the prevention of any person from invading and/or occupying and/or undertaking the construction of any structures and/or placing any material upon the immovable properties on the land. It allowed the removal of any materials placed by any persons upon the aforementioned properties and the dismantling and/or demolition of any structure or structures that might be constructed upon the properties subsequent to the grant of the order. On the face of it, the order was directed at structures erected and occupations made on the land after 28 March 2013.It was alleged that the Municipality had used this interdict to effect evictions in Cato Crest and Madlala village in Durban and other areas in eThekwini Municipality on property that appeared to be near a township called Lamontville Township (as discussed in 4.2 above).

The interim order was not obtained in compliance with the PIE Act and as such it could not be used as an eviction order. The residents who had erected shacks on the land indicated that they had occupied the land since 2012. The implication was that the interim order was not supposed to affect them since they were in occupation before the granting of the order. Nonetheless, the appellants (occupants) sought to intervene in the matter and challenge the interim order since it did not mention them and yet they were in occupation of the land. They alleged that the Municipality was using the order to demolish their structures and evict them. The Municipality and the MEC opposed their application to join the proceedings, as did the High Court. The SCA

also rejected the appeal against the High Court ruling and hence the appellants could not be allowed to intervene. The appeals went all the way to the Constitutional Court.

Unfortunately, it would appear that the issues before the Constitutional Court did not seek to invalidate the interdict obtained by the MEC despite strong allegations that the Municipality had used it to effect evictions when it was not an eviction order obtained in accordance with the PIE Act. Hence, the majority of the Court judges decided not to determine the validity of the order and instead focussed on the appeal relating to the intervening applications. In this regard, the Court had to decide whether the occupants had locus standi (sufficient interest) to intervene in the matter as parties.

In its determination, the Constitutional Court found that the occupants had locus standi to intervene in the proceedings brought by MEC for the demolition of the shacks. The Court's understanding was that the structures that were prone to be demolished belonged to the occupants and hence they had interests in the proceedings relating to the 28 March 2013 interim order.Hence, it allowed the appeal and granted leave to the occupants to intervene in the proceedings. This implied that the appellants could then become parties to the High Court proceedings in the matter and challenge the interpretation of the interim order.

However, the Court did not decide on the validity of the interim order and hence it did not set it aside. It is noteworthy that a separate judgment by Judge van der Westhuizen, with Judge Froneman concurring, found that since the order had been obtained in contravention of the PIE Act and yet had been used to evict the residents, it was unconstitutional and had to be invalidated. Nonetheless, since it is the majority decision which is binding, the Constitutional Court did not set aside the order. In the end, the Court referred the matter back to the High Court for the substantive hearing, with the intervening parties agreeing to join the case and present their augments to challenge the interim order. The implication of the decision was that the interim order remained in place despite the allegations that the Municipality was using or could use it to carry out evictions (the Municipality denied that it was using it for this purpose).

The majority decision of the Constitutional Court had mentioned the allegations that the Municipality still out carried demolitions and evictions targeting the occupants by relying on the interim order and yet the Municipality had stated that the order did not affect the occupants. The Municipality later conceded before the Court that the occupants' structures had indeed been demolished. The Court stated that this position taken by the Municipality was a contradiction as it argued, on the one hand, that the order could not affect the occupants and yet proceeded to demolish their structures by using the same order. The Municipality stated that

they would stop such demolitions. Thus the Court took the view that the demolitions would not continue and that the occupants, having been allowed to intervene in the matter, could apply to the High Court to have the interim order set aside.

It is notable that the Constitutional Court focussed on procedural matters after observing that the case before it did not seek to invalidate or challenge the interim order. Hence, it refused to invalidate the order that was being used to carry out evictions against the occupants despite the fact that it was not an eviction order directed against them. Perhaps, after observing that the order was not an eviction order but was being used (or could be used) against the occupants, the Court could have invited the parties to make a submission relating to the validity of the order. As discussed above, the Municipality had gone ahead with the evictions since the Constitutional Court had in effect not given any order prohibiting further evictions.

Before referring the matter to the High Court, the Constitutional Court had expressed its displeasure at the fact that the Municipality had used the order to evict the occupants whilst the matter was being heard by the Court. The Court had an idea that the Municipality could 'potentially' still use the order to evict people and yet the Court did not consider it prudent to make an order suspending the execution of the interim interdict until the High Court matter had been concluded. Indeed, a columnist observed in July 2014 that 'Despite the Constitutional Court's clear reproach, the eThekwini Municipality has used the order to justify several more evictions since the Constitutional Court handed down its judgment'.[105]This position could be contrasted with the one that obtained in the decision of the Supreme Court of Appeal in *Rustenburg Local Municipality v Vincent Mdango and Others*, discussed in 5.1 above. It could also be contrasted with the Constitutional Court decision in *Fischer and City of Cape Town v Ramahlele and 46 Others*, discussed in 5.8below.

Although the Zulu decision might have failed the occupants by not setting aside the interim order, it nonetheless acknowledged that the occupants had the right to challenge evictions and demolitions directed against them when it granted them leave to intervene in the matter. It was thus up to the occupants to make the most of the window of opportunity to challenge the order and subsequently have it invalidated. The decision also appears to reiterate that evictions must be carried out in accordance with the law as set out in the PIE Act and other pertinent

[105]'Evictions: South Africa's bitter, year-round trauma'*Daily Maverick* 15 Jul 2014.

legislation (as explained in 3 above). Perhaps the Constitutional Court did what it could have done in the light of the circumstances, since the order was not being challenged although it was not an eviction order but nonetheless was being used as one.

5.3 Dladla, Nomsa and Others v City of Johannesburg and Others

***Dladla, Ellen Nomsa and Others v City of Johannesburg Metropolitan Municipality & Others*Case Number 39502/12] (High Court Gauteng Local Division]: 22 August 2014**

The matter was decided by the High Court in 2014. It was heard by the Gauteng Local Division Court on 12 August 2014 and judgment was delivered on 22 August 2014. The matter related to the restrictions placed on the occupants of a shelter known as the Ekhuthuleni Overnight/Decant Shelter. The occupants were relocated to this shelter pursuant to an order issued by the Constitutional Court in December 2011 following their 'unlawful' eviction (in the *Blue Moonlight Properties* case). The 2011 order directed the City to provide temporary accommodation to the occupants as they awaited their relocation to alternative or permanent accommodation. The City placed the occupants in the overnight shelter together with other residents who were accommodated as 'overnight guests'. Thus the occupants fell within the category of people who required temporary or emergency accommodation but they were not in the category of people who ordinarily visited an overnight shelter. It terms of the 2011 decision, the City was obliged to house the occupants by way of alternative accommodation for a period of six months. However, after the expiry of the period and by 2014, the City had not yet found permanent accommodation for the majority of the occupants that had remained. Of course, some of the occupants had since left the shelter.

There were a number of issues that were raised in the matter. One issue related to the potential eviction of the occupants who could turn down an offer of accommodation as the City was not willing to continue housing such occupants. The occupants argued that they could not be evicted without a court order authorising their removal. Hence, they sought an interdict from the Court for this purpose, namely, to stop the City from evicting them without a court order.However, in its written arguments before the Court, the City conceded that it would be required to first obtain an eviction order if it were to exclude any of the occupants from continuing to access Ekhuthuleni if they refused to leave the home when asked to do so by the City. For this reason, the Court opined that the issue relating to the eviction of the occupants was no longer before it to be determined and hence the relief sought by the occupants for the interdict restraining the City from evicting them was no longer applicable. The Court proceeded to decide on the other issues, which do not fall within the scope of this study.

It can be observed that the recourse taken by the occupants to apply for an interdict restraining the City from evicting them from the 'temporary shelter' without a court order successfully protected them from facing an eviction. Perhaps if they had not taken this approach, the City would have gone ahead to evict them from the home. This would have been unfortunate considering that they were occupying the shelter because they had been evicted from their homes and as such were using the shelter as temporary accommodation which was being provided pursuant to a court order. They would have been rendered homeless again, thereby failing to reap the benefits of their litigation.

5.4 Malan v City of Cape Town

***Malan v City of Cape Town* [2014] ZACC 25 [CC]: 18 September 2014**

This case was decided by the Constitutional Court of South Africa in 2014. It was heard on 20 February 2014 and judgment was delivered on 18 September 2014. It did not deal with the eviction of a group of people but rather of one individual due to allegations of breaches of tenancy agreement when public rental housing is involved. Nonetheless, the principles enunciated by the Court are insightful. In addition, it raised matters under the PIE Act.

The facts arose from an eviction order obtained by the City of Cape Town that resulted from allegations of breach of a lease agreement by Ms Malan and consequent cancellation of that agreement by the City. Ms Malan was a widow who was about 74 years old and resided at 100D Sonderend Road in Manenberg, Cape Town. The allegations of breaches included the fact that Ms Malan fell in rental arrears after the death of her husband. Consequently, the City cancelled the lease agreement. As she continued in occupation, the City regarded her as an illegal occupier and obtained the eviction order against her.

The main argument in challenging the eviction order was that the City did not give her the opportunity to remedy the breach before her eviction. The High Court found that the lease agreement had properly been cancelled by the City. It also found that the agreement correctly provided for summary eviction in the event of a breach. Consequently, the High Court granted an order against Ms Malan and her family and gave them two months to vacate the property. It was stated that Ms Malan would be given accommodation at an old-age home as tendered by the City. Both the High Court and the SCA refused to grant her leave to appeal against the judgment of the High Court. She thus appealed to the Constitutional Court.

In its determination, the majority decision of the Constitutional Court found that the decision to evict Ms Malan was 'contrary to public policy'. The Court found that Ms Malan was not given the

opportunity to rectify her breaches with the effect that the cancellation of the lease agreement was premature. As a result, the Court held that the 'failure by the City to afford Ms Malan a proper opportunity to rectify the breach rendered the cancellation invalid and contrary to public policy'. Therefore, the Court allowed her appeal.

There was also a separate concurring opinion attached to the ruling which raised significant legal principles. Amongst others, it observed that the City had the constitutional obligation to protect the right to access to housing and protection from arbitrary evictions (see sections 7(2) and 26 of the Constitution) by its residents and that the law did not operate in such a way that the City was entitled to evict Ms Malan from her home without first meaningfully engaging her by raising its concerns with her in order to enable her to rectify whatever breach of the lease she may have committed with a view to avoid eviction.

Thus the Court should have found that Ms Malan's eviction was not just and equitable and accordingly ruled that

> under the present constitutional dispensation, such an organ of state cannot simply make a decision to cancel the lease in the same way as it would have done at common law… it cannot simply adopt the attitude that there is a breach of the lease and, therefore, it is entitled to cancel the lease and go ahead and cancel it.

It was also found that since Ms Malan was deemed to be an unlawful occupier, the City could not proceed to evict her without complying with the PIE Act by, amongst others, demonstrating that the eviction would be just and equitable. Thus the Court should have allowed her appeal and set aside the decision of the High Court.

However, there was a dissenting opinion which found that the eviction was done in accordance with the Constitution and the PIE Act since Ms Malan had been given the opportunity to remedy her breaches but had failed to do so. Hence the lease cancellation was appropriate and her eviction should have stood.

The decision, although it does not deal with cases of mass evictions of people from illegally occupied lands, is significant as it reiterates the duty on the part of property owners to meaningfully engage the occupiers with a view to finding a solution before proceeding with an eviction. The engagement would also bring to light factors that would show whether an eviction is just and equitable. It appears that the obligation is stringent if the property owner is a public body.

5.5 Rand Leases Properties v Occupiers of Vogelstruisfontein and Others

***Rand Leases Properties v Occupiers of Vogelstruisfontein and Others*:22 August 2014**

The matter in this case related to the intention to evict over 200 people who lived in the Marie Louise informal settlement situated between a Pikitup dumping site and the Rand Leases mine in Roodepoort. The premises were on the private land of Rand Leases and the owner had instituted eviction proceedings aimed at removing the occupiers. The living conditions at the settlement were not safe or healthy. In addition, the occupiers did not have access to basic services, including water. Further, the area was prone is flooding. The Johannesburg High Court issued an order requiring the City and the occupiers to carry out 'meaningful engagement'. SERI was approached to represent the occupiers in the process of 'meaningful engagement' with the City in trying to find a way round the impending eviction.

The Court issued a declaratory order to the effect that the occupiers were in an emergency housing situation and ordered the City to provide water and sanitation to the Marie Louise informal settlement community by 13 May 2011. The order also required the City to provide improved shelter by 15 July 2011. The Court made this order after the parties had returned to the Court on 15 April 2011 following the meaningful engagement process. However, the City only complied with part of the interim order by providing toilets and water tanks. The City refused to provide any shelter as it held the view that it would 'wasteful' to do so because the occupiers were going to be relocated in the near future.

Subsequently, the issue of alternative accommodation arose. On 12 April 2013, Judge Victor granted an order requiring the City to meaningfully engage with the occupiers and Rand Leases with regard to the proposed alternative accommodation plans that the latter had drawn up in a draft Memorandum of Understanding. The court order further compelled the City to comply with the previous orders, which among other things required the City to provide building materials to the occupiers. Following the order, SERI took part in a series of engagements to explore alternative accommodation options for the Marie Louise residents, but the parties did not reach an agreement. The City did not accept Rand Leases' proposal and it sought to relocate the residents to a site known as 'the Rugby Club Site' and to incorporate them into the City's Upgrading of Informal Settlements Programme (UISP). But Leases was opposed to this plan. The residents had repeatedly expressed their willingness to relocate and they were agreeable to the City's relocation plan. The City proceeded to obtain consent for the Rugby Club Site for use as emergency housing in terms of the applicable Town Planning Scheme. This step constituted 'a prelude to the upgrading of the land for permanent housing in due course'.

The matter returned to court on 3 July 2013. The Court reserved judgment on the issues relating to the land to which the residents were to be relocated as well as the date on which the relocation and any subsequent eviction was to take place.

The matter was back in court for hearing in August 2014. At this stage, the Court sought to address the question regarding what constituted just and equitable relief in terms of the PIE Act. Rand Leases sought'an order that would oblige [the City] to have moved [the residents] from [the property] on a no-matter-what basis, to another location, by a date to be determined, regardless of whether or not [the City] was successful regarding the Rugby Club site'. The residents and the City were in agreement that an order should be made which directed the City to relocate the occupiers to the Rugby Club Site, provide them with water, sanitation, and necessary building materials to construct their own shelters, and to assist anyone incapable of building shelters for themselves. The High Court duly issued this order on 22 August.[106]

In this case the process of meaningful engagement resulted in the Court issuing an order that satisfied both the occupants facing pending eviction and the City, although the private landowner was not satisfied with it. While it is noteworthy that the obligation to ensure due process when relocating residents is more stringently applied to state agencies such as the City, it must be emphasised that a meaningful engagement process plays a significant role in safeguarding the rights of the people facing an eviction. One drawback in this case is that the process took about three years before the meaningful engagement process yielded positive results.

5.6 Pheko and Others v Ekurhuleni Metropolitan Municipality

Pheko and Others v Ekurhuleni Municipality **Case No CCT 19/11; [2011] ZACC 34 [CC]:28 August 2014**

The applicants in this case were several hundred former occupiers of the Bapsfontein informal settlement, also known as the N2 Highway Park Community, who were evicted and relocated a distance of approximately 30 kilometres. They were represented by Lawyers for Human Rights (LHR). There was no court order authorising their eviction. The Ekurhuleni Metropolitan

[106] For further details see 'Rand Leases Properties v Occupiers of Vogelstruisfontein and Others ("Rand Leases")'SERI, available athttp://seri-sa.org/index.php/litigation-9/cases/12-litigation/cases/77-rand-leases-properties-v-occupiers-of-vogelstruisfontein-and-others-rand-leases (accessed 29 October 2015).

Municipality claimed the authority to evict the residents in terms of a directive issued under section 55(2) of the Disaster Management Act,[107] mandating the applicants' evacuation to temporary shelter. SERI was admitted as amicus curiae in the above matter, which was heard in the Constitutional Court on 15 September 2011. SERI submitted that the directive did not provide a lawful basis for the relocation of the occupiers because the occupiers did not consent to the relocation; there was no court order authorising the relocation, contrary to section 26(3) of the Constitution; and the Disaster Management Act does not purport to limit the right not to be evicted without a court order and would not, if it did, meet the requirements for a limitation of rights set out in section 36 of the Constitution.

SERI submitted that the directive issued under the Disaster Management Act should have triggered the application of section 6 of the PIE Act (discussed in 3 above), given the circumstance in this case. Thus the relocation of the occupiers should have been applied for in terms of the said provision.

On 6 December 2011, the Constitutional Court delivered its judgment that the actions of the Municipality – in forcibly removing the residents of Bapsfontein and demolishing their homes without a court order, allegedly as a result of the imminent danger created by sinkholes in the area – was unauthorised in law and contrary to section 26(3) of the Constitution. The Court declared the Municipality's removal of thousands of people from Bapsfontein unlawful, and ordered it to provide land to the evictees 'within the immediate vicinity of Bapsfontein'.

The Municipality and the evictees subsequently reached an agreement whereby the Municipality was expected to take necessary steps for the 'appropriate' relocation of the community. The Municipality undertook to purchase land, which it identified in its report submitted to the Court, with a view to relocating the N2 Highway Park Community there.

However, a series of events and acts of non-compliance led to the Constitutional Court enrolling the matter for hearing on 12 August 2014. These events mainly related to the failure by the Municipality to fulfil its undertakings for the 'appropriate' relocation of the evictees. The Court had issued directives on 21 November 2013 that required the Municipality to file a report on the progress made in respect to undertakings made to the N12 Highway Park Community and the Mayfield Community. The Municipality had not implemented these undertakings.

[107] Act 57 of 2002.

On 12 March 2014 further directives had been issued by the Court which should have been complied with by 14 April 2014, but were not. Further directives were issued on 15 May 2014 thatrequired the municipality to submit its affidavit by no later than 17 June 2014 explaining why it should not be held in contempt of court. But by 17 June 2014 the Municipality had not filed this affidavit, and in fact only filed it on 25 July 2014. However, the report failed to satisfy the terms of the order of 12 March 2014.

SERI had been admitted as amicus curiae in the matter relating to the contempt of court and it argued that it would be equitable for the Court to issue a declaratory order that the Municipality was in contempt of the order of 12 March 2014. SERI further opined that any punitive or structural consequences of the declaratory order could not be addressed without a joinder of the Mayor or the Municipal Manager as they constituted the functionaries who bore constitutional and statutory obligations to ensure compliance with court orders. SERI submitted that a rule nisi calling the Mayor and the Municipal Manager to show cause why they should not be joined as parties to the application and why the orders had not been complied with would be a just and equitable order.

The Constitutional Court heard the matter on 12 August 2014. On 28 August 2014 the Court declared the Municipality in breach of its constitutional obligations by failing to abide by the two court orders. The Court ordered the Mayor and City Manager to show cause why they should not be joined to the proceedings and for the municipality to identify to the Court any other office-bearers or officials responsible for compliance with orders of the court.

This order of 28 August also required the Municipality to give effect to its agreement with the N2 Highway Park Community and to take the steps necessary for their relocation. The Court proceeded to direct the Municipality to file a progress report detailing the steps taken to purchase the land onto which the Community would be relocated; to provide permanent housing to the N2 Highway Park Community; to ensure that the land utilised is suitable for occupation; to ensure that bulk and link engineering services are available with sufficient capacity for the proposed densities; to ensure that all erven have access to roads; and to ensure that all erven are connected to the internal water and sewer infrastructure networks. Thus the Court expected the Municipality to ensure that the land onto which the Community was to be relocated should constitute permanent homes with the necessary amenities. The order further required the applicants and amicus curiae to respond to the contents of the progress report by the Municipality by 29 December 2014.

On 17 September 2014 the Municipality brought an application seeking to join the MEC in the proceedings. However, before the MEC had a chance to respond to the application, the Municipality withdrew the application, stating that the Municipality and the MEC had addressed and resolved the issues pertaining to the necessary financial resources and the implementation of a comprehensive plan to provide these resources to the Municipality. On 5 December 2014 the Chief Justice filed directions in terms of which the MEC was directed to show cause why he should not be joined to the proceedings. On 12 December the MEC filed an affidavit stating that under the circumstances he did not feel he should be joined to the proceedings.

Thus the proceedings in the matter were expected to continue into 2015 and it remained to be seen how the Municipality would go about complying with the Court's order to ensure the 'appropriate' relocation of the Community.[108]

The case raises the interesting issue of the duty of the state to ensure the provision of alternative accommodation before carrying out an eviction. In this case, the Constitutional Court found,way back in 2011, that the eviction of this community was unconstitutional. The Court ordered the Municipality to provide land for the relocation of the evictees in 2011. However, by December 2014 the Municipality hadnot complied with this order with the effect that three years later the N2 Highway Park Community members had still not reaped the fruits of their litigation. And yet the proceedings in the Court appear to revolve around identifying the particular individuals who should be responsible for implementing the orders of the Court. Thus the contempt proceedings appear to have taken a bit longer than expected in affording the evicted community an effective remedy. This raises the question of what would be an appropriate remedy when state agencies take unduly long before implementing court orders and so threaten the rights of the people affected by the delay.

Nonetheless, the Court should be commended for not relenting on its determination that the Municipality should ensure the relocation of the Community onto land which should be identified. Although the Municipality and the pertinent state actors appear to be 'playing hide

[108] For further details see 'Pheko and Others v Ekurhuleni Metropolitan Municipality ("Bapsfontein")'SERI, available at http://seri-sa.org/index.php/litigation-9/cases/12-litigation/cases/88-pheko-and-others-v-ekurhuleni-metropolitan-municipality (accessed 29 October 2015).

and seek in trying to buy time', the proceedings that are still before the Court ignite hope for the N2 Highway Park Community.

5.7 In Re City of Johannesburg v SERI and Johannesburg Occupiers

***City of Johannesburg v SERI and Johannesburg Occupiers* [Gauteng Local Court 2014]: pending by October 2014**

Prior to the determination of the matter in *Dladla and Ellen Nomsa v City of Johannesburg and Others* (discussed in 5.3 above), the City of Johannesburg made an application to the South Gauteng High Court in January 2014 for an order directing that, pending the final determination of the matter in *Dladla and Othersv City of Johannesburg and Others*,the final eviction applications in over 30 matters should be stayed. The implication was that legal proceedings would be postponed in these cases until the *Dladla* case was completed. The City was deemed to be asking for a 'blanket stay', which could be argued, as was pointed out by SERI, to extend to circumstances where the *Dladla* case did not necessitate one. It was reported on 10 June 2014 that the occupiers had issued a counter-application requesting the Court to declare that the City had failed to provide temporary accommodation to the occupiers, as required by the decision of the Constitutional Court in the *Blue Moonlight Properties* case.

The occupiers had further requested the Court to declare that the City's criteria for determining who of the occupiers would qualify for the provision of temporary accommodation were unconstitutional and invalid. The occupiers argued that that the City should devise, publish and implement revised criteria for determining the occupiers' eligibility for the provision of temporary accommodation. They felt that in the absence of this, they (the occupiers) would be vulnerable to eviction. This development might explain why the occupants in the *Dladla* case above eventually sought an interdict restraining the City from evicting them from the Ekhuthuleni Shelter without first obtaining a court order.

At the time of writing, the applications relating to the blanket stay sought by the City and the request made by the occupiers for a declaration that the City had failed to take steps to provide temporary accommodation were still pending before the Court. The City had filed its affidavit in the stay application and its replying affidavit in the occupiers' application for a declaration by October 2014.

5.8 Fischer and City of Cape Town v Ramahlele and 46 Others

***'Fischer' case- Marikana Land Occupation Cases (Cape Town): Philippi evictions case*High Court Case number 297/2014, Supreme Court of Appeal Case number 203/2014: 4 June 2014 [SCA] and 27 November 2014 [High Court]**

This court matter arose out of the evictions carried out by the ALIU at Marikana informal settlement on the land belonging to a private owner, Mrs Irish Fischer, in Philippi. As discussed in 4.1 above, the evictions were carried out on the basis of an interdict on 7 and 8 January 2014. This action gave rise to a number of court applications for an interdict by Mrs Fischer and the City, on the one hand, and the occupiers, on the other hand, in the High Court of Western Cape. The applications and counter-applications went all way to the Supreme Court of Appeal in the case styled in the High Court as *Fischer and City of Cape Town v Persons intending to occupy ERF 150 (remaining extent) Philippi*.[109] When the matter reached the SCA, it was styled *Fischer and City of Cape Town v Boitumelo Ramahlele and 46 others*.[110] The court case and its applications and rulings are discussed below.

On 10 January 2014 Mrs Fischer and the City launched an application before the High Court for an interdict to restrain certain unidentified occupiers (shack dwellers) from occupying and erecting structures on the remainder of Mrs Fischer's land in Philippi. The court granted the interim interdict. The occupants who were facing the evictions took Mrs Fischer and the City to the High Court and launched a counter-application for an interdict restraining Fischer and the City from demolishing their structures or evicting them. They argued that they had been in peaceful and undisturbed possession of the structures that they had erected on the property around May 2013 and the ALIU was demolishing their homes. Due to the High Court's approach of isolating the issues to be determined, the main contention on the part of the City was that there was no need for the ALIU to first obtain an eviction order before demolishing the structures since they were not carrying out any evictions. The City further argued that it was only the 'unoccupied' structures that were vulnerable to demolition. These structures were not regarded as 'homes'.

In its decision of 13 March 2014, the High Court, per Judge Patrick Gamble, observed that the approach taken by the City in deciding which of the structures qualified as 'homes' and which ones could not be regarded as such was 'fundamentally flawed'.This was because the Court

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[109] *Fischer and Another v Persons whose identities are to the applicants unknown and who have attempted or are threatening to unlawfully occupy Erf 150 (remaining extent) Philippi In re: Ramahlele and Others v Fisher and Another* (297/2014) [2014] ZAWCHC 32; 2014 (3) SA 291 (WCC); 2014 (7) BCLR 838 (WCC); [2014] 3 All SA 365 (WCC) (13 March 2014).

[110] *Fischer and Another v Ramahlele and Others* (203/2014) [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) (4 June 2014).

observed that the City did not consider the question whether the temporary structures were 'homes', but instead made a decision to demolish based on which structures were occupied at the time of demolition. The Court found that this would give rise to illegal evictions.

Thus the Court ruled against the City. Consequently, the Court found that the demolitions and evictions were 'unlawful and unconstitutional' and embodied elements of the conduct obtaining under the apartheid government. It granted the interim interdict against the City, Fischer and the ALIU from evicting the occupants and further directed that they rebuild the structures that had been demolished on 7 and 8 January 2014.

Fischer and the City appealed to the SCA. After hearing the appeal on 27 May, the SCA set aside the judgment of the High Court of 13 March 2014 and referred the matter back to the High Court to hear oral evidence. The reasoned judgement of the SCA was delivered on 4 June 2014. In arriving at its decision, the SCA focused on the procedural aspects that guided civil litigation before the courts whereby the courts are expected to adjudicate on matters that are raised by the parties and on which evidence has been adduced. The SCA found that the High Court had gone beyond the issues raised and argued by the parties before arriving at its decision. The SCA observed that the issue that fell to be determined by the court was whether or not by 7 and 8 January 2014 the occupants were in occupation of the structures erected on the land. This was a factual dispute which the High Court should have determined.In order to determine this, the High Court had to hear evidence from the parties. However, the Court suggested another approach which 'ambushed' the parties by focusing on addressing the question whether the approach taken in deciding which structures to demolish was appropriate, that is, whether the structures were 'homes' or whether they were occupied. After hearing arguments on this issue, the High Court had proceeded to make a finding that there had been illegal evictions and yet the main issue before the court (namely, whether by 7 and 8 January 2014, the shack dwellers were in occupation) had not been argued by the parties.

Thus the SCA found that the High Court did not determine 'the factual dispute that lay at the heart of the counter application' by the occupants, and yet it proceeded to grant the relief that the occupants had claimed in their counter-application. This formed the basis of the SCA's decision to refer the matter back to the High Court for oral evidence to be heard. The occupants sought leave to appeal the SCA decision to the Constitutional Court. However, the Constitutional Court denied the occupants/shack dwellers such leave to appeal. This implied that the matter had to be resolved first in the High Court.

Subsequent to this, an urgent intervening application was launched by SERI on 1 September 2014 in the Western Cape High Court on behalf of 223 people (67 households) who had occupied the settlement before 30 June 2014. The residents were intervening to ensure that the City did not confirm the interim interdict issued by the High Court in January 2014. The residents argued that the interdict was strikingly similar in wording to the one obtained and used by SANRAL in the eviction of Nomzamo informal settlement during the Lwandle evictions, discussed in 4.3 above. They argued that the City could use the interdict to circumvent the protections of the Constitution and the PIE Act to evict their families from the Marikana informal settlement. The intervening application was heard on 1 September 2014. The High Court granted the intervention order and extended the interim order to 26 November 2014. TheHigh Court matter was again styled *Fischer and City of Cape Town v Persons intending to occupy ERF 150 (remaining extent) Philippiand Noxolo Xamli and Others*.

The High Court further ruled that the Sheriff had to put up a noticeboard at the entry point of the settlement bearing a copy of the order. The Sheriff was further directed to read out the order by loudhailer (in English, Afrikaans and isiXhosa) every three weeks. The High Court also directed Fischer and the City to file a supplementary affidavit by 21 October to explain how they would render assistance to the applicants in executing the relief they sought in paragraph 2.2 of the notice of motion, which interdicted the respondents from 'erecting, completing and/or occupying any structures there or extending their current structures save except those respondents currently occupying the property at the date of the granting of this order are not interdicted from occupying the property'.

It would appear the High Court proceeded to hear the substantive matter as referred to it by the SCA with the intervening parties making their submissions. The hearing sought to decide whether the Court should confirm the interim order that was obtained by Fischer and the City in January 2014. The intervening parties argued that the interim interdict on the terms sought by the City of Cape Town and the landowner Fischer in relation to Erf 150 in Philippi would allow for arbitrary evictions if it were to be confirmed, as it would go 'much further than simply restraining people from coming onto the property', and yet it was 'clearly intended to permit the applicants to remove people who are already on the property'. This position would contradict the letter and spirit of the law relating to evictions since the interim order obtained by the City and Fischer was not an eviction order.

On 27 November 2014, the Western Cape High Court handed down an order which protected the residents from being removed, while prohibiting 'newcomers' from erecting further shacks on the land. A look at the copy of the court order dated 28 November 2014 shows that it was in

fact a 'consent order' reached after the agreement of the parties. Thus in terms of this decision, all persons who were already in occupation of the structures on the land by 26 November 2014 were not affected by the order prohibiting the occupation of the property. Accordingly, the order prohibited any persons who sought to erect a structure on the land or who sought to take occupation of the land after 26 November 2014. In addition, in order to clearly define the households that were protected from eviction, it was ordered that a register of names and photographs of shacks to be protected had to be completed by 5 December 2014. The demolition of structures erected after 26 November would thus be allowed.

The 27 November order served the occupants more favourably than the landowners since it protected any person who was in occupation of the land by 26 November 2014 regardless of the fact that they might have taken such occupation illegally. Nonetheless, it compensated the landowner as it protected her property from further illegal occupations.

5.9 De Clerq and Others v Occupiers of Plot 38 Meringspark and Others

***De Clerq and Others v Occupiers of Plot 38 Meringspark, Klerksdorp and Others* (*'Ratanang'*):8 October 2014** [High Court pronounced a structural order that postponed eviction application until 9 February 2015]

The matter related to 380 households comprising about 1000 people living at the Ratanang informal settlement that is located on an abandoned farm on the outskirts of Klerksdorp.The farm owners had applied for an eviction order of the residents in terms of the PIE Act on the basis that the eviction would be 'in the public interest'. The owners were supported by AfriForum.The background of the court matter can be traced to 2013. On 13 May 2013, the North Gauteng High Court issued an order that directed the City of Matlosana to conduct an assessment of all the occupiers and to produce and submit to the Court a 'comprehensive report' detailing the place and time when the City would be in a position to provide alternative accommodation to the occupiers. The City was also required to indicate the nature of the accommodation. On 15 August 2013, the City submitted its report in which it indicated that it did not have the physical and financial resources to provide accommodation to the occupiers.

In their arguments, the occupiers stated that, save for 40 people residing at Ratanang, the residents were 'occupiers' of the premises in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA) because they either moved onto the land after the current owner's father had died and the current owner left it fallow, or the current owner's father had given consent for them to reside on the farm. SERI filed an answering affidavit on behalf of the Ratanang residents

and filed an application for the North West MEC for Human Settlements and the Premier of the North West to be joined to the proceedings on 6 September 2013.

A consent judgment was delivered after the hearing of the matter by the Court on 25 March 2014. In terms of the judgment, the MEC and the Premier were joined as parties to the proceedings and were ordered to file a report outlining the steps they had taken and would take to provide suitable alternative accommodation to the residents. The judgment further ordered the City of Matlosana to take all the 'administrative and other steps necessary' to identify land to lawfully accommodate the residents either in terms of the Emergency Housing Programme or the Upgrading of Informal Settlements Policy contained in the National Housing Code, 2009, or in terms of its own land acquisition programmes. The City was also ordered to file a report by 30 May 2014 that dealt with the identification of land onto which the occupiers would be relocated. Above all, the Court found that residents at Ratanang included residents that were occupiers in terms of the ESTA. Based on this finding, the Court dismissed the eviction application. Accordingly, the occupiers could remain on the premises on which they were residing or they could decide to benefit from the alternative accommodation if and when it was provided.

In July 2014, the Court issued an interim order directing the City to pay a rental of R6 000 per month to the owner of the premises for a period of 30 months and its application was postponed to 6 October 2014.On 8 October 2014, the High Court pronounced a structural order that postponed the eviction application until 9 February 2015 and required the Municipality to convene a local steering committee in terms of Annexure D of the Emergency Housing Programme in the National Housing Code, which makes provision for the process to be followed in the relocation of large communities. The steering committee would have to execute a plan of action to be followed by the parties to the application and by the occupiers on the proposed relocation site. The plan would deal with the details of how and over what period the relocation would be facilitated. The parties would be expected to discuss and deal with the provision of vacant land with access to basic services to the occupiers of the settlement, who would be relocated to land at Alabama Ext 5.

The structural order further expected the Municipality to deliver bi-monthly reports to the Court outlining the progress that had been made in terms of the plan put in place by the committee. The purpose of the order was to give specificity to the Municipality's proposal of alternative land, which was tendered on 18 July 2014. The specific timeframes would oblige the

Municipality to comply with the order within the period stipulated therein and report on the progress made before the return date.[111]

It can be observed that the decision by SERI to challenge the application for eviction prevented the eviction of the residents who would otherwise have been rendered homeless. Indeed, the Court's resolve to ensure that alternative accommodation must be assured during the proceedings played a significant role in this. The case also highlights that the state still bears the duty to ensure that people facing an eviction from private land should not be rendered homeless.

5.10 All Building and Cleaning Services v Matlaila and Others

***All Building and Cleaning Services v Matlaila and Others* ('*Matlaila*')Case No 42349/13 [South Gauteng High Court]: 16 January 2015**

Thiscase involved a property in Fairlands, Johannesburg, on a piece of land owned by a private entity, All Building and Cleaning Services CC, a property development company.The landowners sought to evict the occupiers of this property.SERI represented the occupiers, who included two seventy-one-year-old individuals who had lived on the property for 44 years and had worked for the previous owner of the property. It was the understanding of SERI that the occupiers were at risk of becoming homeless if evicted since they head limited earnings. The property owners sought the eviction order so that they could redevelop the property for higher-income earners.

The occupiers challenged the eviction application and contended that it be set aside on equitable grounds. They argued that the owners should either allow them to reside on a small portion of the property or accommodate them in the redevelopment through the provisions of the Inclusionary Housing Policy (IHP) in order for them not to be rendered homeless. They also argued,as an alternative, that the City was obliged to provide the occupiers with temporary

[111] For further details see 'De Clerq and Others v Occupiers of Plot 38 Meringspark, Klerksdorp and Others ("Ratanang")'SERI, available athttp://seri-sa.org/index.php/19-litigation/case-entries/188-de-clerq-and-others-v-the-occupiers-of-plot-38-meringspark-klerksdorp-and-others-ratanang (accessed 29 October 2015).

alternative accommodation. The Municipality was joined to the proceedings,[112]SERI filed its opposition to the eviction application on 9 October 2014, and the South Gauteng High Court heard the caseon 15 October 2014.

The Court, per Acting Judge Paul Carstensen, delivered its judgment on 16 January 2015 whereby it dismissed the eviction application with costs. The Court reasoned that all applicable factors 'clearly tilt the scales of justice in favour' of the occupants taking into account the circumstances and factors set out in section 4(7) of the PIE Act – including the length of time which the residents had occupied the premises; the circumstances under which they had moved there; the fact that there were pensioners on the property; and that there was a lack of alternative accommodation.

The Court further opined that the onus lay on the property owner to show that an eviction would be just and equitable and that the owner had not satisfied this requirement. With regard to meaningful engagement, the Court found that, apart from 'intimidatory tactics', there had been 'no engagement' with the residents. With respect to the issue of alternative accommodation, the Court held that the owner did not satisfy the Court on this issue or assist the residents in any way. The Court stated that it believed that if, as part of the development, the owner had offered to build the residents a suitable home, there would have hardly been any prejudice. It further observed that the owner had refused to incorporate the residents intothe redevelopment and had anegative attitude towards the constitutional rights of the residents in general. These factors militated against making a decision to grant the eviction order.[113]

The case is significant as it clarifies that private property owners also have the duty to ensure that due process is followed when evicting residents from their premises. They also have the obligation to meaningfully engage with the residents and ensure that steps are taken to provide alternative accommodation for them. Above all, property owners are required to demonstrate

[112]The eviction application was reported to have come in the wake of an attempted illegal eviction that had taken place on Freedom Day on 27 April 2013. It was reported that on that day, a group of men had descended onto the property and had tried to remove the roof of the occupiers' home.

[113] For further details see 'All Building and Cleaning Services v Matlaila and Others ("Matlaila")'*SERI*,available at http://seri-sa.org/index.php/19-litigation/case-entries/298-all-building-and-cleaning-services-v-matlaila-and-others-matlaila; 'Court refuses to evict pensioners after owner's "intimidatory tactics"'SERIPress release,available at http://seri-sa.org/images/Matlaila_PressStatement_16Jan15_FINAL.pdf(accessed 29 October 2015).

that they have regard for the constitutional rights of the occupants facing an eviction and can show that, taking into account all the circumstances, it would be just and equitable to evict the residents.The principles enunciated in this decision would go a long way in protecting the right of individuals, including the elderly, facing an eviction.

6 Observations and conclusions

This study sought to paint a picture of the state of evictions in South Africa during 2014. It examined the number and frequency of evictions, and the extent of compliance with due process (the applicable law) when evictions were carried out.A number of observations can be made regarding the legality and frequency of the evictions. Where illegal occupiers are concerned, there are at least four or fiverequirements that must be complied with. These include: the need to carry out meaningful engagement with the residents whose eviction is pending; there must be provision of alternative accommodation; there must be a court order authoring the eviction; sufficient notice must be served; and the eviction order must be issued if it is just and equitable considering all the circumstances.A majority of the evictions surveyed for the purposes of this study might not have been legal.

For example, with regard to the SANRAL Lwandle evictions (discussed in 4.3 above), the majority of the legal experts consulted/interview by the media and NGOs indicated that the eviction was 'illegal'. The experts agreed that SANRAL should have obtained a court order instead of an interdict from the Western Cape High Court in order to proceed on a sound legal basis for the evictions. A legal officer from the Centre for Constitutional Rights was quoted as stating that the evictions were questionable since 'Section 26(3) of the Constitution determines that "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"'. Since SANRAL did not obtain an order of the court, it is unlikely that the eviction would pass the Constitution's test of legality.

In addition, it would appear that in the case of the Lwandle evictions, the people had not been given alternative accommodation by the City before the eviction. The City's human settlements MMC, Siyabulela Mamkeli, said,'The City cannot incentivise illegal land invasion by providing alternative accommodation, as we have a duty to protect the rights of those people who are on the housing waiting list'. Nonetheless, the MMC indicated that the evicted people would be given short-term shelter since 'as part of our commitment to being a caring city, the City of Cape Town has decided to make available community facilities to those people affected by SANRAL's legal action.'Indeed, it transpired that after the eviction, the discussions then began to explore where the evicted people should be relocated to. It was reported that a national human settlements

official had stated that no decision had yet been made on where the evicted shack dwellers would be moved to in Cape Town by 10 June 2014.[114]The SAHRC, meanwhile, highlighted the lack of alternative accommodation as a major concern. It stated in its report that 'The SAHRC is concerned about the manner in which the evictions were executed, with the delay in providing shelter'.The Commission said that there had also been a failure to plan adequately to provide alternative accommodation.[115] In the end, SANRAL had agreed to buy another piece of land to relocate the people who were displaced.Therefore, the failure to first provide alternative accommodation, amongst others, tainted further the Lwandle eviction with elements of illegality.Incidentally, this was also conceded by government. The Minister of Transport, Dipuo Peters,told SABC news on 3 June 2014 that she apologised 'on behalf of SANRALand on behalf of ourselves as government'.[116]

The Lwandle evictions also failed to take into account the rights and plight of the people as its timing and force sparked controversy. The Ministerof Human Settlements said that 'It is not possible that in the middle of a very cold Western Cape winter and rains and children writing exams the whole community can be removed in brutal force.'[117]The SAHRC had also spoken against 'the excessive use of force by the police and security personnel against the residents, especially women and children during these evictions'.[118] Therefore, it can be noted that certain evictions, such as the Lwandle incidents, that occurred during 2014 did not only contravene the applicable legal requirements explained in 3 above, but that they were also carried without taking into consideration the rights and plight of the residents. It is unlikely that the courts would have found evictions carried out in such manner to have been just and equitable.

This survey of eviction incidents and cases has also brought to light how state agencies and property owners often tried to carry out evictions using a court order that was not in fact an eviction order.It could be argued that the entities hadtried to find a way of skirting the need to obtain an eviction order before removing occupiers on their property. Mostly, an interdict against illegal occupations was used to evict people occupying properties illegally. In this regard, one media reportobserved that the 28 March 2013 interim interdict obtained by the

[114]'Lwandle evictees still without land' *Mail & Guardian* 10 June 2014.
[115]'SAHRC investigates Lwandle evictions'*Mail & Guardian* 8 June 2014.
[116]'Transport Minister Peters apologises for Lwandle evictions'*Mail & Guardian* 3 June 2014.
[117]'Sisulu plans inquiry into Lwandle evictions processes'*Mail & Guardian* 10 June 2014.
[118]'SAHRC investigates Lwandle evictions'*Mail & Guardian* 8 June 2014.

MEC for Housing and the eThekwini Municipality in Durban could in effect be used 'to evict the occupants of 1,568 state-owned properties without warning, whenever and wherever they find these properties occupied'[119] in Cato Crest and Madlala Village. In terms of the law, such evictions are illegal as they are done without an eviction order. Yet the events in 2014 have shown that when such interim orders are 'wrongfully' used to demolish people's shacks and structures, the affected people might have already suffered rights violations in addition to being left homeless by the time the courts come in to declare such evictions illegal or by the time they put a stop to the practice.

Therefore, although the Constitution and the PIE Act provide protection against wrongful evictions, the events that occurred in 2014 suggest that such safeguards did not protect a majority of illegal occupiers from facing rights violations as well as illegal evictions. The occupiers often had to rely on orders from the courts in order to enjoy the protection afforded by the PIE Act and the Constitution.

With regard to the frequency of evictions, it can be observed that that the evictions were frequent. A legal researcher for SERI observed that evictions took place 'constantly' in Gauteng and added that that people 'are scared of the Red Ants because they are violent and abusive'.[120]The shack dwellers association in Durban stated with regard to the evictions in Cato Crest in eThekwini Municipality that whenever the Municipality's agents demolished shacks to evict shack dwellers, the process of erecting new shacks would start again, with the effect that by June 2014 similar evictions had taken place in Cato Crest 12 times.[121]

As discussed above, there were three major eviction incidents in 2014 in Cato Crest alone. The first constituted the major evictions carried out by the eThekwini Municipality in December 2013, which were further carried out a number of times from February and June 2014. The second and third incidents were carried out on private land in Nqobile section of the Marikana Land Occupation and in Sinsoke [formerly, Madlala] Village in September 2014.The shack-

[119]'Evictions: South Africa's bitter, year-round trauma'*Daily Maverick* 15 July 2014.
[120]'Jo'burg residents battle Red Ant evictions'*Mail & Guardian* 19 September 2014.
[121]'Shack dwellers' movement to contest forced evictions'*Mail & Guardian* 24 June 2014.

dwelling residents of Sisonke Villagehad been subjected to 'more than 24 illegal evictions' by the time they approached the Constitutional Court in the early months of 2014.[122]

In explaining the frequency of evictions in Johannesburg, a City of Johannesburg officialsaid:

> There are between 10 and 20 evictions a month in the inner city. Ever since the *Blue Moonlight* case, private property owners understand that it is the City that is now obligated to provide the accommodation, which constitutionally must be temporary in nature. Now it's more of a question of what is temporary.[123]

Thus it could be said that there could have been about one eviction every two days in the inner city of Johannesburg in 2014 alone. However, most of these would have concerned private lands.

The study found that evictions occurred every month from January to November 2014; they were thus frequent rather than occasional.[124]In certain instances they involved hundreds of families, whilein others entire communities were relocated. For example, the 1-2 June Lwandle eviction resulted in the removal of more than 800 families and the areabeing cleared. The June 2014 evictions in Cato Crest resulted in more than 100 shacks being destroyed and about 300 people left homeless. And in theZandspruit evictions of 7-9 July, about 350 residents were removed and 114 shacks destroyed.

With regard to legality, analysis of the facts and court cases demonstrated that the evictions were often not carried out in accordance with the applicable legal framework, with the effect that the majority of them were tainted by illegality. Evictions such as those in Lwandle attracted much outcry and condemnation becausethe evictions were not legal and the evictees suffered many rights violations. Thus it is necessary for South Africa to look at ways of reducing or eliminating cases and incidents of illegal evictions in 2015 and beyond.

It was suggested by an article in the media that in order to prevent a recurrence of another Lwandle-like 'brutal' eviction, a number of factors should be kept in mind.[125] These include:emphasising that municipalities need to follow the law as they have constitutional

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[122]'Another political eviction in Sisonke Village, near Lamontville'*Abahlali baseMjondolo*1 October 2014.
[123]'City of Jo'burg blamed for not providing homes for evictees'*Mail & Guardian* 12 June 2014.
[124] The study has not recorded any eviction(s) carried out in December 2014.
[125]'Lwandle evictions: what went wrong?'*News24* 13 June 2014.

obligations; cautioning 'local governments and others [who] are increasingly trying to find ways to circumvent the legislation that tries to protect people'; dealing with the underlying issues of proper, adequate planning for informal settlements and for the opening up of land; clearing out the complicated 'messy state relating to the issue of housing [waiting] lists as they 'create more confusion than clarity' regarding the allocations process;[126] appreciating that in the interim, in the absence of available housing, the eviction of illegal dwellers must be done in accordance with the law; and above all, ensuring that evictions must bear in mind the 'constitutional value of human dignity.'[127]

In terms of the way forward for 2015 and beyond, useful pointers are provided by Stuart Wilson who, writing in the *DailyMaverick*,[128]agreed with the views of the Chief Justice of South Africa that the country has a 'never again' Constitution. Wilson noted that the Constitution requires that evictions should take place only with the permission of the court; and only where the court has decided that it would be fair, just and equitable to effect the eviction, after all things have been considered. He reiterated that eviction is only fair 'in the eyes of our courts, if an evicted person has somewhere else to go, namely, there is some shelter either provided through their own efforts, or through state support'. Many people or entities 'do not accept this simple, humane principle', and Wilson singled out municipalities as entities that 'have been scrambling to find ways around it''to avoid having to provide accommodation for desperately poor people facing homelessness after eviction'.[129]

It is therefore recommended that the many unfortunate and often illegal evictions that occurred in South Africa during 2014, when people were evicted and left homeless in very cold conditions, could be avoided if, amongst other things,they are only carried out after obtaining an eviction order from the court. The emphasis is placed on 'an eviction order' and not an interim

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[126] Indeed, research by SERI and the Community Law Centre had shown that these housing waiting lists are nothing more than housing demand databases – they are not housing allocations priority lists. See Thelwell E 'Lwandle evictions: what went wrong?'*News24* 13 June 2014, available at *http://www.news24.com/SouthAfrica/News/Lwandle-evictions-what-went-wrong-*20140613 (accessed 29 October 2015).

[127]Thelwell E 'Lwandle evictions: what went wrong?'*News24* 13 June 2014.

[128] See Wilson S 'Evictions: South Africa's bitter, year-round trauma' Daily Maverick 15 July 2014, available at http://www.dailymaverick.co.za/opinionista/2014-07-15-evictions-south-africas-bitter-year-round-trauma/#.VjJ5uberTIU (accessed 29 October 2015).

[129]'Evictions: South Africa's bitter, year-round trauma'*Daily Maverick* 15 July 2014.

interdict aimed at preventing illegal occupation. This is because the courts will only issue an eviction order if it is fair, just and equitable to effect an eviction. South Africa has the required legal framework to put a stop to these unfortunate incidents. Following the applicable law is the crucial step that must be taken.

feasibility and necessity will have to be discussed, appreciated and agreed].