



SOUTH AFRICAN PERMANENT MISSION GENEVA

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Ref: 66/2024

The Permanent Mission of the Republic of South Africa to the United Nations Office at Geneva and other International Organisations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to the Joint Communication dated 4 January 2024, reference number: AL ZAF 6/2023.

The Permanent Mission of the Republic of South Africa hereby submits the Government of South Africa's initial response to Joint Communication received from the United Nations Special Rapporteur on human rights of migrants, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance.

The Permanent Mission of the Republic of South Africa to the United Nations Office at Geneva and other International Organisations in Switzerland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 04 March 2024



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Your Excellency

Initial Response to Joint Communication Received from UN Special Rapporteurs

I acknowledge, with thanks, receipt of the letter, dated 04 January 2024, from the Special Rapporteurs on the rights of migrants, on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, requesting an official response by the Government of South Africa to concerns on allegations of human rights violations, including inaccessibility to adequate housing, food, health care and water; as well as racism, racial discrimination, xenophobia, and related intolerances alleged to have been experienced by migrants who informally occupied a building on 80 Albert Street, Johannesburg, South Africa, and which, sadly, was destroyed by fire on 31 August 2023.

The process that was initiated by Government to obtain the information needed for a comprehensive response to the abovementioned letter is unfortunately not complete. I am therefore forwarding herewith an initial response from the Government of South Africa, in order to comply with the deadline that was stipulated by the Special Rapporteurs, on the understanding that additional information will be submitted to complement this response and address the allegations that were raised. I trust that you will find this to be in order.

Please accept, Your Excellency, the assurances of my highest consideration.

Yours Sincerely

A handwritten signature in black ink that reads "G.N.M. Pandor".

Dr GNM Pandor, MP

Minister of International Relations and Cooperation

Date: 04/03/2024

His Excellency Mr Volker Türk
UN High Commissioner for Human Rights
Geneva, Switzerland

SOUTH AFRICA'S INTERIM RESPONSE TO THE JOINT COMMUNICATION FROM UN SPECIAL RAPPORTEURS:

COMMENT BY THE SOUTH AFRICAN DEPARTMENT OF HUMAN SETTLEMENTS

Question 1: Provide comments regarding allegations

The City of Johannesburg's Department of Human Settlement has played an active role in the provision of emergency shelter accommodation for the victims of Usindiso fire incident. It has established Transitional Relocation Area (Shalizile Denver TRA) whereby the victims were relocated. The services such as water supply, sanitation, area lighting and refuse removal is provided. The costs relating to the construction of the corrugated structures amount to R3.6 million.

Question 2: Provide information regarding how governments seek to provide for the right of migrants to adequate standard of living

The South African Constitution, 1996 enshrines the right of everyone to have access to adequate housing and makes it incumbent upon the State to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.

In response to this Constitutional imperative, Government has in terms of the Housing Act, 1997 (Act No 107 of 1997) introduced a variety of programmes which provide the poor households access to adequate housing. The policy principles set out in the White Paper on Housing aim to provide poor households with houses as well as basic services such as potable water and sanitation on an equitable basis. The limited resources available from the fiscus however necessitate the provision of housing, security, and comfort to all over time.

Ten years after the introduction of the first housing programme in 1994, a comprehensive review was undertaken of the outcomes of all the programmes and the changes in the socio-economic context in the country. This led to the approval of the Comprehensive Plan for Sustainable Human Settlement commonly referred to as "Breaking New Ground" or "BNG", by Cabinet in September 2004.

While retaining the basic principles of the Housing White Paper, the Comprehensive Plan shifts the focus to improving the quality of housing and housing environments by integrating communities and settlements. It also sets new minimum standards for housing products improving privacy and sustainability by providing for the development of a range of social and economic facilities in housing projects. The Comprehensive Plan also focuses on Informal Settlement Upgrading to meet the Millennium Goals of the United Nations to improve the lives of slum dwellers.

To support the implementation of the Comprehensive Plan, housing departments in all spheres of government, as well as Housing Support Institutions have been extensively restructured.

Likewise, the National Housing Code 2000 that contains Government's housing policy and strategies has been substantially revised. The National Housing Code, 2009 is aimed at simplifying the implementation of housing projects by being less prescriptive while providing clear guidelines.

South Africa is continuously affected by natural disasters that destroy and/or damage houses, rendering households homeless and destitute. In addition, the current urbanisation trends in

the country and the substantial housing backlog facing government also contribute to events that leave households homeless and destitute.

Therefore, the Government in pursuance of its goal of realising everyone's Constitutional right to access to adequate housing on a progressive basis, through the Department of Human Settlements (National Department) has introduced the Housing Subsidy Scheme to provide housing assistance addressing various circumstances.

The Department has instituted a National Housing Programme through which it endeavours to address the needs of households who for reasons beyond their control, find themselves in an emergency housing situation such as the fact that their existing shelter has been destroyed or damaged, their prevailing situation poses an immediate threat to their life, health, and safety, or they have been evicted, or face the threat of imminent eviction.

The Programme is instituted in terms of section 3(4)(g) of the Housing Act 1997 and is referred to as the National Housing Programme for Housing Assistance in Emergency Housing Circumstances.

The main objective of this Programme is to provide temporary assistance in the form of secure access to land and/or basic municipal engineering services and/or shelter in a wide range of emergency situations of exceptional housing need through the allocation of grants to municipalities to achieve the following policy objectives:

- To expedite action to relieve the plight of persons in emergency situations with exceptional housing needs.
- To provide for special arrangements in terms of which the Housing Programme will address the diversity of needs of households in emergency housing situations; and
- To maximise the effect of projects through this Programme to ensure that funds are effectively expended, and the services provided could be converted for permanent residential development use.

During the process of the upgrading of informal settlements, it may be necessary to temporarily re-house households while services are being installed or formal houses are being built on sites previously occupied by informal structures.

Likewise, it may be necessary to provide temporary housing relief to households in stress following natural or man-made disasters (e.g., where settlements have been destroyed by fire or houses have been rendered uninhabitable by storms and need to be repaired). In such cases the National Disaster Relief Fund renders the first line of Government assistance. The Emergency Housing Assistance Programme may then be used for temporary housing for disaster victims until such time as they can be provided with permanent houses.

Assistance takes the form of grants to municipalities to enable them to respond rapidly to emergencies by means of the provision of land, municipal engineering services and shelter. It includes the possible relocation and resettlement of people on a voluntary and cooperative basis in appropriate cases.

The Programme provides that all people residing in an area struck by a disaster, notwithstanding issues such as income, race and religious orientation will qualify for housing assistance.

This Programme will apply to emergency situations of exceptional housing need, such situations being referred to as "Emergencies". The Programme will benefit all affected persons who are not able to address their housing emergency from their own resources or from other

sources such as the proceeds of house insurance policies. The following households will qualify for assistance under this Programme if they:

- Lawfully reside in South Africa (i.e., citizen of the Republic of South Africa or in possession of a permanent residence permit). Certified copies of the relevant documents must be submitted with the application.
- Are legally competent to contract (i.e., over 18 years of age or legally married or legally divorced or declared competent by a court of law and sound of mind).
- Neither the applicant nor his or her spouse has previously benefited from government housing assistance.
- Have not owned fixed residential property; and
- Have previously owned fixed residential property but such a person may only qualify for the purchase of a vacant serviced site.
- In addition to the above the following criteria must also be satisfied:
 - Persons must be married or habitually cohabit.
 - Single persons must have financial dependants.
 - Single aged persons, disabled persons and military veterans without financial dependants may be assisted. Aged persons refer to, must comply with the criteria on the aged as defined by the Department of Social Development.
 - Households must earn a monthly income in the range as annually approved; and
 - Persons who have benefited from the Land Restitution Programme and who satisfy all other relevant criteria may also be assisted.
- In certain cases, households/persons with a monthly income exceeding the maximum income set for subsidisation as approved by MINMEC may also apply for assistance under this Programme.
- Households headed by minors, who are not competent to contract may benefit with assistance from the Department responsible for Social Development.
- Persons without dependants; and
- Persons who are not first-time homeowners.

Applications from the following people may be considered on a case-by-case basis:

- Persons who have previously received housing assistance and who previously owned and/or currently own a residential property; and
- Immigrants whose residence status is uncertain on the conditions prescribed by the Department of Home Affairs.

Funding under the Programme will be made available to municipalities as grants for the provision of temporary aid and assistance will be limited to absolute essentials. Where possible, assistance under this Programme should be planned as the first phase towards a permanent housing solution.

Once a Municipality has identified a need for Emergency Housing, it will apply to the Provincial Department for funding for projects under this Programme. Communities may approach municipalities for assistance under this Programme.

The amount of the grant will be determined by the MEC based on the nature and extent of the emergency housing situation and a properly prepared project plan.

Land identified for emergency housing should form part and parcel of the needs assessment and housing plan of each municipality as contained in the housing chapter of the Municipal Integrated Development Plan (IDP).

The projects will be undertaken based on a partnership of cooperative governance between the relevant municipality, the Provincial Department, and the National Department.

The developer role will be fulfilled by municipalities. The Provincial Department can assist the municipality if the municipality lacks capacity and can assume the role of developer if the municipality cannot meet the project commitments.

The National Department of Human Settlements (NDHS) has put the following emergency housing interventions that will enable displaced disaster victims to be provided with decent shelter during disasters:

- A 3-year panel of contractors has been established for the construction of Temporary Residential Units (TRUs) on an as and when required basis until the year 2026.
- The Housing Development Agency (HDA) has been tasked with a responsibility of acquiring suitable land parcels that and state-owned buildings that will be utilised immediately as Temporary Emergency Accommodation (TEA) during disasters, whilst TRUs are being constructed. This responsibility is in line with their core mandate prescribed on the Housing Development Agency Act No. 23 of 2008.
- The National Home Builders Registration Council (NHBRC) has been tasked with the responsibility of conducting structural assessments and remedial plans for formal houses that were damaged by the floods, winds, and fires, as per their mandate prescribed on the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998).
- To ensure that such measures are implementable across all provinces, the NDHS has developed Emergency Housing Guidelines that outline the type of disaster interventions provided by the department and the collaborative role of the Provincial and Municipal Disaster Management Centres (PDMCs, DDMCs & MDMCs), in assisting the NDHS to respond effectively and efficiently to disasters.

The Department is currently investigating the implementation of another emergency strategy namely the provision of emergency assistance in the form of alternate accommodation to people who have been evicted by a court of law. This form of assistance will be provided by local authorities. Such a strategy and the subsidisation thereof are aligned to the right to housing as embedded in the Constitution.

Question 3: plans regarding dilapidated buildings in the Inner city

Vacant and dilapidated buildings in the inner city is an issue of great concern. The possible negative results and risks from occupying these buildings cannot be denied.

Government has taken steps to repossess these buildings based on several legal issues as well health and safety regulations.

Subsequent thereto the buildings, whether they are business or residential in nature, could be converted and upgraded to be used for housing purposes. Such housing will be rental in nature where a non-profit organisation will run the property and receive subsidisation from government in terms of the National Housing Programme: Social Housing.

In addition, it is possible for such upgraded buildings to be used by financing it through the National Housing Programme: Community Residential Units (CRU Programme). This Programme also provides for rental for low-income households.

It is also possible to obtain ownership by making use of one of the other National Housing Programmes forming part of the Housing Subsidy Scheme.

The first option would be the Individual Subsidy Programme which allows for the purchase of an existing property. The second option would be to participate to the IRDP and as such benefit from a new house in a housing project.

Before rental assistance by means of the National Housing Programme: Social Housing or the CRU Programme can be granted, immigrants need to see to it that they have obtained a permanent residence permit from the Department of Home Affairs.

COMMENTS BY THE SOUTH AFRICAN DEPARTMENT OF HOME AFFAIRS

Page 2, paragraph 3, and 1st sentence of paragraph 4

While the City of Johannesburg has offered and provided victims and survivors of the fire with temporary accommodation, many migrant victims and survivors have reportedly felt unsafe and avoided going to designated shelters, community halls and accessing public services for fear of being stopped by the authorities and potentially being deported.

Concerns are raised regarding individuals being accused of being in the country irregularly, despite their identification and passports being destroyed because of the fire.

RESPONSE: *The residential status of all the migrants at the shelters affected by the fire was checked against the Home Affairs systems; the said migrants were found to be illegal in the country.*

Consular services for the foreigners were to be arranged by the City of Johannesburg. Home Affairs was not included in the process.

Page 3, paragraphs 4 and 5

On 15 November 2023, displaced victims and survivors of the fire were evicted from Hofland Park Recreational Centre, where many had been given shelter by the City of Johannesburg. Reportedly, authorities, including the police and operation Dudula, locked the gates of the shelter and proceeded to gather victims and survivors' and their belongings to be transferred to a detention centre.

Many of the migrants evicted from Hof land Park Recreational Centre were detained and sent to the Lindela Repatriation Centre, with authorities claiming that they were undocumented migrants. Individuals were forced to undergo biometric verification to determine their migration status, as many had lost their identification papers, passports, and documents during the fire. Those without passports and documentation remain detained.

RESPONSE: *In the absence of documentation, to assist with the verification of the said foreigners' status in the country, biometrics were required to be captured.*

Page 5, paragraph 6

There is also a strong concern about what may happen to the individuals if they are forcibly returned to their countries of origin, where they would face irreparable harm. We stress that individualized assessment of protection needs, as well as due process guarantees, must apply to all individuals, regardless of their status, to ensure safeguards against irreparable harm, including refoulement, in line with international human rights law. We urge the Government of South Africa to halt any plans of eviction and deportations of migrants, which have not conducted an individual and objective risk assessment of their exposure to human rights violations. States must take measures to develop and enhance human rights – based

measures and eradicate migration policies that put the lives of migrants at risk and lead to tragedies such as this one. In this regard, we highly recommend to your Excellency's Government consultation **of the Global Compact for Safe, Orderly and Regular Migration and OHCHR's Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations.**

RESPONSE: *South Africa has acceded to various international humanitarian and human rights instruments, the principles of which are applied with national legislation. None of the detained migrants affected by the fire have been deported, and all have access to consular services and legal representation.*

Page 6, last sentence of paragraph 6

Please also provided information on effort made by your Excellency's Government to establishing "firewalls" between public services and immigration authorities to ensure that all migrants are not discouraged from having access to the core minimum standards of housing, food, water and sanitation, health care and social protection services, without discrimination and fear of detection, detention, and deportation.

RESPONSE: *Illegal migrants that are detained are required to be presented before a court of law within 48 hours of their detention, for confirmation of their illegal status and continued detention for deportation purposes. The said migrants have access to legal representation and consular services.*

Page 7, paragraph 3

Please explain what measures are being put in place to guarantee access to legal protection and effective remedies, including the right to challenge the lawfulness of evictions, detentions and return orders.

RESPONSE: *Illegal migrants that are detained are required to be presented before a court of law within 48 hours of their detention, for confirmation of their illegal status and continued detention for deportation purposes. The said migrants have access to legal representation and consular services.*

COMMENTS BY THE SOUTH AFRICAN DEPARTMENT OF SOCIAL DEVELOPMENT

What services did Social Development offer to children in the wake of the tragedy – if possible, you can highlight services to all children and also add additional information for migrant children.

Department of Social Development JHB Metro Region assessed a total number of 65 clients with the following breakdown: 18 women without children, 17 mothers with their 27 children and 3 males

The key services rendered included: intake and screening, pre-counselling and therapeutic services, needs analysis, pre-statutory service and statutory services as follows:

- Social Workers rendered psychosocial services to the children and focused on physiological needs, educational needs, clothing, pampers, financial support and be assisted to access social grants and access to birth certificates.
- 1 separated and lost child – An enquiry was opened with Children's court and the child placed with Walter Sisulu CYCC and Johannesburg Child Welfare Society renders

continuous supervision services and reunification work aimed at tracing parents are underway.

- A 12-year-old boy child was reunified with the mother who was traced to be at Maimai informal settlement in JHB
- The Department worked in liaison with other stake holders implementing the Integrated Service Delivery Model practiced through collaboration and networking. These stake holders were, the Department of Home Affairs, South African Social Security Agency, MES-Impilo, City of Johannesburg, Life Coaches, University of Witwatersrand Psychologists, Red Cross and Mental health

Any other information you wish to highlight regarding to protection and promotion of the rights of children in this regard.

- Since the children were in the care of their parents, the Department rendered preventative and early intervention services focusing on preservation services by empowering the families to continue functioning and be able care for their own children
- Statutory services had to be rendered to protect the well-being of the child
- DSD offered bereavements services to the affected families and referred the affected to receive continuous psychological services with mental health
- The Department of Social Development experienced challenges which included: -
- Most of the victims are migrant workers from various provinces around the country. When the issue of placing them in shelters outside the city was raised, most were not interested. They were concerned that they would be unable to continue with their small businesses and job hunting.
- Furthermore, most of the victims did not want to be reunited with their families back home since they felt that they have not accrued anything financially and going back home will be a shame to them.

How Government is taking steps to ensure the right of everyone, regardless of their status, to an adequate standard of living, including the right to housing, food, water, health care and social welfare.

Interventions made by SASSA:

- Social Relief of Distress (SRD) to the value of R2 080 each in a form of food vouchers was made available to 58 families, totalling to R120 640.
- Hot meals were provided to all 456 individuals housed in different shelters.
- Cash contributions were also made to the families of the 76 deceased individuals.
- Further information can be found on the attached reports, viz. Copy of SASSA Register of Marshalltown fire Disaster, Incident Report of Marshalltown Building, Agenda and Attendance Register of the Stakeholders' meeting for the Incident of Marshalltown Building Fire as well as Summarized Report for the Incident of the Marshalltown Building Fire.

The following supplementary documentation is forwarded with these comments:

1. Summarized report for the incident for Marshalltown Building Fire 31 August 2023
2. Stakeholders Meeting for the Incident of Marshalltown Building Fire
3. Incident report Marshalltown building 31 August 2023
4. Copy of SASSA Register for Marshalltown Fire Disaster 2023-12-09