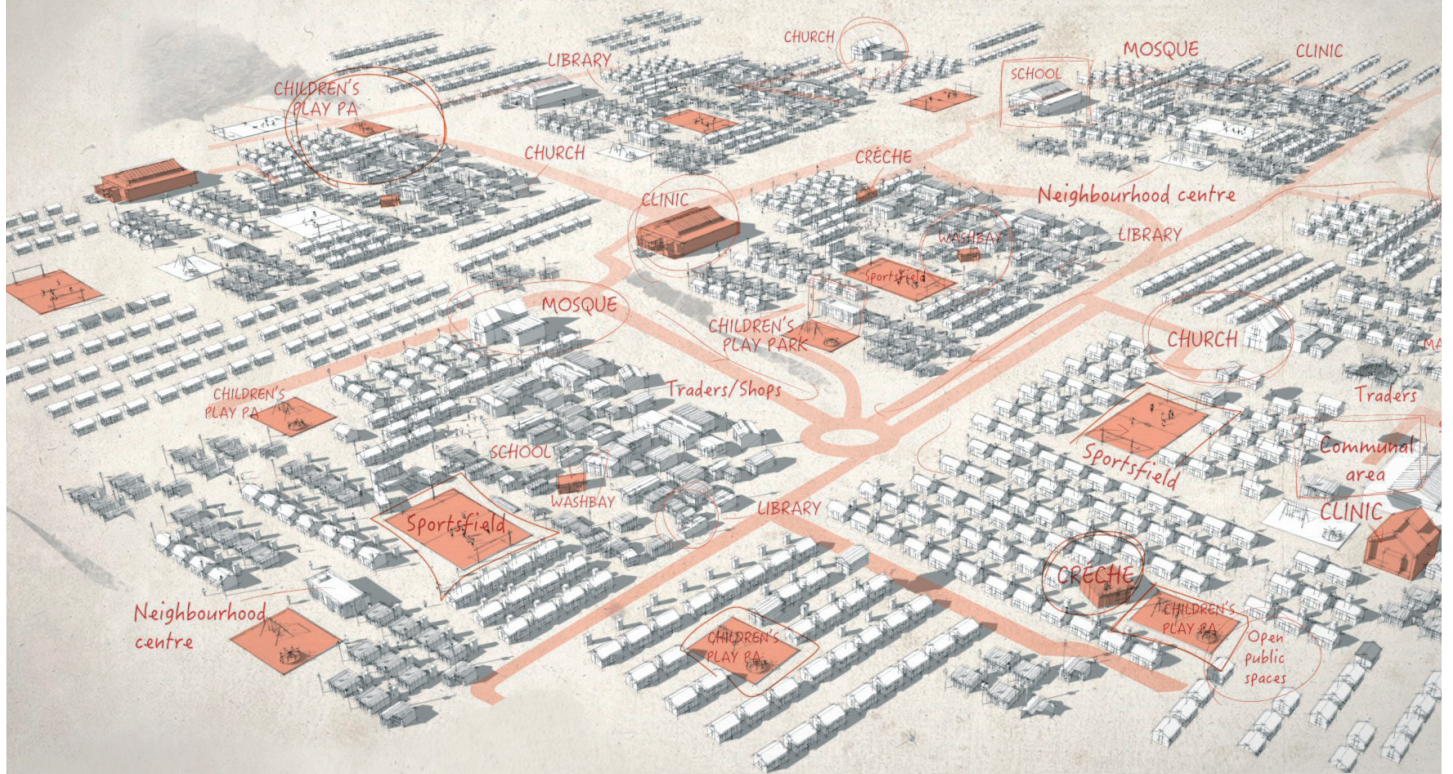# INFORMAL SETTLEMENT UPGRADING MATTERS:

A SUBMISSION INTO THE NEW HUMAN SETTLEMENTS POLICY

CAPE TOWN NGO COLLABORATIVE INITIATIVE
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ACKNOWLEDGEMENTS

01.

INTRODUCTION

This submission has been developed to inform the human settlements policy and legislative review currently being undertaken by the Department of Human Settlements (DHS) on behalf of the Minister of Human Settlements, Water and Sanitation. It has been prepared by the Cape Town NGO Collaborative Initiative, a collective of urban sector organisations with a wide range of expertise and experience in progressive practice around participatory and incremental informal settlement upgrading, and human settlements development more broadly, in South Africa. These organisations are: Community Organisation Resource Centre (CORC), Development Action Group (DAG), Habitat for Humanity South Africa, Isandla Institute, People's Environmental Planning (PEP), Ubuhle Bakha Ubuhle (UBU) and Violence Prevention through Urban Upgrading (VPUU).

We believe informal settlement upgrading is key to developing inclusive, liveable and sustainable neighbourhoods and addressing urban poverty and inequality in South Africa. Our collective aim is to promote the recognition of participatory and incremental informal settlement upgrading as a core strategy for ensuring access to housing, basic services and social amenities (including social facilities and public spaces) for the urban poor. We wish to see these issues clearly articulated in the new White Paper on Human Settlements (referred to hereafter as the White Paper) and enabling legislation.

We are encouraged that despite the challenges in informal settlement upgrading, the Upgrading of Informal Settlements Programme (UISP) has been acknowledged as a policy priority by the DHS and other key departments and entities (including COGTA, DPME and National Treasury) and the need for scaling up of the programme recognised. We believe that informal settlement upgrading should be a key thematic focus of the White Paper, with the revised UISP as the lead programme to drive delivery and address the considerable housing backlog (DHS 2009). The National Development Plan (NDP),[1] Integrated Urban Development Framework (IUDF),[2] Spatial Planning and Land Use Management Act (SPLUMA),[3] and UN Sustainable Development Goals (SDGs)[4] all emphasise the importance of informal settlement upgrading. Community participation is a key component of our relevant legislation and policies in South Africa (Isandla Institute 2019: 9). However, government at all levels has also shown ambivalence towards the programme and the involvement of communities, resulting in protests or NGOs approaching court on their behalf. In April 2016 the Johannesburg High Court handed down an important judgment in the *Melani* case, finding it unlawful that the City of Johannesburg had not applied the UISP to the Slovo Park informal settlement, and requiring the City to rectify this. The judgment underlined that the UISP applies to all informal settlements and that relocation is a last resort only after the possibility of upgrading has been investigated and this approach found

to be unfeasible (Huchzermeyer 2016: 204).[5] However there remain challenges which continue to hinder successful implementation across the country, and the disjuncture between policy and practice poses a significant challenge for the development of the White Paper, as the DHS must ensure that the document does not simply entrench existing trends, but rather enables more progressive and transformative development practices.[6]

We have a deep belief in and commitment to people-centred development and processes that promote community involvement and empowerment, and want to ensure that national policy recognises the important role of non-state actors, especially communities of the urban poor, in human settlements development. We draw on lessons learned in our everyday practice to highlight key issues that we believe require articulation in the current legislative and policy review. We further draw on our collective role in the drafting and implementation of the Western Cape Informal Settlement Support Programme (ISSP) in the Western Cape.[7] Our active involvement in the ISSP provides us with a unique lens on what national policy should promote, enable and curtail. It is our view that the national policy needs to take account of the ISSP as it drives a participatory, partnership-based and incremental approach to informal settlement upgrading. In the course of implementing the ISSP, we are gaining further insights into the challenges and opportunities of pursuing a progressive and developmental approach to informal settlements, and are able to identify the need for specific changes in mind-sets, organisational systems and capacity, and the broader regulatory, policy and financial environment.

1.1. Outline of submission

This submission consists of five sections. Section 2 briefly outlines our understanding of informal settlement upgrading and its guiding principle, as well as highlights the disjuncture between policy and practice that we have observed through our work in informal settlements. Section 3 assesses the state of play regarding six key issues that significantly impact on informal settlement upgrading in South African cities: 1) informal settlement upgrading as an urban land reform priority; 2) access to funding and finance; 3) investment in public space; 4) multi-stakeholder partnerships; 5) security of tenure; and 6) the right to build. Section 4 summarises our recommendations made in this submission for the White Paper. Before we present these sections, however, we believe it is important to articulate how we imagine informal settlement upgrading unfold and how an incrementally developed neighbourhood may look. Embedded within this imaginary is both a critique of current thinking/assumptions and an identification of possibilities, which the national policy then needs to enable.

WHAT DOES AN INCREMENTALLY DEVELOPED NEIGHBOURHOOD LOOK LIKE?

We envisage a future where **informality remains a long-term feature of the municipal landscape** as settlements embark on their own **trajectories of incremental development towards dignified, dynamic and inclusive neighbourhoods**. Some settlements may be on a slower trajectory than others, as public and private funding needs to be unlocked. However, even in settlements that are on a slower development trajectory there is a **clearly negotiated vision and plan of the 'neighbourhood in becoming**', with incremental improvements occurring in line with the long-term vision and community plan, as and when households and government are able to unlock resources.

Significant public investment will be directed towards the public realm to support dignity, health, safety and livelihoods. As a result, **essential services, road infrastructure, taxi ranks, public space and social facilities will define the quality of the living environment**, with households being assured of their right to stay through tenure security modalities that suit the local context. These tenure options can differ between places and over time, but the **gradual progression towards**

greater tenure security does not necessarily result in freehold title. The right to stay and the right to build do not require individual ownership to the land.

As development progresses incrementally, newly emerging neighbourhoods will combine formal elements (including housing) with informal elements, including self-build, incremental housing. Municipalities will be able to **offer and support a variety of housing solutions**, with a strong bias towards **EPHP and incremental housing solutions pursued by individual households or groups**. Through zoning, land use approval, planning approval, templates for building plans, financial and other technical support, **municipalities will support self-build and incentivise a local construction sector**.

Many residents will use their plots and their shelter to **generate a livelihood and perform a service to the community**. Spaza shops, crèches, barbershops and hairdresser salons, multi-purpose community centres, safe shebeens, tailors and seamstresses, artisans, churches, mosques and rental accommodation all contribute to the vibrancy of the neighbourhood. While some regulation of these activities may be necessary, the municipality will have made its systems simple, easy and responsive to address inefficient, costly bureaucracy and over-regulation. After all, its **primary**

interest is in addressing poverty and strengthening livelihood opportunities.

As neighbourhoods become more developed, they are **better integrated into the overall spatial fabric of the municipality**. Physical and virtual pathways are created towards adjacent neighbourhoods and centres of economic opportunity. Taxi ranks and bus stops, provided for at an early stage of neighbourhood development, are not only important transport hubs, but also connect residents to local entrepreneurs and food markets.

Throughout, **communities are actively involved in the development of their settlements**. They have mapped their settlement, verified government data, decided on a vision and plan for their neighbourhood, exercised social control, negotiated service standards, monitored progress and implementation, provided local labour, held government to account and sought to overcome internal differences and disputes. The **municipality has invested significantly in its capacity to be engaged and responsive**, to drive implementation, and to assemble resources and partnerships with other spheres of government and other sectors. It has also invested in **monitoring, evaluation and learning to improve its performance**.

02.

GUIDING PRINCIPLES FOR INFORMAL SETTLEMENT UPGRADING

Informal settlement upgrading involves a range of interventions aimed at spatial and social transformation. Rural to urban migration (urbanisation), natural population growth and smaller households – together with the declining rate of state-subsidised housing delivery – has meant an increased demand for housing and basic services in towns and cities. Informal settlements are a people-driven, bottom-up response and solution. However informal settlements are often considered as spaces of illegality, deprivation and indignity, which has fed into the 'eradication' discourse that is still pervasive in some municipalities and provinces. This has been changing over the years, with the recognition of informal settlements as spaces of opportunity - where the urban poor gain access to shelter, services, livelihoods and social networks – and which should not simply be left as they are but transformed over time. The function that these spaces perform in the lives of their inhabitants should be acknowledged and appreciated, as they very often sustain already precarious and insecure livelihoods. Informal settlement upgrading serves as a strategy for enhancing the opportunity already implicit in informal settlements, which has important social and economic dimensions. In informal settlements "livelihoods," rely on both productive (wage labour, or the production of goods and services that meet people's own needs directly or can be sold) and distributive labour (the work of engineering distributions of goods produced elsewhere and the effort of building and maintaining social ties through which resources are circulated) (SERI 2019: 54).[8]

Informal settlement upgrading is a long-term process, however there are also urgent dimensions to human settlements development. The increasingly frequent and often deadly fires, floods and other disasters in informal settlements are a major cause for concern for municipalities, with growing anger amongst communities about the effects of these disasters and the lack of upgrading taking place.[9] Firefighters are hampered by the close proximity of structures (less than three metres apart) resulting in the rapid spread of fire, and narrow access routes and lack of street names or exact locations in settlements also hinders access for emergency ambulance services and the police.[10] This impacts health and security in informal settlements. Unlawful electricity connections are dangerous, while poor access to sanitation facilities cause immense hardship and safety concerns for residents, especially women, children and those living with disabilities (SERI 2019a).

Informal settlement upgrading typically has to straddle the rights and needs of individuals/ households with those that are at the level of the collective/settlement. In the current

dispensation, the dominant focus is ultimately on the entitlements (including eligibility/non-eligibility) of households, which has resulted in systemic blockages in the upgrading value chain. Our view is that the primary emphasis should be on collective/settlement level rights and development, with household/individual rights enabled through a stronger focus on functional (and incremental) tenure and neighbourhood-level development.

2.1. Mainstreaming community participation: Communities as active change agents

Core to informal settlement upgrading is an emphasis on communities as active agents with critical roles to play in the planning, implementation and maintenance of development interventions (DHS 2009; SACN 2014; NUSP 2015; Cirolia et al 2016; Hendler and Fieuw 2018; SERI 2019; Isandla Institute 2019). We agree with the finding of the UISP baseline assessment evaluation that building community empowerment and active participation are fundamental tenets of the UISP, however that this is currently poorly implemented and under-funded (RebelGroup 2017). The DHS acknowledges that there has been an inability for communities and civil society to meaningfully and effectively participate in the various dimensions of human settlements development - including urban planning, urban management, and project planning – and there is "a limited ability to effectively leverage the 'social capital' and potential for self-help, inherent within communities" (DHS 2015: 11). In informal upgrading projects it is vital that existing arrangements, systems, patterns and procedures that make up norms, practices and agency in the settlements that are being upgraded are recognised and understood, and that the logic of an intervention approach begins with what already exists (SERI 2019: 8).

A recent guide published by Isandla Institute specifically designed for municipal officials (including planners, engineers, project managers, and other built environment professionals) shows how coproduction is an effective way for municipalities to work with communities, emphasising its socio-technical underpinnings and contextualising it within the policy and legal context (Isandla Institute 2019). The guide also examines what is needed to create an institutional environment that supports co-production, and examines the various components of an informal settlement upgrading project (planning, essential services provision, land and tenure decisions, settlement design and spatial layout, and incremental housing consolidation), offering practical suggestions for working with communities on these aspects of upgrading, using co-production techniques and methodologies. Finally, the guide identifies some of the challenges with pursuing co-production in upgrading and focuses on managing conflicts and expectations (Isandla Institute 2019). Co-production requires a shift in mindset as it sees communities as strategic partners with deep-rooted knowledge of their settlements that must be harnessed (Isandla Institute 2019: 76). Importantly, co-production approaches allow for more contextually-sensitive incremental settlement upgrading plans that respond better to the needs of residents, and these approaches also improve trust in the municipality, strengthen community commitment to the upgrading process, and empower residents.

Communities are best placed to identify local needs and priorities, and therefore to determine appropriate development trajectories for their neighbourhoods and settlements. Participatory informal settlement upgrading empowers communities through processes of information gathering, collective decision-making and capacity building. Participatory informal settlement upgrading also encourages a sense of ownership among communities as those who are actively

involved in the planning and implementation of development interventions are more likely to commit to maintaining development outcomes. The categorisation of informal settlements presents important opportunities for partnerships. The process is generally closed within municipalities, with little transparency for settlement residents to know their settlement's category and what this means for its development, however the process can be managed in a more transparent and democratic manner. While categorisation is a highly contentious process and it is understandable that municipalities would not want to reveal this information, communicating with residents on how the categorisation process works will assist in building trust in the municipality (Isandla Institute 2019: 19).

Some of the lessons learned over the decade in terms of successful partnerships between local government and other stakeholders around informal settlement upgrading include the following: the value of a deep social facilitation process; the need for political endorsement and an enabling local policy environment; the fact that long delays can kill a project or partnership; the requirement of building municipal capacity for participatory upgrading; the importance of experimentation, innovation and change are required; and the vital nature of joint decision-making and effective communication (Hendler and Fieuw 2018: 99-102). The White Paper should emphasise and explain the key guiding principles for community participation in upgrading, which include: dignity; empowerment and agency; voice and influence; accountability; responsiveness; transparency (Isandla Institute 2019: 11-12). The White Paper should work towards enabling communities to participate as active agents, and to co-create – in partnership with government and other stakeholders – sustainable, integrated and resilient human settlements.

2.2. The new role for local government: Enabled enabler of progressive practice[11]

Informal settlement upgrading is primarily a function of local government, as it is at the local scale where the complexities of human settlements development must be navigated. We agree with the recommendation that this mandate vests within local government, which should provide the co-ordination of urban development functions, and that national and provincial departments return to a housing focus (Indego 2018). Municipalities are therefore not merely implementation agents of national human settlements programmes; they need to assemble the requisite partnerships and processes to effectively manage the challenges, trade-offs and contestation inherent to human settlements development, and must do so in an engaged, accountable and transparent manner. As CORC explains, informal settlement upgrading projects are an important "means to draw in politicians and policy makers in order to challenge and transform institutional arrangements and policies (Hendler and Fieuw 2018: 14). The high levels of deprivation in informal settlements need to be acknowledged and standards need to be put in place for essential services. Municipalities need to be held accountable for ensuring that all informal settlements meet these standards regardless of whether the settlement is to be upgraded or relocated (RebelGroup 2017).

While there are progressive policy measures that encourage and guide the upgrading of informal settlements in South Africa, it is our experience that these rarely find articulation in practice. This disjuncture between policy and practice may be the result of a number of factors including unchanged mindsets regarding the function of informal settlements, a weak appetite on the

part of the state to partner with non-state actors, an emphasis on quantitative rather than qualitative outcomes, a lack of capacity among local stakeholders (including local government, NGOs and communities) and a mismatch between policy objectives and the existing instruments for development. We believe that it is crucial for the White Paper to explicitly enable and encourage progressive practice as the foundation for human settlements policy going forward. This means that the new policy needs to be strongly rooted in practitioner perspectives on the possibilities and constraints of participatory, partnership-based, incremental and in situ neighbourhood development. The White Paper needs to straddle an unambiguous normative approach with a sound pragmatic sensibility of the institutional realities and capacity available and attainable to realise the policy objectives.

Municipalities, NGOs and private sector entities are already utilising innovative and effective methodologies to improve the lives of informal settlement dwellers. We believe that deeper engagement and joint learning across scales and stakeholders, and the formation of innovative partnerships at the local level, is critical. Equally important is the investment in adequate capacity for informal settlement upgrading across all spheres of government. We welcome the establishment in the DHS of the Directorate: Informal Settlement Upgrading, to provide support to provinces and municipalities and to manage the National Upgrading Support Programme (NUSP), which plays an important role in coordinating this engagement and learning. The White Paper must create an enabling environment that allows for and supports this kind of capacity development, ongoing engagement and learning.

We strongly believe in strengthening the collection, use and management of data related to informal settlements and informal settlement upgrading. We further argue that community involvement in local enumeration has proven to be a valuable strategy in bringing local knowledge to bear, highlighting data gaps in public data and empowering local communities, amongst others. We note that in terms of the verification of informal settlements delivery data, the Presidency, National Treasury and DHS have found serious challenges with informal settlement delivery claims, which for various reasons have both lacked clarity and rigorous interrogation (Rhizome Management Services 2014: 1-2). In order to ensure that the principles of informal settlement upgrading are recognised, and that the UISP is not used for providing services to greenfield sites rather than to upgrade informal settlements in-situ, there is a need to examine how targets and performance are measured (Hendler and Fieuw 2018: 34). Key implementation questions in terms of informal settlement upgrading that need to be addressed in performance monitoring at the local and provincial level include the following: what forms of tenure security are being provided in settlements; what levels of service are being provided; what are the medium- and long-term plans for the settlements in terms of permanent services, security of tenure and housing consolidation; what is in place in terms of urban management and access to social and economic facilities; what partnerships with communities and CBOs are taking place; and what creation of livelihoods opportunities in settlements has occurred.

The Auditor General's findings on local governments for 2017/2018 raised concerns about the financial health of some of the metros and serious problems with procurement and supply chain management that particularly impact service delivery to informal settlements (IBPSA 2019: 1). Informal settlement residents receive most of their services from private contractors and therefore feel the consequences of poor financial management more heavily than other

residents. The work of the Social Audit Network (SAN) has shown that informal settlement residents themselves can work with government to monitor services and financial management, and that such citizen-based monitoring needs to be done on a much larger scale (IBPSA 2019: 1). The involvement of residents and communities in monitoring delivery of services is also crucial, and should be articulated in the White Paper.

FOREIGN NATIONALS LIVING IN INFORMAL SETTLEMENTS

While there is a belief that informal settlements are populated predominantly by foreign migrants, this has been shown not to be the case and most migration is internal to South Africa (NUSP 2015).

The issue of 'non-qualifiers', and particularly foreign nationals, needs to be explicitly addressed in the White Paper. There appears to be a lack of understanding around this which can lead to unnecessary tensions and contestation during planning and implementation of upgrading projects, particularly given the complexity and range of attitudes to foreign nationals which exist in South Africa (and vary by settlement and also by province) (DHS and DPME 2016: 131-145).

The White Paper should acknowledge that in terms of section 26 of the Constitution everyone has the right to have access to adequate housing (including refugees, asylum seekers and undocumented migrants). Similarly, the Water Services Act obliges municipalities to provide access to at least a basic level of water services to everyone in their jurisdiction, wherever they reside. The PIE Act also applies across the board and prevents the demolition of someone's home or without a court order. This means that within informal settlements, upgrading plans need to be inclusive and address both South African and non-South African households, ensuring that basic services, incremental tenure and housing consolidation support is tailored to local context, norms and practices.

The UISP includes a number of references to "illegal immigrants"; this phrasing is problematic and "undocumented migrant" should rather be used. Nonetheless, in terms of the UISP, the socio-economic and demographic profile of the community should be assessed, and when municipalities submit their interim business plans they should include the "identification of illegal immigrants" (NUSP 2015). However, it has been argued that at the feasibility stages an estimate of "illegal immigrants would suffice, if relevant at all (SERI 2011: 91). According to the UISP, in cases where "illegal immigrants" are identified in a settlement, the municipality or provincial department should report to the Department of Home Affairs who will investigate the matter and make recommendations to the developer on "how to proceed and whether informal occupation rights could be awarded to such persons as an interim measure" (DHS 2009: 39-40).

Importantly, in principle the only tenure arrangement that cannot be extended to undocumented migrants is individual ownership (DHS 2009), which means that there are many other tenure arrangements that can be provided (see Section 3.5 below). It is also important to emphasise that unlike the other housing programmes (where specific eligibility criteria apply), in terms of the informal settlement programme and grant (as well as the emergency housing grant that is sometimes used to fund interim service arrangements), all informal settlement residents effectively qualify for Phases 1-3 interventions, irrespective of income level, citizenship, lack of dependents, or past home ownership (NUSP 2015).

Therefore, at the settlement level, all residents benefit from upgrading (DHS and DPME 2016) and there is no legal prohibition to the provision of serviced sites to foreign nationals or other interventions falling under Phases 1-3 of the upgrading programme. Beneficiary eligibility becomes an issue in terms of the EPHP or consolidation subsidy (because non-South African citizens do not qualify for top-structure housing subsidies). However, this does not mean that other support mechanisms for housing consolidation cannot be developed and utilised (NUSP 2015) (see Section 3.6 below).

03.

"KEY INFORMAL SETTLEMENT UPGRADING-RELATED ISSUES"

This section considers six key issues that we as a collective believe are central to a progressive approach to human settlements development, and informal settlement upgrading in particular, and should be addressed in the White Paper and enabling legislation.

3.1. Informal settlement upgrading as an urban land reform priority

Informal settlements emerge as the result of dysfunctional land and property markets that exclude the urban poor. Low income communities, who are unable to access land and shelter through formal channels, are often pushed to the urban periphery. Access to well-located, serviced land remains a major challenge for informal settlement upgrading in South Africa, with funding limitations a key issue (Rebel Group 2017). While some informal settlements develop on well-located land, harsh living conditions contribute to a poor quality of life for residents. Therefore, while this submission argues that informal settlement upgrading is a critical strategy for ensuring that the urban poor have access to basic services, social facilities, public space and livelihood opportunities, we also recognise that this strategy will not affect the necessary change if it is narrowly construed as a site-and-service approach and is not situated within the broader transformation agenda. We expect that the White Paper will move beyond a site-and-service approach to informal settlement upgrading in order to ensure the development of vibrant living environments that meet the needs of the urban poor. Where in situ upgrading is found to be not possible, the White Paper must also make provision for the relocation of settlements to well-located, serviced land. We expect the White Paper to put forward a medium- and long term plan for counteracting South Africa's legacy of spatial inequality, and for developing integrated and inclusive human settlements. While informal settlement upgrading must be central to such a plan, it must also be complemented by a range of other strategies that allow for the transformation of South African land and property markets.

The question of urban land reform is critical. In an important judgment in August 2017, the Western Cape High Court dismissed applications by the landowners of the Marikana informal settlement to evict the 60 000 people living there and ordered the City of Cape Town to enter into negotiations with the property owners to purchase the land.[12] In the event of negotiations failing, the court ordered the City to expropriate the land or provide reasons why it was unable to do so (SERI 2019: 13). In 2019 the Presidential Advisory Panel on Land Reform identified an upsurge in unlawful occupations on urban land, stating that "the fragmented, disjointed, haphazard and unclear lack of policy implementation, including an absence of an adequate redistribution policy, combined with the densification of our urban areas, and the need for

people to access services, infrastructure, and economic opportunities in peri and urban areas, has led to a stark increase in people occupying land illegally" (2019: 12). The Presidential Advisory Panel states that expropriation without compensation is one of several targeted land acquisition strategies, and that it may commence immediately under specified conditions identified for "nil" compensation, including but not limited to abandoned land, land held purely for speculative purposes, unutilised land held by state entities, *informal settlements areas* [emphasis added]; and inner city buildings with absentee landlords (2019: 80). The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change in 2017 also encouraged the "expropriation of well-situated private land where landowners are holding it for speculative purposes", stating that "section 25(3) of the Constitution specifies that the current use of a property should be taken into account when determining compensation" (High Level Panel 2017: 461). We agree with calls that the upgrading of informal settlements should be an urban land reform priority (Royston and Ebrahim 2019). Municipalities have an important role to play in urban land reform and should, amongst others, develop a land release strategy for informal settlement upgrading.

3.2. Access to funding and finance

Informal settlement upgrading is only feasible if projects and programmes are adequately funded and financed. We note the persistent challenges with provincial expenditure on the Human Settlements Development Grant (HSDG) by metros in terms of the Urban Settlements Development Grant (USDG) over the 2014-2019 MTSF period (DHS 2015: 11). This underspending causes frustration within the sector, civil society and communities. Where metros have spent the USDG, a large proportion is allocated to fund bulk infrastructure or other projects rather than informal settlement upgrading (IBPSA 2017: 2). We therefore welcome the new National Treasury grant framework for informal settlement upgrading contained in the 2019 budget, which includes the introduction of a "window" for the UISP that sees ring-fenced funding for informal settlement upgrading included in the USDG and the HSDG (National Treasury 2018: 34). Importantly, there is a requirement that municipalities, metros and provinces work in partnerships with communities. The informal settlement upgrading "window" for 2019/2020 states that at least 20% of the USDG has to be spent on informal settlement upgrades and this "window" includes a requirement that metros work in partnership with communities (IBPSA 2019a). We welcome the formal introduction of the Informal Settlements Upgrading Partnership Grant (ISUPG) allocated to provinces and metros (taken from the HSDG and USDG respectively) to fund the upgrade of informal settlements and the shifting of focus to partnerships with communities. We also welcome the shifting of funding from the Integrated National Electrification Programme to the USDG to fund the improved implementation of the electrification of households in informal settlements in metros (IBPSA 2019a), noting that electrification projects in informal settlements should form part of a broader participatory and incremental approach to upgrading informal settlements.

However, the White Paper will have to give greater clarity on how housing consolidation is financed and enabled. The current eligibility criteria for the consolidation subsidy significantly impede an incremental approach to upgrading, as the presence of a significant number of 'non-qualifiers' (as per the administrative interpretation) mean that further public investment is curtailed. A different approach is needed, one that creatively 'knits together' different housing

consolidation strategies, instruments and mechanisms to accommodate the socio-economic diversity of an emerging neighbourhood. As noted previously, the issue of 'non-qualifiers', and particularly foreign nationals, needs to be explicitly addressed in the White Paper.

While grant funding will remain a critical mechanism for financing informal settlement upgrading, the White Paper must also make provision for alternative financing mechanisms – particularly those that are community-driven. Because grant funding is often limited to service level infrastructure, and ill-suited to participatory informal settlement upgrading processes, alternative financing mechanisms that allow for community empowerment are likely to give rise to a more responsive development practice. We welcome the openness to household involvement and contributions in incremental housing provision and recommend that the shape and form of this involvement be explored in greater detail in the White Paper. SERI's research across three settlements and provinces has found that there are very often informal saving schemes (stokvels) in informal settlements (SERI 2019). Local and international practice illustrates the value of community-driven financing models that enable informal settlement dwellers to save, contribute to development processes, and to leverage public sector investment and partnerships. CORC's Community Urban Finance Facility (CUFF) is an example of such an innovative financing mechanism at a national level that enables communities through savings mobilisation to leverage funding from both the public and private sector. In addition, the intent of the CUFF is to circumvent bureaucratic processes and enable timeous availability of funding for upgrading (Hendler and Fieuw 2018: 19-21).

3.3. Investment in public space

In informal settlements, as in formal areas, access to public space is central to the wellbeing of residents and should be considered a vital component of creating integrated, inclusive, liveable and sustainable neighbourhoods and cities. The White Paper should define what is meant by public space, including its value and implications for development practice, and should address the ways in which the accessibility and safety of public spaces in South Africans cities (and particularly in informal settlements) may be enhanced. Our experiences, particularly the work of VPUU, illustrate the positive outcomes that can be achieved if investment in public space is prioritised. VPUU works across scales and in close partnership with multiple stakeholders, employing a community-orientated, area-based, integrated approach in order to develop socially activated and safe public spaces in informal settlements. The White Paper must incentivise and enable municipalities to prioritise investment in public space by adequately guiding resource allocation. This should be considered at the outset of any upgrading intervention, before public infrastructure provision and settlement division.

3.4. Multi-stakeholder partnerships

Multi-stakeholder partnerships should be acknowledged in the White Paper as a central thrust in human settlements development. While national, provincial and local government stakeholders have key roles to play in driving informal settlement upgrading, they cannot do so alone. The scale and complexity of the challenge necessitates multi-stakeholder partnerships that allow for a range of skills and competencies to be brought to bear on the upgrading process. National Treasury has emphasised the importance of partnering with communities to upgrade informal settlements (National Treasury 2018). It is true that multi-stakeholder partnerships increase

the feasibility of upgrading interventions by increasing trust and decreasing risk. Building trust with communities is the critical foundation on which projects either fail or are successfully implemented, and this often requires intermediaries to act as facilitators. When communities are actively involved in decision-making they are more likely to feel a sense of ownership over development processes and less likely to resist project implementation. Multi-stakeholder partnerships also enhance efficiency by encouraging complementarity, and allow for resource pooling and maximisation. However, while policy in South Africa recognises that multi-stakeholder partnerships are crucial for transformative urban development – and particularly informal settlement upgrading – these are not yet prevalent in practice. Because institutional and financial models are not geared toward supporting multi-stakeholder partnerships, government actors tend to work in silos and in isolation from each other, as well as in isolation from a range of stakeholders with important contributions to make to the process of informal settlement upgrading. The White Paper should consider mechanisms to enable and resource multi-stakeholder partnerships (e.g. the NGO Framework Agreement under the Western Cape ISSP) and identify public sector capacity requirements to assemble, coordinate and manage such partnerships. Municipalities, and particularly metros, need to configure their institutional arrangements and structures in a way to ensure the coordination of informal settlement upgrading (NUSP 2015; IBPSA 2017: 5).

As a result of the *Melani* judgment in 2016, the City of Johannesburg formed a local level steering committee, the Slovo Park Task Team, which is a multi-stakeholder forum which includes the Slovo Park Community Development Forum (SPCDF) municipal officials and representatives from MOEs, provincial and national government officials, technical experts, academics and researchers. Developing these kind of multi-stakeholder partnerships as early as possible is critical to preventing community protests and/or costly litigation in informal settlements. There are many organisations which have experience in building and maintaining multi-stakeholder partnerships, and understand the challenges and ways to address these to ensure the viability and sustainability of projects (Hendler and Fieuw 2018: 22; Isandla Institute 2019). The White Paper should outline how communities and other stakeholders should participate meaningfully in the development of human settlements in South Africa. We recommend that the White Paper give clear guidance on the institutionalisation of multi-stakeholder partnerships for informal settlement upgrading, incentivise government stakeholders to initiate multi-stakeholder partnerships and make provision for capacity building in the interest of maintaining these. This can be done, firstly, by outlining the value add of different role-players, including communities, NGOs, tertiary institutions and private sector entities. Secondly, the White Paper must examine the implications of partnerships for practice and guide local governments in answering questions such as 'Who do we partner with?', and 'What resources are available to support multi-stakeholder partnerships?'

3.5. Security of tenure

The UISP baseline assessment evaluation found that recognising tenure through different mechanisms and allowing for incremental approaches needs to be encouraged and added to the UISP, as formal registered title is not proving feasible in the short- to medium-term (RebelGroup 2017: 28). The practice of only providing title deeds in the final phase when the top structure is provided has been highlighted as problematic (RebelGroup 2017: 28). In fact, the

preoccupation with freehold title is both fundamentally flawed and limiting the prospect of incremental upgrading towards liveable, dynamic neighbourhoods.

A range of tenure options is important to allow for progressive strengthening of tenure security, from basic functional tenure to full title. Norms and standards applicable to land-related decisions in upgrading processes should be acknowledged, but there should be room for negotiation around specific outcomes. SPLUMA allows for the integration of informal settlements into city-wide plans and the innovative use of land use regulations to improve tenure security. Importantly, each informal settlement is different and an understanding of the diversity of local land and tenure arrangements and land use management practices (including land access, social relations, local norms and enumeration) should form the basis for functional tenure, in conjunction with administrative recognition, and is an essential starting point for informal settlement upgrading interventions (SERI 2019: 19, 33). There has been considerable innovative research conducted on the questions of security of tenure in urban informal settlements (NUSP 2015) and rural informal settlements where customary land is prevalent (HDA 2015; Hornby et al 2017; SERI 2019; Isandla Institute 2019), and this should find articulation in the White Paper.

3.6. Incremental housing and the right to build

We welcome the proposed consolidation of self-build (including EPHP) and informal settlement upgrading programmes, and would like to see *the right to build* included in the White Paper. The right to build basically refers to a publicly supported scheme to address the housing crisis and allow people to build their own homes, with the necessary guidance and support.[13] Social cohesion is enhanced through the incremental housing construction process, which creates opportunities for partnerships (Isandla Institute 2019: 62). Housing consolidation falls within the last phase of the UISP process but is not covered by UISP funding, which only includes up to Phase 3 (the creation of serviced stands). Residents have two main subsidies that they can use for consolidating their unit – the EPHP and consolidation subsidies – however the limitations of these subsidies necessitate complementary approaches and interventions to support self-build incremental housing (Isandla Institute 2019: 62). The UISP baseline assessment evaluation found that residents are often unable to contribute to building adequate top structures and that the UISP needs to incorporate an element towards providing safe shelter within the programme (RebelGroup 2017: 28). The UISP evaluation recommended that the subsidy should be extended to contribute to an incremental structure (factored into the total amount per site), suggesting that a menu of options could be built into the programme (just like different levels of services) to include slabs with a wet core; slabs with upright corner poles, slabs with roof trusses for example, for residents to choose from (RebelGroup 2017: 42).

Municipalities should tap into the latent willingness, social capital, potential and agency of communities for incremental consolidation (DHS 2015; NUSP 2015), and building partnerships

 with stakeholders and role-players involved in the construction process is key (Isandla Institute 2019: 61). The White Paper should include mention of housing support for self-build in informal settlement upgrading, so that targets are set and so that this in turn incentivises implementation (Eglin 2017: 9). In this regard, a national Right to Build scheme should be

explored. Such a scheme would cover issues related to planning approval, building norms and standards, standardised and modular building plans, and the role of the local (SMME) construction sector, for example. DAG's work has shown that support for a local emerging construction sector is key in supporting households and communities build at scale (Kumar and MacGregor-Rourke 2018).

04.

RECOMMENDATIONS

The recommendations made in this submission draw on the everyday practice of the contributing organisations, and are intended to inform the development of robust and transformative human settlements policy. Our recommendations can be summarised as follows:

1. **Informal settlement upgrading as the key thrust of human settlements development:** The White Paper must recognise informal settlement upgrading as a core thrust of human settlements development and the UISP as the lead programme. If this approach to poverty reduction and spatial transformation is not prioritised in human settlements policy, it will not be utilised in practice.

2. **Community participation:** The White Paper must acknowledge the critical role that communities have to play in the planning, implementation, and monitoring and evaluation of informal settlement upgrading interventions. Without the active involvement of informal settlement dwellers and their influence on development decisions, development intervention will not result in inclusive and sustainable outcomes. While informal settlement upgrading is utilised to bring about change in the physical environment, is must also be used as a means through which to empower communities. The White Paper must encourage development practitioners to harness and strengthen existing community capabilities.

3. **Local government as an 'enabled enabler':** The White Paper must enable local government representatives to undertake participatory and incremental informal settlement upgrading, and must recognise the important role that local government plays in bringing about change. The White Paper must emphasise the importance of municipalities dedicating adequate capacity and skills to fulfil their multi-faceted roles in informal settlement upgrading, and make provision for capacity building of municipal representatives to enable them to play a lead role in bringing about liveable, dynamic neighbourhoods. This also has implications for the roles and capacities of provincial and national government, such as the capacity to effectively execute management, support and oversight functions (including disbursement of funds).

4. **Cross-sectoral learning:** The White Paper must encourage the upscaling of innovative and effective informal settlement upgrading practices through cross-sectoral learning initiatives (that is, learning across spheres of government, scales of operation and stakeholder groups). If mechanisms for identifying, disseminating and testing best practice are put in place, development practitioners will be encouraged to experiment with a range of potentially transformative methodologies. Monitoring and evaluation outcomes (see

below under #12) should feed into learning initiatives, to ensure that learnings are based on existing practice.

5. **Focus on outcomes:** The White Paper needs to emphasise that informal settlement upgrading is about incremental development towards functional, liveable, dignified, inclusive and vibrant neighbourhoods. It is much more encompassing than the narrow site-and-services approach that dominates current discourse. The White Paper further needs to make reference to the responsibility of the human settlements sector towards realising gender equity in the delivery of services, access to land and security of tenure. The focus on outcomes also implies a whole-of-government and whole-of-society approach, which needs to be articulated in the White Paper.

6. **Urban land reform:** The White Paper must emphasise the need for urban land reform, with informal settlement upgrading an urban land reform priority. Land acquisition, including the expropriation of land, and land release are critical strategies to enable in situ upgrading as an intervention of choice, or settlement development for relocated households.

7. **Funding and financing:** The White Paper must make provision for alternative financing mechanisms, particularly those that draw on community capabilities and resources. In a fiscally constrained environment, alternative financing mechanisms allow for more flexible and responsive resource allocation. Community-driven financing schemes, such as savings groups or city funds, empower informal settlement dwellers to contribute to their own development. Other financing mechanisms that leverage public, private and community/ household contributions should be explored. In terms of the new ISUPG, we believe it is important to develop systems to monitor its uptake, use and impact, especially with regards to enabling a participatory and partnership approach. The % allocation for this purpose – which should be stipulated as a minimum rather than a maximum requirement – should be monitored to determine whether it is adequate and utilised appropriately.

8. **Investment in public space:** The White Paper must adequately define public space and recognise its importance for human settlements development and the well-being of urban residents. Investment in the making of accessible and safe public spaces must also be prioritised in the White Paper, and identified as an early step in upgrading processes (not only at UISP Phase 3). Essentially, public investment should primarily be directed towards the public realm, including public space, and less to the private (household) sphere.

9. **Multi-stakeholder partnerships:** The White Paper must outline the potential value add of a range of stakeholders (including local communities, NGOs, tertiary institutions, and private sector entities). It must enable and encourage multi-stakeholder partnerships in the interest of feasibility, efficiency, accountability and sustainability. It should further consider mechanisms to enable and resource such partnerships (e.g. the NGO Framework Agreement under the Western Cape ISSP) and identify public sector capacity requirements to assemble, coordinate and manage such partnerships.

10. **Security of tenure:** The White Paper should emphasise the recognition of tenure through different mechanisms and allowing for incremental approaches over the short- and medium-term. The White Paper should encourage a recognition of the diversity of local land and tenure arrangements and land use management practices in settlements, which should

form the basis for functional tenure in conjunction with administrative recognition. The White Paper should emphasise that this is an essential starting point for informal settlement upgrading interventions.

11. **Incremental housing and the right to build:** The White Paper should articulate the right to build in terms of the informal settlement upgrading process, and explore a national 'Right to Build' scheme. It should emphasise that municipalities tap into the latent willingness and agency of communities for incremental consolidation, and that building partnerships with stakeholders and role-players involved in the construction process is key. The White Paper should include mention of housing support for self-build in informal settlement upgrading, so that targets are set and so that this in turn incentivises implementation. Municipalities should be required/encouraged to make both technical and financial support available to enable incremental housing.

12. **Monitoring & evaluation and the role of data to drive good practice:** The White Paper should require municipalities to develop a monitoring, evaluation and learning framework that guides local informal settlement upgrading approaches. Provision should be made for the role of communities in monitoring and evaluation; a national citizen-based monitoring approach could be developed, in partnership with the DPME and possibly other stakeholders. The White Paper should further direct municipalities regarding the collection, use and management of relevant data, and the important role local communities can play in these processes.

The White Paper will have to find a constructive balance between norms, principles and standards guiding practice, and practice guiding norms, principles and standards. Without the latter, the policy intent will remain unattainable and frustration with government's inability to live up to expectations will grow. Therefore, in developing the new human settlements policy and legislation, we believe that it is of critical importance for the DHS to consult widely and in particular with those stakeholders who live in informal settlements and who have hands-on experience with the limitations and possibilities of existing policy and mechanisms for informal settlement upgrading. While we recognise that we represent but a small slice of a broader constellation of actors, we nonetheless believe that we have valuable expertise and insights to offer. We hereby express our interest in and availability for a sustained engagement with the Department and other relevant stakeholders.

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1   The NDP includes as one of its five objectives to be achieved by 2030 as "the upgrading of all informal settlements on suitable, well located land" (NPC 2012: 58). The NDP promotes the need to address informal settlements both at a programmatic and project level. In addition, it encourages a people-centred approach that is focused on understanding and responding to the needs of the community living in an informal settlement and creating integrated neighbourhoods. A key element of the NDP is its "acceptance of informality" (NUSP 2015)

2   The IUDF provides a roadmap to implement the NDP vision for the spatial transformation of South African cities and towns. The vision of the IUDF is "liveable, safe, resource-efficient cities and towns that are socially integrated, economically inclusive and globally competitive, where residents actively participate in urban life", and it incorporates four strategic goals which are key to the human settlements agenda: to ensure people have access to social and economic services, opportunities and choices (inclusion and access); to harness urban dynamism for inclusive, sustainable economic growth and development (growth); to enhance the capacity of the state and its citizens to work together to achieve social integration (governance) and to forge new spatial forms in settlement, transport, social and economic areas (spatial integration) (COGTA 2016). The eight policy levers proposed are: integrated spatial planning; integrated transport and mobility; integrated and sustainable human settlements; integrated urban infrastructure; efficient land governance and management; inclusive economic development; empowered active communities; and, effective urban governance.

3   SPLUMA explicitly refers to incremental upgrading of informal areas, which is defined as the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure.

4   The UN Agenda 2030 and SDGs Goal 11, which is to make cities inclusive, safe, resilient and sustainable. In terms of informal settlements, SDG 11 has a target to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030. The SDG 11 also has a target to enhance inclusive and sustainable urbanisation and capacity for participatory, integrated and sustainable human settlement planning and management.

5   *Melani and the Further Residents of Slovo Park Informal Settlement v City of Johannesburg and Others* 2016 (5) SA 67 (GJ) (22 March 2016). See: http://www.seri-sa.org/index.php/more-news/19-litigation/case-entries/225-melani-and-the-further-residents-of-slovo-park-informal-settlement-v-city-of-johannesburg-and-others-slovo-park

6   The recent *Report of the Portfolio Committee on Human Settlements, Water and Sanitation on Budget Vote 38: Human Settlements, on the Strategic Plan for the coming Medium Term Expenditure Framework (MTEF) period and Annual Performance Plan 2019/20* (dated 5 July 2019) found that in 2017/2018 out of 400 informal settlements that were planned to be assessed (feasibility studies conducted), only 61 were assessed, and out of a planned 300 informal settlement upgrading plans that had to be developed, only 109 were completed.

7   The Western Cape Informal Settlement Support Programme includes a provincial Strategic Framework, an Implementation Plan and accompanying M&E Framework as well as the Informal Settlements Support Plan for municipalities. The provincial government adopted it in 2017 and has since engaged local municipalities, NGOs and the private sector in its roll-out.

9   For example, the most prominent form of productive labour in informal settlements is the running of spaza shops, however there is also various forms of distributive labour and of social grants and remittances play an important role in the lives of informal settlement residents (SERI 2019; 54).

10   Ibid.

11   Our view is that informal settlement upgrading is a highly de-centralised action, driven by local government, together with local residents and communities. National and provincial government should provide policy guidance, resources, an enabling regulatory environment, capacity development and oversight, but not take over planning, coordination and implementation roles of local government.

12   *Fischer v Unlawful Occupiers and Others* 2018 (2) SA 228 (WCC). The landowners, together with the City of Cape Town and Western Cape Provincial Minister of Human Settlements are appealing the judgment to the SCA. See https://www.seri-sa.org/index.php/component/content/article?id=491:fischer-v-unlawful-occupiers-erf-149-philippi

13   The UK has passed 'Right to Build ' legislation in October 2016, requiring local authorities in England to make serviced plots available to those who want to build their own home, either as an individual or family unit or as a group. Applicants register on the 'Right to Build' register, which is set up by the National Custom and Self Build Association (NaCSBA). The local authority needs to give suitable development permission for the allocated serviced plot to make it a 'permissioned plot' (i.e. a serviced plot with granted planning permission). For more information see: https://nacsba.org.uk/campaigns/right-to-build-portal/

05.
CONTRIBUTING ORGANISATIONS

Community Organisation Resource Centre (CORC)

The **Community Organisation Resource Centre** is a formally registered Non Profit Organisation (NPO) that supports the social, strategic and administrative practices of urban poor movements, the Federation of the Urban and Rural Poor (FEDUP) and the Informal Settlement Network (ISN). CORC's support to ISN and FEDUP includes savings, data collection, peer-to-peer learning exchanges, community-based planning for informal settlement upgrading and housing projects and engaging with government, funders and other actors. CORC's mission is to support poor communities that are willing and able to help themselves. See: https://www.sasdialliance.org.za/about/corc/

Development Action Group (DAG)

DAG is a non-profit organisation working throughout South Africa to address underlying causes of poverty and inequality in urban areas. The organisation has over 30 years of experience in working with community based organisations to unlock opportunities to access basic services, land, tenure rights and affordable housing. DAG has three integrated programmatic result areas: participatory urban governance, housing and human settlements, and capacity building. These are implemented through a seven-step methodology: building strategic partnerships, citizen mobilisation, capacity building, research, advocacy/lobbying, demonstration projects, and learning from practice. See https://www.dag.org.za/

Habitat for Humanity South Africa

Habitat for Humanity SA is a developmental NGO which forms part of a global brand. Locally, we have a 20-year track record in the human settlements sector, and our focus has been on turning the tide on poverty through a People-Public-Private Partnership (P4) model approach, which focuses on participatory development processes and awareness raising through our active citizenry programme. We are a respected advocate for community-centred development policy, and work with a wide array of stakeholders, from communities and grassroots movements to national policy formulators. See https://habitat.org.za/

Isandla Institute

Isandla Institute acts as a public interest think tank, seeking to promote, and contribute to, systems and practices of urban governance that are just, equitable, inclusive, sustainable and democratic. Central to our work is the notion of urban citizenship, for current and future generations. We understand urban citizenship to be about the realisation of material outcomes necessary for dignity, well-being and inclusion; the recognition of political voice and agency;

and, a responsibility or duty to act with respect towards the urban collective. We engage in policy research, knowledge sharing and dialogue facilitation, institutional support, advocacy and network politics to support urban development and transformation. See: http://isandla.org.za/

People's Environmental Planning (PEP)

PEP is a not-for-profit organisation that has supported organised communities in informal settlements around South Africa since mid-1998. PEP has assisted poor communities affiliated to FEDUP to design, plan and build houses across South Africa, and over the years our work has expanded into researching alternative technologies and cost saving approaches to affordable housing delivery. We have also been active in providing technical training to shackdwellers and officials active within the People's Housing Process (PHP). See http://www.peoplesenvironmentalplanning.org.za/

Ubuhle Bakha Ubuhle (UBU)

UBU provides innovation around the housing challenges that face many people who are looking for home in Cape Town. UBU works with local communities to create housing solutions using processes and self-build technologies tried and tested by the UBU team and communities they work alongside. UBU facilitates the process that leads to community led participation and design, and UBU Build activates the building using sustainable and appropriate materials. See http://www.ubu.bz/

Violence Prevention through Urban Upgrading (VPUU)

VPUU NPC implements multi-sectoral integrated area-based upgrading programmes of neighbourhoods in townships and informal settlements. This is done in partnership with communities, the City of Cape Town, Drakenstein Municipality, Theewaterskloof Municipality and the Western Cape Provincial Government. The organisation works in an integrated team with a focus on community participation, socio economic development, operation and maintenance, planning and design, infrastructure, and knowledge management towards sustainable urban neighbourhoods. See
http://vpuu.org.za/