

Internal displacement in South Africa: Reflections on law, contemporary and memory of forced removals

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1 Introduction

The South African government as a sovereign state has responsibility to protect its people.¹ This responsibility covers protection against arbitrary displacement.² It also translates into a duty to ensure that the displaced populations are provided for during displacement and well settled after displacement, and if possible compensated for their inconveniences and losses.³ South Africa by virtue of being a member for the African Union, is bound by the African Union convention for the protection and assistance of internally displaced persons.⁴ It is also bound by the United Nations Guiding principles on internal displacement that currently form part of customary international law.⁵ These principles are additionally recognised as an important international framework for the protection of internally displaced persons by the African Union IDP convention in its preamble.

Forced evictions, evacuations and relocations that happened in South Africa were based on politically motivated apartheid policies or similar practices and where aimed at or resulted in altering the ethnic and racial composition of the affected population.⁶ These evictions constitute internal displacement and fall within the category of arbitrary displacements prohibited by principle 6(2)(a) of the United Nations guiding principles on internal displacement. Unjustified and flawed

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¹See arts 3, 4 and 5 of the *African Union Convention for the Protection and Assistance of Internally Displaced Persons* (Kampala Convention) adopted 2009-10-22.

²See art 3(1)(a and g) of the *African Union IDP Convention id.*

³Principle 3(1, 2) and principle 6 of *The United Nations Guiding Principles for the Protection and Assistance of Internally Displaced Persons* 1998(hereafter Guiding Principles on internal displacement).

⁴See arts 3, 4 and 5 of the *African Union IDP Convention id.*

⁵Principle 3 of the *Guiding principles on internal displacement id*

⁶Festenstein and Cambridge *Land and race: South Africa's Group Areas and Land Acts* (1987) 6 South African Institute of Race Relations.

government policies or uncompelled large scale development projects have also caused waves of forced evictions in post apartheid South Africa.⁷ These evictions fall within the category of arbitrary displacements prohibited by principle 6(2)(c) of the guiding principles and article 10 of the African Union convention for protection of internally displaced persons.

This paper intends to investigate whether South Africa has exercised its obligations towards its internally displaced persons as per provisions of the United Nations Guiding principles on internal displacement and the African Union convention for internally displaced persons. In line with the above aim, the second aim is to find out whether South African courts have in the process of addressing forced evictions, construed the intention of section 26 of the Constitution in a transformative manner. Lastly the paper intends to establish the similarity in encounters and lived realities of internally displaced communities that have experienced forced evictions in apartheid and post apartheid South Africa.

2 Overview of African internal displacement

Internal displacement is prevalent in Africa and its effects have been felt throughout the continent.⁸ The problem of internal displacement is deeply rooted in the continents' socio-economic problems, historical factors, bad governance, as well as unregulated development projects.⁹ Internal displacement on the continent is further compounded by the existing governments' denial to disclose or acknowledge its existence, mostly because these very governments have a tendency of perpetuating or ignoring the reality of such displacement.¹⁰ These governments are under international law and international human rights law responsible for addressing the needs of internally displaced persons within their

⁷Tissington and Vartak 'N2 project: Housing rights violations as "development" in South Africa' (2009) *COHRE Report* 9.

⁸The effects can be seen in places such as the Gulf of Guinea in West Africa, involving countries such as Nigeria (in the Niger Delta), Ivory Coast, and of course former cases such as Sierra Leone, Liberia. In the Horn of Africa the consequences of displacement are evident in Ethiopia, Somalia, and of course the Darfur region in Sudan. The Great lakes region has dealt with rampant displacement cases with recurring tendencies involving Uganda, Rwanda, and DRC, recently Kenya joined the ranks. Southern Africa has Zimbabwe as a case in point, and former displacement hubs such as Mozambique, Angola and South Africa. Basically one can say that most of Africa has been affected by internal displacement at one point in time or the other.

⁹Cernea 'Development-induced and conflict induced IDPs: Bridging the research divide' (Special Issue 27) *Forced Migration Review* 2 at <http://www.fmreview.org/pdf/cernea.pdf> (accessed 2010-12-09); Internal Displacement Monitoring Center (IDMC), Norwegian Refugee Council *Internal displacement in Africa: Extremes of vulnerability and deprivation* (2004) 23.

¹⁰In Zimbabwe, there was explicit denial by the government that there were increasing populations of displaced persons, in fact they were described as 'mobile populations' to scale down the level of seriousness of the problem; Seminar on Internal Displacement 'Background paper' *Regional meeting on refugees and internally displaced persons in the Southern African Development Community (SADC)* Gaborone, Botswana 24-26 August 2007 at 1.

borders.¹¹ Principle 3 and 6 of the Guiding Principles provide for such.¹² In the process of satisfying this duty, steps such as adopting policies, laws and institutions for the protection of vulnerable groups need to be taken.¹³ It is also necessary to allocate resources and facilitate cooperation with relevant international and regional organisations as well as non-governmental organisations. This is to ensure that displaced populations are protected, assisted, reintegrated and adequately compensated.¹⁴

In countries like Kenya the Ministry of State for Special Programmes (MossP) has been created to among other things assume institutional responsibility for IDPs. Additional institutional capacities, for instance, the Kenyan Parliamentary select committee on internal displacement and Kenyan National protection working groups on internal displacement have also been set up to bring together all stakeholders involved in IDP protection.¹⁵ Stakeholders include NGOs, National human rights institutions, international organisations, United Nations organs, relevant ministries (land, justice and foreign affairs), IDP communities, civil society and other national actors. These national initiatives have made the process of addressing internal displacement in Kenya comprehensive and can be a good lesson for other African countries.¹⁶

Some of the above suggestions to enhance protection of the internally displaced are very progressive. The main issue is whether these relatively new frameworks are adequate and will be adhered to by individual states on the continent. Doubt regarding adherence to such instruments arises out of the observed relative failure of some states to partake in the ratification of such progressive frameworks for protecting internally displaced persons.¹⁷ The African Union Convention which was adopted on 23 October 2009 has been signed by 35 out of 53 countries. By 7 February 2012 only twelve out of 53 African countries had ratified it.¹⁸ The convention requires fifteen ratifications to come into force, this means it cannot be enforced despite its progressive provisions.¹⁹

3 Internally displaced persons: Norms and

¹¹Sovereignty should be a responsibility and not a political shield: Deng and Cohen *Masses in flight: The global crisis of internal displacement* (1998) 23 Brookings Institution Washington DC.

¹²*Guiding Principles on internal displacement* (n 3).

¹³See art 3(2) (a and b) of the African Union Convention (n 1).

¹⁴SADC Background paper on internal displacement (n 10) 1.

¹⁵Kenya Human Rights Commission and National Network for IDPs in Kenya *Gains and gaps: A status report on IDPs in Kenya 2008-2010* (February 2011) 12.

¹⁶Kenya Human Rights Commission and National Network for IDPs in Kenya (n 15) 12.

¹⁷African Union *List of countries which have signed, ratified or acceded to the African Union convention for the protection and assistance to internally displaced persons (Kampala convention)* 2012-02-07 at <http://www.africa-union.org> (accessed 2012-01-21).

¹⁸*Ibid.*

¹⁹*Ibid.*

definitions

In an attempt to address the above issues the International community through the United Nations Secretary General's Representative for internally displaced persons decided to enact a set of principles that would specifically provide for existing inadequacies in the regime responsible for the protection of internally displaced persons.

3.1 The United Nations guiding principles on internal displacement of 1998

The Guiding principles are regarded by the international community as the most comprehensive existing norms internationally that provide for the protection of internally displaced persons.²⁰ These principles came into being because of lack of key documents that provided for the protection and assistance of internally displaced persons. The idea behind the Guiding Principles emerged from a study undertaken by a team of international lawyers at the request of the Representative of the Secretary General.²¹ The Guiding Principles were enacted without inter-governmental consultation, even though a very detailed and wide consultative process was followed before their adoption.²² The United Nations unprecedentedly supported this set of principles even though they had been drawn up by a group of experts outside normal intergovernmental procedures.²³ They apply to three different situations, tensions and disturbances which are provided for by human rights law; non-international armed conflict covered by both humanitarian and human rights; and inter-state wars where humanitarian law is solely applicable.²⁴ The guiding principles define internally displaced persons as:

Persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result of, or in order to avoid the effects of,

²⁰Cohen 'The Guiding Principles on Internal Displacement: An innovation in international standard setting' (2004) 10 *Global Governance* 459.

²¹Cohen 'The development of international standards to protect internally displaced persons' in Bayefsky and Fitzpatrick (eds) *Human rights and forced displacement* (2000) 76 Refugees and Human Rights Series vol 4; the work of the Special Representative has contributed immensely to the process of setting up a framework for the protection of the internally displaced within the boundaries of their countries.

²²The General Secretary's Representative on the Human Rights of internally displaced persons, Francis Deng who was responsible for establishing a framework for addressing the issue of internal displacement, consulted widely with academics, researchers, legal experts, organisation and various institutions.

²³A unanimously adopted General Assembly Resolution in 1999 welcomed the representative of the Secretary General's use of the Principles in his dialogues with governments, intergovernmental organisations and NGOs, and further encouraged further dissemination and use of the Principles-GA Resolution A/C 3/54/L 68, 2000-11-11.

²⁴*Ibid.*

armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.²⁵

This definition's key features are forced or coerced movement, as well as being displaced within the borders of a particular country.²⁶ It encompasses the relocation of people as a result of various factors including natural and development induced factors such as development projects, which cover the South African scenario.²⁷ This is because evictions within South Africa through government policies are acknowledged as consequences of development initiatives, of course there are various unacknowledged underlying factors involved.²⁸

3.2 *The African Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009*

The African Union convention on internal displacement signifies a commitment by African states to address protection gaps within the forced displacement regime on the African continent.²⁹ The convention which was adopted after a short consultative process,³⁰ has to a large extent borrowed from, and recognises the Guiding principles on internal displacement. In fact definitions employed to describe an IDP are similar.³¹ The African Union convention on internal displacement defines an internally displaced as:

Persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognized border.³²

²⁵ *Guiding Principles on Internal Displacement* (n 3).

²⁶ *Id* Introduction, scope and purpose 1.

²⁷ *Id* Principle 6(1)(c).

²⁸ Principle 6(1-3) of the *Guiding Principles* provides for the prohibition of arbitrary displacement, as a result of apartheid, ethnic cleansing, conflict, large scale development projects unjustified by compelling public interests, or collective punishment.

²⁹ Initial steps were taken through the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the United Nations Convention Relating to the Status of Refugees (189 UNTS) of 1951-07-28; The AU IDP Convention has managed to address matters such as holding non-state actors and, armed groups and other relevant actors responsible for protecting IDPs in their territories (art 7). The convention has also made it an enforceable obligation for states to prevent, and provide protection to the internally displaced.

³⁰ Solomon 'An African solution to internal displacement: AU leaders agree to landmark convention' Brookings-Bern Project on internal displacement at http://www.brookings.edu/papers/2009/1023_african-Union-Solomon.aspx?p=1 (accessed 2009-10-26).

³¹ See preamble to the *African Union IDP Convention* (n 1).

³² *Id* art 1(k).

Article 4(4)(c) of the convention is highly relevant to the South African situation because it addresses arbitrary displacement based on racial or ethnic policies.³³ Conditions experienced by non-white communities during apartheid fall squarely within the provisions of this article. This article would have been highly applicable in protecting such communities from internal displacement. Unfortunately the article only applies in preventing displacement, and since the conditions for apartheid no longer exist in South Africa, provisions of the article are no longer relevant.

The next provision of relevance deals with development induced displacement.³⁴ There is lack of data and documentation on development induced displacement in Africa and South Africa specifically, even though it is one of the major causes of displacement.³⁵ Displacements within South Africa are usually carried out under various developmental conditions including satisfying the state duties in relation to health and safety, as well as upgrading and developing residential areas.³⁶ In a number of situations there is failure by the state in exercising its duty to ensure that eviction as a result of development projects occurs where it is necessary or is carried out under the right conditions.³⁷ At this point provisions of article 10 of the African union convention would come into application to prevent displacement caused by development projects, ensure all stakeholders concerned are consulted, and require the state to carry out socio-economic and environmental impact assessment of such projects. The convention is progressive so far as addressing internal displacement is concerned because it obligates states to provide effective remedies and compensation to displaced persons. Additionally the convention provides for the establishment of a conference of state parties which is responsible for monitoring and reviewing the implementation of its provisions.³⁸

This convention would be the perfect tool to protect South African communities from arbitrary displacement and ensure reparations where such has happened. There is one set-back though, South Africa, despite being an avid member of the Africa Union has failed to ratify and is not a signatory to the African Union convention for internally displaced.³⁹ This makes it impossible to hold the

³³*Id* art 4(4)(a).

³⁴Article 10 of the African Union IDP Convention (n 1) provides for obligations of states in relation to displacement induced by development projects. Article 10(1-3) provides that state parties must do their best to prevent displacement caused by projects carried out by public or private sectors, they must ensure that the stake holders explore all feasible alternatives whilst fully informing and consulting with the persons likely to be displaced by these projects, lastly a socio-economic and environmental impact of the projects must be assessed prior to their undertaking.

³⁵One project or the other is usually offered by the government as the reason behind evictions in South Africa; See also Cernea (n 9) 2.

³⁶*City of Johannesburg v Rand Properties* 2006 6 BCLR 728 (W) 729.

³⁷See principles 7 and 18 of the Guiding principles (n 3).

³⁸Article 10 of the African Union IDP Convention (n 1).

³⁹African Union *List of countries which have signed, ratified or acceded to the African Union IDP Convention* (n 17).

South African government responsible for the prevention of and protection from internal displacement of its people under the convention. This means that the only protection available for protection is based on customary international law found in international human rights and humanitarian law principles that constitute the guiding principles on internal displacement. Such application is still subject to the discretion of the government because the principles have not been incorporated into South African law through legislation or policy.

4 Evictions as a representation of internal displacement in apartheid South Africa

The policy of apartheid is one of the most appalling legacies of South Africa. It left a violent history of division, discrimination and manipulation of law on a racial basis.⁴⁰ Forced removals of various communities throughout the country were undertaken on the basis of this policy. Justifications advanced for such policy varied, from the need to provide separate development for the different races, to safety and security measures for the protection of the different races.⁴¹ Underlying reasons for forced removals and separate development were to provide government with a platform to establish different cities. These cities would be for the dominant white communities of South Africa, and others for the rest of the races such as Africans, Indians and 'Coloureds'.⁴² Africans were mostly moved to homelands (Bantustans), 'Coloureds' and Indians were reserved to work in factories and hold middle class positions.⁴³

It should be noted that not all black people were moved to homelands, some of them were allowed to live in hostels near the peripherals of towns so they could offer services.⁴⁴ Most people did not want to live in the homelands, life there was hard, with limited employment opportunities, social amenities and means of production. This resulted in gradual mushrooming of large shack communities around peripherals of cities.⁴⁵ To build these shacks land was needed, but it was not available to the majority of the population, so these shack communities (townships) that immersed were built on property that people did not own.⁴⁶ As the apartheid

⁴⁰Popke 'Violence and memory in the reconstruction of South Africa's Cato Manor' (2000) 30 *Growth and change* 235- 254 at 235; See also s 2 of the Group Areas Act no 41 of 1950 (GAA); see again Guiding principle 6(2)(a) of the Guiding principles on internal displacement (n 3).

⁴¹Mather 'Forced removal and the struggle for land and labour in South Africa: The Ngomane of Tenbosch, 1926-1954' (1995) 21/2 *Journal of Historical geography* 169- 183 at 185; Festenstein and Cambridge (n 6) 6.

⁴²Festenstein and Cambridge *ibid*.

⁴³*Ibid*.

⁴⁴Maylam 'Explaining the apartheid city: 20 years of South African urban historiography' (1995) 21/1 *Journal of Southern African Studies* 23; see also s 4(2) of Group Areas Act (GAA) no 41 of 1950.

⁴⁵Soweto and Alexandra around Johannesburg, Gugulethu and Kayelitsha around Cape Town and so forth.

⁴⁶Maylam (n 44) 22.

machinery began to crumble in the late 80s and early 90s more people moved to these townships seeking a better life for themselves and their children. There is a direct structural link between historical factors related to forced removals in apartheid South Africa and the large population of people that still live in small informal towns (townships).⁴⁷ As a result of these historical factors people within the country have remained displaced. Apartheid discriminatory laws and resulting lack of title to land for the majority of South Africans, have been the basis of further forced removals and displacement of communities in post apartheid South Africa.⁴⁸

4.1 *The Group Areas Act no 41 of 1950*⁴⁹ (GAA)

It has been argued by various scholars that the National Party (NP) did not invent segregation, rather it was a remnant of the colonial powers that had previously occupied South Africa.⁵⁰ The NP, after coming into power simply concretised and systemised an already existing system of segregation on trading and residential property rights throughout South Africa.⁵¹ This means that the GAA was a response to numerous initial unsuccessful steps to effect segregation.⁵² This is a compelling argument, but even if the GAA did not introduce segregation, it facilitated the enforcement of segregation and institutionalised systematic State interference with individual rights to property and land.⁵³

The GAA was introduced with competing reasons as already indicated above. Initially it was as a response to pressure imposed by certain sections of the white

⁴⁷Townships such as Soweto (found on the edges of Johannesburg), Kayelitsha and Gugulethu (found on the edge of Cape Town) and most other townships in South Africa are basically internally displaced communities that strategically settled in such locations for survival.

⁴⁸Maylam (n 44) 22, 28.

⁴⁹Hereafter referred to as GAA, the Act was created on the 1950-04-27 and subsequently repealed 41 years later on 1991-06-04.

⁵⁰Christopher 'From flint to Soweto: Reflections on the colonial origins of the apartheid city' (1983) *Area* 15 at 145; It can be rightly stated that by 1834, the London Missionary Society had established a formal black settlement in Port Elizabeth. In the 1850s the Port Elizabeth municipality created the Native Strangers' location where Hottentots, Fingoes, Kaffirs and other strangers visiting Port Elizabeth could temporarily stay. In 1855, a century before the GAA, signs of apartheid had manifested in Port Elizabeth through the introduction of regulations that required blacks to live in Native Strangers' Location if they were not at the time housed by their employers or owning their own property; quoted in Maylam (n 44) 22.

⁵¹Festenstein and Cambridge (n 6) 1.

⁵²These attempts include The Glen Gray Act by Cecil Rhodes in 1894 which created separate reserves for Africans; The Transvaal Gold Law Act of 1908 which barred all Africans in certain proclaimed areas from acquiring rights conferred by mining laws and from acquiring land outside areas assigned to them by the mining commissioner; The 1905 Transvaal Municipal Ordinance allowed municipalities to establish areas for Asian occupation and to remove illegal occupants; The Native Lands Act (later Black Land Act) of 1913; The Natives (Urban) Areas Act of 1923, later consolidated into the Blacks (Urban Areas) Consolidation Act of 1945, and the Housing Act of 1920.

⁵³Section 1(1) of GAA (n 40).

population demanding protection against economic competition.⁵⁴ But again as indicated above, it has become very difficult to accept the explanation that economic factors were the only explanation for residential segregation. It became obvious with time that the Act had numerous other underlying reasons.⁵⁵ Its existence was preservation of western civilization, in addition, to perfecting the elimination of racial friction as well as ensuring the supremacy of the white man in South Africa in the interest of material, cultural and spiritual development of all races.⁵⁶ Since the races were at different stages of cultural and political development, it was argued that conflict between them could only be minimised or prevented by eradicating contact between them.⁵⁷ Other significant reasons that have been advanced for this law include military considerations, especially in towns with military outposts. The 'sanitation syndrome' was an additional reason which explained urban segregation in terms of elimination of moral panic and racial hysteria resulting from the association of black presence with squalor, diseases and crime.⁵⁸

The Minister of Constitution and Development Planning, Mr Chris Heunis, claimed by 1985 that the purpose of the GAA had been to maintain fixed patterns of our commonality of interests and group adherence.⁵⁹ The other purpose, he claimed was the demarcation of group areas which were the basis of local government in the new Constitution. The GAA, he said, was an important tool in defining the areas where people lived as well as defining the institutions in which people could work.⁶⁰ The Department of Constitution and Development Planning (DCDP) had the power in terms of the GAA to issue eviction notices to disqualified people.⁶¹ According to the GAA, if the notice was ignored, then the issue would be referred to the group areas inspectorate of the South African police, which in turn would try and obtain an eviction order from court.⁶² But this is not what

⁵⁴Festenstein and Cambridge (n 6) 6.

⁵⁵*Ibid.*

⁵⁶Statement by the Minister of Interior, Dr Eben Dönges, in a Parliamentary speech on the Group Areas Bill (1978-02-28)

⁵⁷Festenstein and Cambridge (n 6) 7.

⁵⁸Maylam (n 44) 24; s 1(1) of GAA (n 40).

⁵⁹Festenstein and Cambridge (n 6) 7.

⁶⁰*Ibid.*

⁶¹According to definition (viii) of the definition section of the GAA (n 40) a 'Disqualified person' in relation to immovable property, land or premises in any group area, means a person who is not a member of the group specified in the relevant proclamation under section three, and in relation to any immovable property, land or premises in the controlled area, means a person who is not a member of the same group as the owner of such property, land or premises, or if the owner is a statutory body other than a municipality in the province of the Cape of Good Hope, of the same group as the majority of the members of such body or in the case of any such municipality, of the same group as the majority of the members of the council thereof, or if the owner is a company, of the same group as any person by whom or on whose behalf or in whose interest a controlling interest is held or deemed to be held in such company; See ss 10(1) and 20(1)(a) and (b) of GAA.

⁶²See s 31 of the GAA (n 40)

actually happened in practice.⁶³ Later rules were set up, especially in the 80s after the ruling of Judge Richard Goldstone in the case of *State v Govender* 1982 TPD 15. It was established that disqualified people could not be automatically evicted after a court granted an order. It had to be proved by the group areas board that alternative accommodation was available.⁶⁴ This principle was applied for a short while before the government found a way to circumvent it.⁶⁵

4.2 *Specific historical developments of displacement in District Six*

District Six is one of the most historically documented eviction projects carried out under the Group Areas Act in Western Cape Province.⁶⁶ The project represents a lived reality of legal, social and psychological effects of forced removals in South Africa. The district was a racially and socially diverse area where people of all kinds lived together.⁶⁷ To the outside world especially the government, District Six gained reputation as a dirty, gang infested neighbourhood, thus the multiracial existence of the community was unacceptable. Plans for re-organisation of District Six started taking shape in 1930s with the motive being control and segregation disguised as urban planning within the realms of the Group Areas Act.⁶⁸ By the 1940s when the first municipality re-development plan was being published, steps to re-structure the area as a white only area were already underway.⁶⁹

Cape Town was regarded as the original dwelling of the Cape coloureds, the South African Malays, as well as a settlement of choice for many Indians and Chinese traders. Africans were also drawn to this co-existence. This resulted in one of the largest and strongest multiracial communities in South Africa.⁷⁰ This mixed community that had co-existed for a long time made the task of implementing the GAA almost impossible and sparked resistance from all races in the Cape Town area. Parties involved included the Cape Town City Council, the

⁶³See the case of forced removals in Western Cape.

⁶⁴*SA Law Reports* 1986 3 SA 969-972.

⁶⁵Mr Cassim Salojee, chairman of an organisation called Act stop which was formed to resist forced removals claimed that the group areas police were instead exerting pressure on landlords to serve their evictions orders on illegal tenants personally, see Festenstein and Cambridge (n 6) 28.

⁶⁶Louw *Group areas: Micro studies in the Western Cape a select bibliography* (March 2010) 3 African Studies Library University of Cape Town.

⁶⁷Segregation in 19th century Cape Town existed, but it was not aimed at keeping races apart, rather its purpose was to exclude people of colour from the ranks of the dominant class, white people were the dominant class, but there were still numbered white people in the lower class areas; Maylam (n 44) 23.

⁶⁸Festenstein and Cambridge (n 6) 7

⁶⁹Maylam (n 44) 28; Festenstein and Cambridge (n 6) 4; until the 1930s (through the Coloured Persons Settlement Act) coloured people were not prevented from living in most areas except title deed land.

⁷⁰Horrell *The Group Areas Act: its effect on human beings* (1986) 72 South African Institute of Race Relations.

South African Institute of Race Relations, the Black Sash Movement, the Nederduits Gereformeerde Mission Church of Wynberg, as well Coloured people, Africans and some people within white communities.⁷¹ The process of segregation became very difficult to impose in Cape Town because multiracial communities were scattered amongst each other. This led to more aggressive forms of removals and displacement.⁷²

Masses of indigenous people especially dock workers were first moved from District Six to Uitvlugt as a result of the outbreak of bubonic plague as early as 1901.⁷³ This was the beginning of strategic segregation in Cape Town. Bubonic plague was of course used as an excuse to move natives to locations. It was suggested that the removals were for health purposes, because the native population was associated with most things unclean, crime, and pervasions, even though this was not a compelling excuse.⁷⁴ As Spanish influenza broke out in 1918, it provided a further excuse to forcibly move people from Ndabeni which had now become overcrowded and unhealthy. Langa was then created by the Cape Town city council as a model location for people to be moved to around 1927.⁷⁵ This establishes that by the time the GAA was being enacted in 1950, mechanisms for forced removals and displacements were already set up and implemented in Cape Town.⁷⁶

In 1966, District Six was declared a white only area, this resulted in the demolition and destruction of most of structures within the district except for religious buildings and some historical buildings. The outcome was the forced removal and displacement of more than 60,000 people.⁷⁷ Most of these people were forced to relocate to the cape flats and considerable numbers were left homeless.⁷⁸ The people who were forcibly moved, mostly Coloureds, Indians and Africans were eventually relocated to other areas. These removals resulted in breakdown of family social ties such as churches which had in most cases been built by the displaced communities. Additionally, it affected children's access to education because building new schools took several months, and it took years for communities to access any infrastructure.⁷⁹ It also led to increase in crime, narcotics and alcohol abuse. The rise of influential and dangerous gangs in Cape

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ The plague (black death) had serious connotations on South Africa because it was associated with black urban presence; Uitvlugt was later renamed Ndabeni, this is how Ndabeni was created; Louw (n 66) at 3.

⁷⁴ Maylam (n 44) 24.

⁷⁵ Louw (n 66) 3.

⁷⁶ The Native (Urban Areas) Act of 1923.

⁷⁷ *Apartheid: Apartheid enforced* at http://www.capetown.at/heritage/history/apart_enforce.htm (accessed 2010-09-02) 2.

⁷⁸ Festenstein (n 6) 21; see *Apartheid: apartheid enforced* at http://www.capetown.at/heritage/history/apart_enforce.htm (accessed 2010-09-02).

⁷⁹ Festenstein and Cambridge (n 6) 21.

Town, especially in the cape flats area was also a consequence of forced relocation. Forced removals also affected the earning capacity of people in these communities, who in most cases were relocated far from places where they could easily gain employment or access their former jobs.⁸⁰

Removals and consequent displacements, even in circumstances that are non segregationist are known to cause trauma. In the case of the displacements in South Africa the effects were more traumatic because they were carried out on racial grounds. Relocation undermined the morale of the communities involved, giving them a sense of homelessness.⁸¹ People lived in uncertainty for a long time, sometimes as long as a decade after the GAA was passed, waiting for the day when they would be displaced, without knowledge of whether they would or would not be displaced. This affected the upkeep of property in certain areas, property also deteriorated in areas where government refused to grant grading permits to disqualified people to build, extend or renovate existing structures.⁸² This resulted in the creation of ghost towns and slums that the GAA had actually been enacted to prevent.

District Six was meant to be converted into a white only suburb, but these plans failed. Riots, protests and bad publicity that resulted from forced removals discouraged any developers. Throughout the 70s and 80s the area was an empty ghost town with the exception of religious structures that had been left after the 'slums' clearance campaign. Some areas were later developed for the Cape Technikon.⁸³ Attempts to re-organise racially mixed residential and commercial areas led to the creation of more than 900 group areas in the country by 1985.⁸⁴ While the GAA was vigorously defended by its creators as the only way of ensuring orderly urban development, harmonious racial existence and economic justice, its effects were totally the opposite.⁸⁵ The GAA immensely reshaped South Africa's urban landscape and continues to do so.

5 Reflections on post apartheid displacement patterns

After the first multiracial democratic elections in 1994, injustices associated with policies of apartheid were deemed over.⁸⁶ When ANC came into office in 1994,

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ In 1970 the government renamed the area Zonnenbloem after the original Dutch farm in an effort to attract developers.

⁸⁴ Festenstein and Cambridge (n 6) 21.

⁸⁵ *Ibid.*

⁸⁶ Wickeri 'Grootboom legacy: Securing the right to access to adequate housing in South Africa' (2004) 7 *Working Paper Economic, Social and Cultural Rights Series no 5* Center for Human Rights and Global Justice NYU School of Law.

the party promised to tackle issue of rights to housing, protection against eviction and provision of a better life for every South African.⁸⁷ Laws like the GAA and PISA (Prevention of Illegal Squatting Act) that had been the basis for forced removals were repealed and new Acts were enacted to minimise and if possible eradicate forced evictions.⁸⁸

Unfortunately forced evictions, relocations and displacements in South Africa are still a lived reality, in fact they have become prevalent among poor societies of South Africa.⁸⁹ It is not unusual to see the SAPS (South African Police Forces) forcibly removing people from their shacks or apartments.⁹⁰ Acts of parliament that were enacted to protect people against forced removals and inhuman displacement are actually being invoked to evict masses of people.⁹¹ This makes it imperative to question whether the injustices of apartheid really ended with the downfall of the apartheid state machinery. Additionally there is doubt whether courts which are obligated to interpret section 26 of the Constitution within a public interest context are doing so effectively. Is the cleavage between laws' promise and its lived reality simply too large to address in post apartheid South Africa?

5.1 *Specific legislative framework on forced removals and displacement*

5.1.1 **Prevention of Illegal Eviction from Unlawful Occupation of Land (PIE) Act**⁹²

The PIE Act was intended to set out procedures aimed at safeguarding rights of vulnerable people unlawfully occupying land without the express consent of the

⁸⁷ ANC, hereafter referred to as the party; African National Congress (ANC) Election Manifesto, 1994, at www.anc.org.za/ancdocs/policy/manifesto.html (accessed 2010-12-09); see also African National Congress 'The Freedom Charter' adopted by Congress of the People (1955-06-26) at www.anc.org.za/ancdocs/history/charter (accessed 2010-12-11).

⁸⁸ PISA no 52 of 1951 which was enacted to ensure ordered urbanisation, the Act created powers of removal and demolition, it was also used to establish informal settlement areas; Wickeri (n 86) 8.

⁸⁹ Wickeri *ibid*; see again principle 6(2)(c) of the Guiding principles on internal displacement (n 3).

⁹⁰ Ramutsindela 'Forced removals in South Africa: A thing of the past?' (2003) *Forced Migration Review* 31 at <http://www.fmreview.org> (accessed 2011-01-08); Etv 'Blikkiesdorp 2010: A Cape Town perspective' Etv in-house production 2011-01-30.

⁹¹ The Prevention of Illegal Eviction from Unlawful Occupation of Land Act no 19 of 1998; The Extension of Security Tenure Act no 62 of 1997; The Interim Protection of Informal Land Rights Act no 31 of 1996; The Housing Act no 107 of 1997; The Slums Act of 2007.

⁹² Act no 19 of 1998.

owner for a considerable period of time.⁹³ The effect of the Act is that if an occupier is in occupation of land for a period longer than six months, then the Act requires that the court must consider whether land is available elsewhere or there is a reasonable possibility of availability of land by the owner or municipality to which the unlawful occupier can be relocated to.⁹⁴ Only after the court is satisfied that the relevant procedure has been followed and after the unlawful occupier raises no defense, can the court grant an eviction order.⁹⁵

The order given must satisfy additional requirements such as stipulating a just and equitable date on which the unlawful occupier has to vacate the said land and determination of the date on which the eviction order may be carried out when the unlawful occupier fails to vacate the said premises.⁹⁶ The PIE Act also provides for procedures to be followed where eviction is necessary and urgent.⁹⁷ These procedures are meant to apply in cases where the unlawful occupation implies a danger to any person or property, or where the owner's or any other person's hardship resulting from the occupation exceeds those of the occupier if evicted.

The PIE Act further provides that eviction can be instituted by a state organ if its consent to erect a structure on the land in question is required and the unlawful occupier has failed to obtain such.⁹⁸ It can also be instituted where it is in the public interest for the eviction to take place. Public interest has been defined to include; the interests of health, safety of those occupying land, as well as the health and safety of the general public.⁹⁹ It is this general provision for 'public interest', 'consent', and 'hardship' of owner being preferential to that of the illegal occupier that has been re-interpreted so many times to suit and justify certain displacements within the country.¹⁰⁰ The term 'public interest' is too wide and can be interpreted to include or exclude a lot of circumstances. Effecting such a discretionary provision is highly

⁹³ *COHRE Report* (n 7) 9; This Act replaced the Prevention of Illegal Squatting Act of 1951 (PISA), it criminalises un-procedural evictions; See also PIE Act s 2(6), (7) and (8).

⁹⁴ PIE Act ss 6 and 7.

⁹⁵ This includes satisfying the requirement of serving a 'written and effective notice' of eviction on the unlawful occupier and the local municipality in not less than 14 days before the eviction proceedings are heard in court. The notice must clearly set out grounds for the said eviction, the date and time at which the eviction proceedings will be heard, as well as informing the unlawful occupier of their right to appear before the said court in their defense or apply for legal aid. It is a requirement under the PIE Act that a court must consider the rights of certain groups that are regarded as vulnerable occupiers, including the elderly, children, women headed house holds and the disabled; See *COHRE Report* (n 7) 9; See also s 6(4) of PIE Act; Huchzermeywer 'Housing rights in South Africa: Invasions, evictions, the media and the court cases of *Grootboom*, *Alexandra*, and *Brendell*' (2003) 14/1 *Urban forum* 84.

⁹⁶ Section 4(8)(a)(b) of PIE Act.

⁹⁷ Section 5(a)(b) and (c) of PIE Act.

⁹⁸ Section 6(a) of the PIE Act.

⁹⁹ *COHRE Report* (n 7) 9; s 6(1)(2) of the PIE Act.

¹⁰⁰ *Ibid*; see the interpretations of Judge Hlophe in the Cape High Court decision involving Joe Slovo residents.

dependent on judges' willingness to take into consideration all relevant socio-economic factors. In cases where judges are either unwilling or unable to exercise such consideration, the outcome could be unjust. This provision was misinterpreted to support massive evictions of Joe Slovo residents in Western Cape.

5.1.2 Section 26(3) of the Constitution of South Africa¹⁰¹

The section provides that 'No one may be evicted from their homes or have their home demolished, without an order of court made after considering all the relevant circumstances. Additionally, no legislation may permit arbitrary evictions'. This section was adopted to address injustices to land and to discourage forced removals that characterised the apartheid regime. It is a strong provision that falls within section 2 of the Bill of rights of the Constitution. This means that in interpreting the section, international law and the promotion of its object must be considered.¹⁰²

The section places discretionary power on courts to address past injustices and judge in a manner that is just and equitable taking into consideration social and legal contexts. What is deemed just and equitable in most cases will depend on the judge and the facts of the case at hand. The interpretation of section 26(3) was meant to protect those who would in most cases have been evicted as illegal occupiers of land. Considering the historical and social factors within the South African society, interpreting the section has to effect the promotion of values that underlie an open and democratic society based on human dignity, equality and freedom.¹⁰³

Even though this provision is progressive, it has been evidenced in court judgments that it defines the court's powers very expansively. Courts have been given so much power to set up a constitutional jurisprudence. The courts and judges under the provision are expected to create a 'just' and 'equitable' outcome. What is just and equitable is relative and very fluid, there is no specific legal rules for such creation. This means that a just and equitable jurisprudence on section 26(3) will depend on the willingness of the judges to apply the law while taking into account sensitivity of the issues and parties involved. It also means that, since courts are made up of judges, and judges are human, human error in constructing what is 'just' is highly probable.¹⁰⁴ The nature of this contrast between what the law in section 26(3) intended and what it creates in reality has never been more obvious than in the outcome of the court case involving the Joe Slovo settlement of Western Cape.¹⁰⁵

¹⁰¹Act no 108 of 1996.

¹⁰²Sections 39(2) and 39(1)(b) of the South African Constitution (n 101).

¹⁰³Section 39(1)(a) *ibid.*

¹⁰⁴Wilson 'Judicial enforcement of the right to protection from arbitrary eviction: Lessons from Mandelaville' (2006) 22 *South African Journal of Human Rights* 537.

¹⁰⁵*Residents of Joe Slovo Community v Thumelisha Homes* CCT 22/08 2009 ZACC 16.

5.2 The position of courts

Since 1994 there have been various court decisions in South Africa involving legal redress for or against eviction of communities.¹⁰⁶ A landmark decision that was hailed locally and internationally as having promoted the socio-economic rights of the poor and landless in South Africa was rendered in the case of *Grootboom*.¹⁰⁷ The decision in *Grootboom* and other similar cases was celebrated as an example of constitutional transformation and practical application of judicial activism to promote the rights of poor and marginalised South African communities.¹⁰⁸ Yet, *Grootboom* and latter cases do not necessarily reflect the wider practice of courts in matters involving eviction of the poor.¹⁰⁹

Victories achieved in cases like *Grootboom* were overridden by the sudden necessity for large projects to refurbish cities all over South Africa. Such initiatives were in preparation for the World cup among other things, and they have left hundreds of people displaced.¹¹⁰ These projects involved upgrading areas that were occupied by shack dwellers. Most people were forcibly moved from their homes and left homeless, displaced and separated from their families and familiar way of life.¹¹¹ Some were able to get allocated TRAs (Temporary Residential Areas) which were erected far away from towns consequently their living conditions there have been deplorable. Most of these TRAs are plagued by vandalism, rape and fear.¹¹²

¹⁰⁶ *Abahlali baseMjondolo Movement of South Africa v Premier of the Province of Kwazulu Natal* CCT 12/09 ZACC 2009 31 (hereafter referred to as the Slums Act case); *Residents of Joe Slovo Community v Thumelisha Homes* CCT 22/08 2009 ZACC 16; see also *Various Occupants v Thumelisha Homes* CCT 22/08 2008; *Occupiers of 51 Olivia Road Berea Township v City of Johannesburg* 2008 5 BCLR 475(CC); *Port Elizabeth Municipality v Various Occupiers* 2004 12 BCLR 1268 (CC); *Government of the Republic of South Africa v Grootboom* 2000 11 BCLR 1169 (CC).

¹⁰⁷ 2000 11 BCLR 1169 (CC) where Mrs Grootboom, together with 900 people of the Wallacedene settlement in Cape Town, challenged the Tygerberg Municipality in the High Court on the basis of the progressive constitutional right to adequate housing, and the children's unqualified right to shelter. The Court declared the government of South Africa in breach of its constitutional obligations and required it to implement a program that at minimum provided for people to living under desperate conditions. It also held that the duty for children still lay with their parents, unless they were exclusively placed under government care.

¹⁰⁸ *Minister of Health v Treatment Action Campaign (2)* 2002 5 SA 721 (CC); *City of Cape Town v Neville Rudolf* 2004 5 SA 39.

¹⁰⁹ Wilson (n 104) 561.

¹¹⁰ 'I know we were moved because of the World Cup, they don't want people to see shacks on the road in South Africa, they want everything perfect for the world cup' Badronessa Morris, a resident of Blikkiesdorp (Tin Can city) in 'Forced evictions in South Africa clear the way for the World Cup' *The New worker* at <http://www.antieviction.org.za> in South Africa (accessed 2010-05-26); see also 'South Africa is not showing the world what it is doing to its people, it only shows the World Cup' in the *Guardian* 2010-04-01 21.50 BST at <http://www.guardian.co.uk> (accessed 2010-05-26).

¹¹¹ The well known evictions include evictions in Joe Slovo, Alexandra, Kennedy Road, these are relatively well known because they resulted in high profile contentious court cases.

¹¹² Blikkiesdorp (Tin Can City) was built in 2008 to provide emergency housing for about 650 illegal occupiers, but it currently houses about 15,000 people living in about 3000 iron structures; see *COHRE Report* (n 7) 4.

5.2.1 Joe Slovo to Delft (Tin Can City)

On June 2009, the Constitutional Court judicially sanctioned one of the largest evictions in post apartheid South Africa.¹¹³ The case involved residents of Joe Slovo Community, *Western Cape versus Thumbelisha homes and others* (commonly known as the Joe Slovo case).¹¹⁴ The decision included a unanimous judgment by five judges who ruled in favour of the relocation of 20,000 Joe Slovo residents to accommodate the N2 gateway project. This project was part of the comprehensive plan for the development of sustainable human settlement (BNG) approved by the Cabinet in 2004.¹¹⁵ This decision has affected, and will continue to affect housing rights of thousands of other poor people in urban South Africa, besides the Joe Slovo residents.¹¹⁶

The Joe Slovo settlement is used as a case study in this paper because it is one of the recent cases involving massive forced removals. It also takes place in Western Cape, where the initial renowned forced removals of District Six took place. The comparison to the two events separated by time, under similar dynamics is core to this discussion. The use of Joe Slovo as a case study is to re-emphasise these dynamics. Joe Slovo which was an informal settlement on the outskirts of the N2 gateway in Cape Town was established in the early 90s. It was in the ideal location for migrants who needed to access employment in the nearby suburbs and towns of Pinelands, Epping, and the Cape Town central business district.

In 2004 the residents of the Joe Slovo settlement first learnt about the N2 Gateway project, after its announcement in the newspapers. From the pictorial plans, it became evident that for the new development sites to be constructed residents would have to be evicted. At this point no one had contacted or consulted with the occupants of this settlement. After phase one of the development began most of the residents were removed from their original dwellings to other open spaces within the settlement. The government promised them permanent homes within the developed site after the construction was over, this promise was never fulfilled. Instead government suggested fast track relocation to Delft. This realisation resulted in massive protest, consequently people to forcibly entered houses that were not allocated to them.¹¹⁷ These events unfolded in a protracted court case that started in the High Court and eventually ended in the Constitutional Court.

5.2.2 The High Court

In September 2007 the Minister of Housing together with Provincial Housing and

¹¹³ COHRE Report id 9.

¹¹⁴ Judgment of the Constitutional Court of South Africa in *Residents of Joe Slovo Community, Western Cape v Thumbelisha Homes, Minister of Housing and Minister for Local Government and Housing, Western Cape Case CCT 22/08*.

¹¹⁵ COHRE Report (n 7) 1.

¹¹⁶ *Ibid.*

¹¹⁷ COHRE Report (n 7) 9.

Thumbelisha homes obtained an order for eviction of residents of Joe Slovo from the Cape High court. Residents of Joe Slovo had contested the application on grounds that they had tacit consent from the city of Cape Town to reside in Joe Slovo.¹¹⁸ They claimed that this negated any insinuation that they were occupying the area unlawfully. Their second argument was that they had legitimate expectation that they would be allocated at least 70% of the newly constructed houses under the N2 project, such expectation was not fulfilled.

In March 2008 the Cape high court ruled in favour of government. Presiding judge Hlophe stated in his judgment that residents of Joe Slovo had neither legitimate expectation nor right to remain in Joe Slovo. He went on to state that 'the right that is provided for by the law, is the right to adequate housing and not the right to remain in the locality of their choice'.¹¹⁹ He further elaborated that the relocation to Delft provided a more than adequate temporary accommodation at the state's expense and satisfied the government's duty to provide adequate housing.¹²⁰ After the judgment was handed over, Joe Slovo residents, represented by the Joe Slovo task team announced their intention to appeal, and not to the Supreme Court of Appeal but directly to the Constitutional Court. They contended that the matter was affecting their rights under section 26(3) of the Constitution.¹²¹

5.2.3 The Constitutional Court

Submissions were much more technical at this point. They took into account matters such as the inconvenience that would be caused by the distance and location of Delft, the break down of family, social ties, and economic restraints that would be imposed upon an already vulnerable community as a result of the forced relocation.¹²² The Court had to consider whether Joe Slovo residents were illegal occupiers that fell within provisions of the PIE Act. This in turn could mean that they could only be evicted as per section 6 of the Act. Otherwise, if they actually had tacit consent from the city of Cape Town, then they were not illegal occupiers.¹²³

The interpretation of the situation under which the city of Cape Town had given consent and the circumstances, under which it was said to have withdrawn it, was very blurry. It has been argued by a number of academics and legal practitioners that the consideration over the issue of consent was very narrow and

¹¹⁸This tacit consent it was argued, was implied by the Cape Town City's provision of sanitation services to Joe Slovo settlement

¹¹⁹High Court of South Africa, Cape of Good Hope Provincial Division, *Thumbelisha Homes v Various Occupants*, Final Judgment, Case Number 13109/07.

¹²⁰*Ibid.*

¹²¹Section 26(3) of the Constitution of the Republic of South Africa Act no 108 of 1996 provides for protection from arbitrary eviction and demolition of one's home without an order of court that takes due consideration of all relevant circumstances. The section also has the effect of forbidding legislation which permits arbitrary evictions. Section 26(3) basically represents an attempt to redress and prevent the injustices of forced removals committed during and inherited from apartheid South Africa.

¹²²*Ibid.*

¹²³Act no 19 of 1998 hereafter referred to as PIE Act.

not as transparent as the situation would have required.¹²⁴ Having failed to prove 'consent' to occupy, the court had to decide whether the eviction was just and equitable under section 6 of the PIE Act. The Constitutional Court unanimously found that the High court had acted in accordance with section 26 of the Constitution when it granted the eviction order, and that doing so was reasonable under the given circumstances.¹²⁵ Relocation to Delft over a ten months period was ordered by the court.¹²⁶

It was clear from the judgments of the five justices that the court had to debate whether the issue of justice and equity would be sufficiently addressed by ordering the relocations. In fact this debate can be picked-up from the judgments of Justices O'Regan, Moseneke and Sachs who were highly critical of certain aspects of the N2 Project and seemed to find the mass eviction distasteful. They nevertheless, came to the same conclusion as the rest of the court because the eviction was in favour of long term benefits aimed at facilitating low income accommodation. Since the project was far along, they agreed that the solution would be to ensure eviction. In addition to this, the court emphasised that regard had to be given to humanity, and the eviction had to be just and equitable. This was a step further from the decision of the Cape High Court.¹²⁷

The constitutional court attempted to address matters such as the quality of the temporary housing to be provided as well as engagement with the communities by government. This was its way of ensuring that the relocation process, which it had deemed necessary, was tolerable. This decision was nevertheless a compromise judgment.¹²⁸ In as much as the Constitutional court was obligated to protect constitutional rights of the people of Joe Slovo, it also did not want to seem to doubt government decisions. By deciding to relocate them, and then placing conditions in the decision, the court justified the relocations without necessarily addressing the shortcomings of the way the N2 project was conceived.¹²⁹

It was evident from the beginning that not all the relocated people would be able to be allocated houses in the newly developed project. It was also obvious

¹²⁴The Legal Resources Centre argued that the court watered down the legal concept of withdrawal of consent to occupy. The residents never received written notice or any concrete document corresponding the state's intention to withdraw consent. Professor Pierre de Vos from the University of Cape Town also mirrored this view by criticising the narrow and formalistic way in which the court interpreted the situation.

¹²⁵*COHRE Report* (n 7) 19.

¹²⁶*Ibid.*

¹²⁷The orders made included a requirement for allocation of 70% of the houses built to Joe Slovo residents who applied and were eligible, an order stipulating for the allocation of temporary units (TRUs) to any residents relocated to Delft including specifications of size, quality and composition as well as provision of transport, lastly an order was made for consultations to take place between residents and state parties concerning the relocations as well as information provision to relocated residents about their position on the house waiting list.

¹²⁸Chenwi and Tissington "Sacrificial lambs" in the quest to eradicate informal settlements: The plight of the Joe Slovo residents' (2009) 10/3 *ESR Review* 20.

¹²⁹*Id* 19, 20.

that people that were allocated houses would additionally face the issue of increased rents which they could not afford. It was also very doubtful how far (if at all) the government would engage with the relocated communities in tackling issues of access to schools, healthcare, and work. Despite all the above misgivings, the Constitutional court went ahead and endorsed a vanity project that seemed to run counter to the governments' own housing policy.¹³⁰

The court justified its ruling by submitting that the decision was just and equitable because it would benefit the community in the long run. If one compares the socio-economic benefits of Delft to Joe Slovo, it is easy to conclude that the displaced communities would have been better off in Joe Slovo.¹³¹ First of all not every family was allocated a house, secondly the houses allocated were made of tin sheet which is very thin.¹³² In winter the place is very cold, additionally there have been numerous break-ins because the sheet can easily be cut. The houses are also very small and cannot accommodate families. There is congestion because the site was meant to cater for 6 500, but Delft accommodates more than 15 000 people.¹³³ Delft itself is located in a sandy, dusty, windy place which is totally inhabitable.

6 Conclusion

Removals in South Africa are historical, but what is more disturbing is that they are systematic and instituted by the same governments that the people trust for protection. Removals have over decades been taking place under the general guise of either 'separate development' projects or 'housing provision (upgrading) projects. Masses of people get displaced and the excuse is development but the most notable effect of these projects is that no development results from such relocations. As a matter of fact evictions and removals serve to further marginalise communities that are usually already historically disadvantaged.

During apartheid, rampant displacement was used as a political tool to systematically dis-empower communities. As a result of this, masses of people were internally displaced all over South Africa. There were no displacement camps, but the conditions of the homelands and townships to which these people were confined can be compared to internal displacement camps. Most of these locations lacked necessary amenities such as water, sanitised environment, healthcare, education facilities or even proper houses. The camps were further characterised by theft, gangs, rape, drug abuse and diseases. Consequently a large part of today's population, rural and urban is still reeling from the effects of such displacements.

In post-apartheid South Africa, expectations over the eradication of such

¹³⁰The Policy stated that informal settlements were to be eradicated through *in-situ* upgrading where possible.

¹³¹Etv (n 90).

¹³²See 'South Africa is not showing the world what it is doing to its people, it only shows the World Cup' (n 110).

¹³³*Ibid.*

conditions ran high, but little seems to have been done. The homelands disintegrated, but townships remain a remnant of apartheid South Africa. Conditions that existed during apartheid still exist to a large extent. People in South Africa's townships, as well as those living in some unmaintained buildings in urban areas are still being displaced to make way for one project or the other. The question is where do these masses of people go? They are the unaccounted for masses of people internally displaced within South Africa.

It is not presumptuous to conclude that what has been happening in South Africa from the last century, throughout the apartheid years, up to the present is internal displacement. Communities have been broken, socially and psychologically as well as economically. Laws set up to address such displacements have not resulted in effective uniform application. This is because their effectiveness in protecting people from displacement is highly dependent on the discretion and willingness of the judge who applies them. If the protection of local law is unpredictable, it is time predictable international standards against internal displacement are applied. If they could not be implemented to address past injustices, they should be invoked to address injustices currently taking place. The African Union has adopted a Convention dealing with internal displacement in all phases, and as a result of all causes. South Africa is a member of the African Union, it has obligations to sign and ratify the convention to facilitate prevention of and protection from further displacement within the country.

South Africa is a leading economy in Africa, it should lead by example. To qualify as a leading economy, people within the country should be living within acceptable standards, including having access to houses. The minimisation of forced removals and displacement can be one way of eradicating poverty. Before the government takes on erecting affordable up to standard houses that are too expensive for the people they are meant to cater for, it should start with upgrading the available accommodation and conditions of living.¹³⁴ Where such upgrading takes place, it should be meant to benefit the communities involved, not to displace them further. In circumstances where removals have to take place, they should be done after ascertainment that the people have alternative accommodation, and after consultations take place with the affected or soon to be affected populations. Only then can one claim that relocations are taking place on a developmental basis.

¹³⁴COHRE Report (n 7) 21.