

Towards an SER Matrix: Monitoring the Progressive  
Realisation of Socio-Economic Rights in South Africa

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Studies in Poverty and Inequality Institute (SPII)

# **A Review of Housing Policy and Development in South Africa since 1994**

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The opinions expressed in this paper are those of the author and do not necessarily reflect the views and opinions of the Studies in Poverty and Inequality Institute (SPII)

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## 1. TERMS OF REFERENCE

This piece of research forms part of a larger research project undertaken by the Studies in Poverty and Inequality Institute (SPII) to compile a measurement matrix of progressive realization of the socio-economic rights enshrined in the South African Constitution.

Towards this outcome, the Socio-Economic Rights Institute of South Africa (SERI) is appointed to undertake a review of housing policy in South Africa since 1996, specifically to address the following:

- a. Construct a definition of 'adequate housing', with explanatory reasons for such construction.
- b. Review the development of policy in respect of the realization of the right of access for all to 'adequate housing'.
- c. Audit the extent to which policy making and formulation is developed with an explicit reference to the obligations on the state to move progressively towards universal realization of this right. Has the state set itself indicators and benchmarks to measure its achievement of this, and if so, what are they?
- d. In the absence of such explicit reference, what principles appear to guide policy development?
- e. Provide a brief statistical section of current housing provision, backlogs, and a review of the number of current houses that fail to meet the standard of 'adequate housing' as contained in section 26 of the Constitution of South Africa.

## 2. EXECUTIVE SUMMARY

The following review of South African housing policy and development since 1994 forms part of a larger research project run by the Studies in Poverty and Inequality Institute (SPII). This broader project seeks to compile a measurement matrix capturing the progressive realisation of socio-economic rights by the government, as required by the Constitution of the Republic of South Africa Act 108 of 1996. To develop such a monitoring and evaluation tool is an ambitious, but necessary, aim. South Africa receives routine praise for having put justiciable socio-economic rights in its Constitution and for being one of the few countries in the world to do so. Observers particularly commend the South African Constitution for imposing *positive* obligations on the state regarding socio-economic rights, requiring proactive policy formulation, budgetary allocation and effective implementation. However, without effective accountability and measurement mechanisms for tracking the realisation of socio-economic rights, the implementation of this socio-economic rights framework cannot be tested. An adequate tool could help corroborate the experience of NGOs and community-based organisations working on housing rights in South Africa since 1994, that is, the failure of government policies to live up to their stated goals and the negative consequences that policies aimed at improving access to housing have at times had for their intended beneficiaries.

Accordingly, this report provides the background necessary to understanding housing policy developments in South Africa since 1994. It begins by summarising key Constitutional Court cases and judgments relating to the right to housing, highlighting instances where the government has failed in policy interpretation or implementation, or where the government or other parties infringe on the right to housing. This survey illustrates the need for an iterative and flexible approach to developing housing policy that is shaped by an active judicial review of cases brought by public interest litigants. The five cases that this report reviews in detail illustrate not only the role of the judiciary in implementing and analysing housing policy – and measuring it against the state’s constitutional obligations – but also some of the problems of the implementation of housing policy caused by government. Recent implementation problems include government housing projects that displace intended beneficiaries and rupture social networks essential to adequate housing (see *Joe Slovo*) and pilot provincial legislation framed as progressive housing policy that threatens the availability of housing for residents of informal settlements (see *Abahlali*).

Against this background of Constitutional Court jurisprudence on the right to housing, it is clear that defining ‘adequate housing’ – as this report aims to do – is no easy feat. In truth, what constitutes adequate housing depends on the specific context and circumstances of households and individuals and their needs and priorities. South Africa is characterised by lingering spatial inequalities and a pronounced rural-urban divide, within which there are many different housing typologies, such as: high-density residential (e.g. inner city flats, private rentals, social housing); shacks in informal settlements on both publicly- and privately-owned land; Reconstruction and Development Programme (RDP) houses in urban townships; backyard shacks adjacent to formal housing; and rural housing. Thus, individuals and households face a

wide variety of housing options that vary in terms of adequacy of location, shelter, space, size of household, affordability, physical security and tenure security. This element of individual- or household-level choice epitomises 'adequacy' and 'accessibility'.

Although it is clear that adequate housing concerns more than providing shelter from the elements, it is difficult (perhaps impossible) to define exactly what constitutes adequate housing, nor is it easy to apply a single definition. Rather, a list of key criteria may be applied to each context, including adequacy of location; adequacy of shelter; affordability (in terms of upfront and ongoing costs); adequacy of service availability; adequacy of space; physical security; security of tenure; future prospects of RDP housing; and the accessibility or availability of such housing to intended beneficiaries. While the state should ideally strive to ensure that *all* persons living in South Africa are able to satisfy *all* of the requirements regarding adequacy of housing – indeed, this is the Department of Human Settlements' reason for existence – in reality, the state *prioritises* housing provision based on land and financial constraints, amongst other factors. Class and racial divisions continue to perpetuate themselves spatially even 16 years after the end of apartheid. Affordable housing that caters for household or individual needs in areas close to work, schools, universities, health care facilities, public libraries, Internet access, etc., can begin to address these divisions, inter-generational poverty and inequality.

Having struggled to construct an adequately flexible definition of 'adequate housing' – or at least the broad set of variables which must fit into any attempted definition – this report surveys the numerous housing policies and programmes formulated and implemented over the past 16 years. It examines in depth the two guiding national policies, the White Paper on Housing (1994) and *Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements* (2004) ('*Breaking New Ground*' or BNG), as well as the following policy and legislative documents: The Housing Act 107 of 1997 and the National Housing Code (2000), the People's Housing Process (1998), the Social Housing Policy (2005), the Inclusionary Housing Policy (2007) and the revised National Housing Code (2009). This report highlights external critiques of each of these policies and programmes. It also evaluates their implementation on the ground and broad social impact where such information is available. This analysis points to areas that require critical review, particularly as a result of the proliferation of government programmes after the 2009 revision of the National Housing Code.

Stepping back from the details of these specific programmes, this report audits the extent to which the development of housing policy-making has made explicit reference to the state's constitutional obligations to move progressively towards universal realisation of the right to adequate housing. The South African state can be commended on the number of houses that it has built over the years given the mammoth challenge that it faced in 1994. The state has also made strides in re-evaluating and reformulating its policies over time to correct poor assumptions, respond to failures and address new challenges. There is no doubt that the state's housing policy development has been, and continues to be, explicit in its ambition to provide better housing to more people and to be more demand-side driven. It thus aims to provide choice to people and create desirable, integrated and functioning human settlements.

However, the state's policies are not sufficiently based on explicit and consistent reference to its constitutional obligations to move progressively towards universal realisation of the right to

adequate housing. While the state refers to this constitutional obligation, it frames housing policy interpretation and practice entirely within other paradigms, such as 'speeding up delivery', 'reducing backlogs' and 'eradicating informal settlements'. Such paradigms focus on attaining minimum standards (for example, the number of housing units 'delivered') rather than achieving a social impact, such as improved services and tenure security. This approach informs a reality in which we have yet to see one successful and properly executed *in situ* upgrade of an informal settlement in Cape Town or Durban, or a large-scale roll out of low-income subsidised community residential units (CRU) in inner city Johannesburg.

Further, problems with the paradigms that underlie policy formulation translate into deficiencies in the benchmarks and indicators that the state employs to measure its success. The Department of Human Settlements (DHS), which is tasked with housing policy formulation and implementation monitoring, has developed a range of primarily numerical delivery benchmarks that it uses to measure its success. The Department equates progressive realisation of access to adequate housing for all with progressive policy formulation, housing delivery and reductions in the backlog of people who are 'inadequately housed' – a general reference to those living in informal settlements.

Even according to these benchmarks and indicators, it is clear that a housing crisis persists in South Africa. Since 1994, the 'inadequately housed' backlog has in fact increased and continues to grow due to factors such as changing household structures, rapid urbanisation and increasing unemployment. In 1994, it was estimated that there was a backlog of 1,5 million units, while in 2010 the shortfall stood at 2,1 million. Recent reports indicate that even these estimates may suffer from under-counting. Further, many of the houses counted in official statistics will have to be 'rectified' in line with the Minister of Human Settlements' R1,3 billion rectification of RDP houses programme, as their quality is extremely poor and some are literally falling down.

The final step in this report is to frame practical recommendations on appropriate indicators (or identify sources from which one could draw such indicators) that one could adopt in reviewing and monitoring realisation of the right to adequate housing. These indicators should not only refer to the progressive nature of the right, but also enable one to assess the protection of and respect for existing access to housing, even if this housing is not adequate in terms of location; shelter; affordability; services; space; physical security; security of tenure; future prospects for RDP housing; and accessibility or availability.

In summary, the following points should inform a matrix aimed at measuring progressive realisation of the right to adequate housing:

- Indicators must account for positive progress as well as negative infringement on the right to housing. One would measure the number of **evictions and forced relocations** from state and privately owned accommodation or land where no alternative accommodation (of a better nature) was provided, or the number of **repossessed houses in townships** and people imprisoned for 'trespassing' in family houses repossessed and auctioned by the banks.

- In collecting data on housing, one should not regard a house as an end in itself but as a social asset and a means to **social and economic transformation, equality, human development and fulfilment** (although we acknowledge that these aspects are not as easy to measure).
- Housing benchmarks and indicators should be **aligned with in-depth and consolidated analyses of data from the Census, Community Survey and General Household Survey** not only to ensure that state prioritisation and funding allocations to housing programmes are appropriate given the greatest need, but also to provide important data for key financial, social and economic factors related to the *impact* of housing provision.
- The matrix should incorporate the findings of a recent cost-benefit analysis (CBA) study conducted by the Social Housing Foundation (SHF). This study points to some critical shortcomings in the availability of accepted national data and statistics on key financial, social and economic factors related to housing. The CBA research identifies a number of indicators that could be assessed to determine the impact of a given type of housing on the lives of its intended beneficiaries, including: **health and education outcomes; access to services; transport costs and time; income and expenditure; access to employment and job opportunities; previous dwelling and motivation to change accommodation; improved urban management; social cohesion; and crime.**
- There is an **urgent need to review which (and how) Breaking New Ground programmes, as outlined in the National Housing Code, are being taken up, where and by whom**, in order to assess whether the programmes appropriately and effectively supply the greatest housing needs.
- There is an **urgent need to implement the emergency housing, informal settlement upgrading and CRU interventions** at a faster rate and a larger scale. The problems and bottle-necks in **inter-governmental relations and funding flows** related to housing provision must be examined more closely and creative solutions found to decrease them.
- There needs to be interrogation of **which municipalities are being accredited by the national Department of Human Settlements and if their housing provision plans – Housing Chapters of the Integrated Development Plan – are appropriately framed and prioritised** to progressively realise the right to adequate housing to all. In municipalities that lack, and are unlikely to ever gain, accreditation status, the national department should still support and fund projects in informal settlements. The state should **collaborate with those grassroots organisations that have a vested interest in seeing housing development and the provision of basic services** occur in their communities and have the organisational and leadership capacity to ensure community buy-in, process stability and long-run sustainability.
- Information should be gathered on **how much land has not been put to productive use and the ways in which people use urban land.**



- One needs to seriously consider documented **problems with the system of ward councillors and committees** because they often shape the success or failure of housing developments and contribute to infringements on the right to housing experienced by poor people across the country. **Negative indicators might be necessary, and could include reports of repression of non-aligned community-based organisations and corruption in local councils around housing allocation.**

In conclusion, the indicators discussed in the final section of this report are by no means exhaustive or definitive. They provide, however, a starting point for both quantitative and qualitative measures that could be evaluated at a project level and aggregated to provide nation-wide data. In addition, one needs a broad social perspective that goes beyond quantitative or qualitative data to measure progressive realisation. Accordingly, the analysis throughout this report provides a broad background on the historical development of law, policy, and judicial review relating to the progressive realisation of the right to access adequate housing for all. While exploring this context, the report flags critical issues going forward in housing provision and policy development as well as areas pertinent to developing a measurement matrix.

***26(1) Everyone has the right to have access to adequate housing.***

***(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.***

***(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.<sup>1</sup>***

### **3. INTRODUCTION**

The following review of South African housing policy and development since 1994 forms part of a larger research project run by the Studies in Poverty and Inequality Institute (SPII). This broader project seeks to compile a measurement matrix capturing the progressive realisation of socio-economic rights by the government, as required by the Constitution of the Republic of South Africa Act 108 of 1996 ('The Constitution'). To develop such a monitoring and evaluation tool is an ambitious aim; however it is necessary given the lack of existing accountability and measurement mechanisms for tracking the realisation of socio-economic rights, either at the international human rights level or at the national level. South Africa receives routine praise for having put justiciable socio-economic rights in its Constitution and for being one of the few countries in the world to do so. Observers particularly commend the South African Constitution for imposing *positive* obligations on the state regarding socio-economic rights, requiring proactive policy formulation, budgetary allocation and effective implementation.<sup>2</sup>

A measurement matrix, of the type SPII is developing, could further act as a guide for policymakers fashioning policies in the future by highlighting the constitutional obligation that all policies be constructed in a framework informed by the aim of progressive realisation over time. This paper thus begins by examining the extent to which policy positions in housing, developed before and after the adoption of the Constitution in 1996, demonstrate either a formal or a substantive awareness of the need to work within such a framework. The paper then identifies possible indicators that one could use to construct a measurement matrix of progressive realisation towards attainment of full enjoyment of section 26 of the Constitution.

The Housing Act 107 of 1997 sets out the roles and responsibilities of the three tiers of government with respect to housing. National government must establish and facilitate a sustainable national housing development process by formulating housing policy. It must also monitor implementation by promulgating the National Housing Code and establishing and maintaining a national housing data bank and information system. Provincial government must create an

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<sup>1</sup> Section 26 of the Bill of Rights in the Constitution of the Republic of South Africa.

<sup>2</sup> The state's obligations are to 'respect, protect, promote and fulfil' the rights contained in the Bill of Rights. See section 4.1 for more on the meaning of these four obligations in relation to the right to housing.

enabling environment by doing everything in its power to promote and facilitate the provision of adequate housing in its province, including allocating housing subsidies to municipalities. Provincial government must act within the framework of national housing policy. Local government, i.e. municipal government, must implement policy, settlement planning and the delivery of housing. Every municipality must take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the constitutional housing right is realised. Municipalities should do this by actively pursuing the development of housing, addressing issues of land, services and infrastructure provision, and by creating an enabling environment for housing development in its area of jurisdiction.<sup>3</sup> In 2002, local authorities received the power to become developers of low-income housing projects themselves. More recently, through housing accreditation<sup>4</sup>, municipalities can receive the authority to carry out functions currently undertaken by provincial government, such as subsidy budget planning and allocation as well as the management and administration of priority programmes. These functions are outlined in the Housing Act and the Municipal Systems Act 32 of 2000. The aim of this legislation is to enable capacitated municipalities to gain full control over these functions as well as full financial administration of housing in their jurisdiction. Thus, accredited municipalities will be responsible for all housing functions in their area, while the province assumes responsibility for monitoring and evaluation.

Despite the constitutional right to housing for all, as outlined in section 26 of the Bill of Rights,<sup>5</sup> South Africa still has a housing crisis even after 16 years of democracy.<sup>6</sup> It is generally recognised that the state cannot deliver housing on the scale required in South Africa at a sustainable rate or within the means of lower-income households.<sup>7</sup> According to a recent Urban LandMark and Social Housing Foundation (SHF) study, 'There is growing evidence that it will be impossible for South Africa's current settlement policy to meet its Millennium Development Goals (MDGs) targets to "eradicate informal settlements" by 2014 as it is currently implemented. The housing delivery processes aimed at the needs of the urban poor suffer from severe capacity problems and cannot draw on the resources located in the traditional housing and property markets'.<sup>8</sup>

The continued lack of adequate housing and basic services (water, sanitation, electricity, etc.), growing unemployment and a largely unresponsive state, particularly at the local level, have resulted in an increasing number of so-called 'service delivery protests' in townships and informal settlements across South Africa. When the government does initiate development projects, they

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<sup>3</sup> National Housing Code, Part 1, Chapter 2, section 2.3.

<sup>4</sup> See section 6.5.1 on accreditation.

<sup>5</sup> Several authors explore the relationship between the three parts of section 26 of the Constitution relating to housing. According to Geoff Budlender, 'Section 26(1) delineates the general scope of the right: everyone has the right of access to adequate housing. Section 26(2) speaks to the positive obligations imposed upon the state. And section 26(3) spells out aspects of the negative right, by prohibiting arbitrary evictions. This analysis is important because it explains that section 26(1) creates a general right. The content of the right is not limited to the duties in section 26(2) or the prohibitions in section 26(3): they are simply manifestations of the general right set out in 26(1)'. Geoff Budlender, "Justiciability of the Right to Housing - The South African Experience" in Scott Leckie (ed.), *National Perspectives on Housing Rights* (Kluwer Law International, 2003), pp. 207-208.

<sup>6</sup> Minister of Human Settlements Tokyo Sexwale recently described efforts to address the informal settlement situation in South Africa as 'dealing with a manmade disaster every day'. "SA dealing with Haiti like situation every day: Sexwale." *The Herald* 21 January 2010

<sup>7</sup> Urban LandMark and SHF. "Small -Scale Private Rental: A Strategy for Increasing Supply in South Africa" (January 2010), p. 12.

<sup>8</sup> Ibid.

are generally implemented with limited or non-existent consultation with, and participation by, affected communities; instead, external bodies undertake these projects and consultants often drive them. It is unclear whether state officials understand the obligation of and rationale for community consultation and participation and how to effectively engage in these processes. Where consultation does occur it is often purely procedural and not intended to genuinely engage substantive issues around development.

At the same time, a number of landmark cases have reached the Constitutional Court in which the justiciability of the right to housing has been tested. The pronouncement of the Court in these cases often has policy and budgetary implications for the state. These cases have all dealt essentially with negative infringements of the right to housing or with evictions. While this judicial role in monitoring socio-economic accountability is welcomed by many, it makes others nervous – particularly government officials and those academics and development practitioners who do not believe that the courts are an appropriate mechanism to address socio-economic policy issues. The fact remains that the right to housing is qualified by the internal limitation of ‘progressive realisation’, which means that the rate and reach of realisation is not stipulated and universal access is neither time-bound nor resource-indexed.

While the judiciary plays a role in adjudicating where and how the state has failed in its constitutional duties regarding the right to housing, engaging the courts is often done on an *ad hoc* and defensive basis. This is despite the fact that the standard-bearing case on socio-economic rights, the *Grootboom* case (explored in greater detail below), resulted in detailed directions to the state on requirements for an effective housing policy framework. Arguably, the judiciary in South Africa is loathe to engage too vigorously with the budgetary implications, equity concerns and the ‘separation of powers’ implications of substantively adjudicating the implementation of socio-economic programmes.<sup>9</sup> This responsibility falls primarily on the Constitutional Court. Since the *Joe Slovo* and *Mazibuko* judgments in 2009, the Court has appeared cautious to pronounce on the flawed implementation and negative impact of government’s socio-economic programmes with the concomitant budgetary and programmatic implications of such a judgment.

Further, the right to adequate housing is intrinsically bound up with a number of other cross-cutting rights – including the rights to public participation, equality, human dignity, just administrative action, access to information and access to justice – as well as a range of socio-economic goods and amenities. These include access to land, water, sanitation, electricity, livelihoods, transport, clinics and hospitals, schools, universities and other cultural and recreational amenities such as libraries, public spaces, swimming pools, sports fields and churches.<sup>10</sup> Taken together, these rights and socio-economic goods are meant to alleviate poverty, reduce inequality and improve the quality of people’s lives.<sup>11</sup>

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<sup>9</sup> While housing is a national and provincial competence in terms of the constitution, it is at the local government level that engagement and planning is envisaged to occur most effectively. Recent moves towards the accreditation of municipalities and the push for them to produce housing sector plans for their Integrated Development Plans (IDPs), are evidence of this. Indeed, effective intergovernmental interaction and clear roles and responsibilities between the spheres of government in housing delivery are critical to effective implementation of housing policy.

<sup>10</sup> In the recent Department of Human Settlements Budget Speech 2010/11, Minister Sexwale stated that, ‘Government strives for the establishment of viable, socially and economically integrated communities which are situated in areas allowing convenient access to economic opportunities, health, educational and social amenities and within which

At present, the South African Human Rights Commission (SAHRC), the Chapter 9 statutory body created to monitor the government's progress in realising socio-economic rights, uses 'protocols for requesting information') as its primary tool to interrogate government departments and agencies and for identifying violations of economic and social rights. These protocols are effectively adaptations of the international reporting instruments on human rights. This process essentially involves requesting information from government using a questionnaire and holding public hearings.<sup>12</sup> Academics and Commissioners have identified several shortcomings of this approach, namely the fact that it relies on government self-reporting and fails to sufficiently interrogate the reliability of data and aggregation by variables such as sex, age and rural or urban context. Further, the data and statistics that the Commission gathers fails to reflect the reality on the ground adequately, particularly the *impact* of socio-economic policy and programmes rather than just programme's goals.<sup>13</sup>

This paper examines the emerging constitutional jurisprudence on the right to housing, looking specifically at the *Grootboom*, *PE Municipality*, *Olivia Road*, *Joe Slovo* and *Abahlali*, to gauge the state's interpretation and implementation of housing policy. Studying these cases will also indicate whether judicial reviews of housing policy and housing-related judgments have led to policy shifts through an iterative process. The paper then suggests a definition of 'adequate housing', and presents a review of housing statutory and policy development since 1994 in order to evaluate how the state has interpreted its constitutional obligations with respect to housing.<sup>14</sup> Throughout, the paper assesses the extent to which the state explicitly refers to the progressive realisation of the right to housing and identifies alternative principles guide policy development. This report also highlights the benchmarks and indicators that the government currently uses to measure its progress in the area of housing rights.

The penultimate section of this paper provides statistics on housing delivery since 1994 and highlights some of the challenges of assessing the adequacy of existing housing. The final section synthesises the findings of the paper and offers recommendations for policy makers responsible for crafting and implementing housing policy in the future. These recommendations include potential indicators to assess housing policy or sources from which one could draw such indicators.

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South Africa's people will have access on a *progressive* basis to: permanent residential structure with secure tenure, ensuring privacy and providing adequate protection against the elements; and potable water, adequate sanitary facilities, including waste disposal and domestic electricity supply.' (Emphasis added) Tokyo Sexwale, "Budget vote speech by the Human Settlements Minister, National Assembly" (21 April 2010)

< <http://www.polity.org.za/article/sa-sexwale-budget-vote-speech-by-the-human-settlements-minister-national-assembly-21042010-2010-04-21> >

<sup>11</sup> Outcome 7 of the 12 measurable 'outcomes' of the current government reads, 'There should be sustainable human settlements and an improved quality of household life.' "Service delivery agreements signed" *IOL* 29 September 2010 <<http://www.iol.co.za/news/politics/service-delivery-agreements-signed-1.682476> >

<sup>12</sup> Cameron Lee Jacobs, "Demystifying the Progressive Realisation of Socio-Economic Rights in South Africa" South African Human Rights Commission, October 2009, p. 8.

<sup>13</sup> This was the laudable aim of the South African Human Rights Commission's 2009 public hearings entitled 'The Millennium Development Goals and the realisation of economic and social rights in South Africa', which had to be postponed due to the lack of response from organs of state and eventually constituted little more than an information-gathering exercise with a public hearing component.

<sup>14</sup> Section 7 of the Bill of Rights in the Constitution states that (1) 'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom' and (2) 'The state must respect, protect, promote and fulfil the rights in the Bill of Rights.'

## 4. CONSTITUTIONAL JURISPRUDENCE ON THE RIGHT TO HOUSING

This section summarises key Constitutional Court cases and judgments relating to the right to housing. Examining Constitutional Court jurisprudence around housing and analysing the types of cases the Court has considered over the past decade reveals government failures in policy interpretation and implementation and indicates where the government or other parties have infringed on the right to housing.

This chapter begins with an overview of the state's human rights obligations, the justiciability of these rights, and how the Constitutional Court has applied these general principles to housing-related cases. It then looks at several cases in detail. Each case section presents the background to the case and identifies the key issues and principles it raises. The sections also examine the extent to which the judgment in the case affected government policy and its implication for progressive realisation of housing rights.

### 4.1. The meaning of 'respect, protect, promote and fulfil'

The Constitution obliges the state to 'respect, protect, promote and fulfil' the rights contained in the Bill of Rights, obligations that are interconnected in theory and practice. The first two obligations place negative duties on the state, while the second two place positive duties on the state.<sup>15</sup> It is in this context that one must locate the state's responsibilities in relation to housing rights.

The obligation to '**respect**' is a negative duty that the Constitution places upon the state, other entities and persons not to prevent or impair a person's constitutional rights. The state violates this obligation when, through legislative or administrative conduct, it deprives people of the access they enjoy to any socio-economic right, such as housing. For example, legislation that permits procedurally or substantively unfair evictions would constitute a failure to respect housing rights.<sup>16</sup> Similarly, the state fails to respect housing rights when it (or a private party) brings proceedings for the eviction of persons who will be left homeless if they are evicted<sup>17</sup> or when

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<sup>15</sup> Negative duties or obligations have traditionally been associated with civil and political rights, which refer to the state's obligations of restraint and non-interference with people's liberties. In contrast, positive duties are viewed in relation to socio-economic rights and impose obligations on the state to secure the necessities of life for all. Liebenberg (who he?) calls this strict distinction between negative and positive duties a false dichotomy. She argues that it fails to recognise that policy choices are made when judges elect to protect only negative liberties (these could have socio-economic implications and perpetuate structural inequality), and that civil and political rights also have resource and policy implications for the state. This was part of the reasoning that informed the decision to include socio-economic rights, with both positive and negative obligations on the state, in the Constitution. See Sandra Liebenberg, *Socio-Economic Rights Adjudication under a Transformative Constitution* (Juta, 2010), pp. 54-55.

<sup>16</sup> For example, in the cases of *Olivia Road* and *Abahlali*.

<sup>17</sup> There have been a number of these cases brought before the South Gauteng High Court, the most notable being *Olivia Road* and *Blue Moonlight Properties*, which deal with state and private evictions respectively and the failure of the City of Johannesburg to formulate a responsive housing plan that caters for low-income inner-city residents. It is

legislation permits the sale in execution of immovable property (i.e. a house) where less invasive means to satisfy the debt are available.

The obligation to **'protect'** the right to housing requires the state to take measures that prevent third parties from interfering with this right. The most important statutes that uphold this protection are the Extension of Security of Tenure Act 62 of 1997 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, which were specifically enacted to give effect to section 26(3) of the Constitution.

The obligation to **'promote'** constitutes another positive duty that requires state action to further or advance the right to housing. Budlender argues that this obligation appears to require the state to create an enabling environment that will advance the realisation of the right to housing. In the words of the Constitutional Court in the *Grootboom* case:

“...[It] is not only the State who is responsible for the provision of houses, but ... other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The State must create the conditions for access to adequate housing for people at all levels of our society.”<sup>18</sup>

Further, the Kyalami Ridge case illuminates the fact that officials must take the right to housing into account, with due weight, in all administrative decisions that affect realisation of that right.<sup>19</sup> The obligation to promote tends to create a constitutional presumption in favour of that administrative decision which most favours the realisation of the right to housing.<sup>20</sup>

The final obligation to **'fulfil'** the right to housing has traditionally been regarded as the most contentious of the components of social and economic rights. It requires the state to 'adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right'.<sup>21</sup> In *Grootboom*, the landmark case addressing this duty, the Court showed that the positive obligation to 'fulfil' the right to housing is justiciable even in resource-constrained situations. A court judgment may not always result in an order for the provision of specific benefits to specific individuals but it can nevertheless have a far-reaching and fundamentally important influence on achieving the right to housing.<sup>22</sup>

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interesting, if not worrying, to note the recent reference to the latter case by the Minister of Human Settlements in his 2010 Budget Vote Speech. Here, Minister Sexwale speaks of the 'worrying trend' he refers to as 'the legalization of illegality' and the 'negative impact of unintended consequences emanating from certain landmark judicial rulings on the human settlements mandate.' He goes on to state that, 'In some cases, the rulings have forced the amendment of human settlements policy, with severe and unplanned budgetary consequences. The most recent far-reaching ruling is the one against the Johannesburg Metropolitan Municipality where the city has been ordered to pay rent to a private property owner on behalf of illegal occupiers until alternative accommodation has been found. While being dutifully circumspect about the constitutional independence of the Judiciary, the Ministry of Human Settlements is concerned about rulings that could virtually collapse government budgets and plans where unlawful behaviour - in this case illegal land and buildings' occupation -- is legitimised by a series of court rulings.' Tokyo Sexwale, "Address by the Minister of Human Settlements, Tokyo Sexwale MP, on the occasion of the Human Settlements Budget Vote, National Council of Provinces, Cape Town" (6 May 2010) < <http://www.info.gov.za/speeches/2010/10050615451001.htm> >

<sup>18</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) (*Grootboom*), para 35.

<sup>19</sup> *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others* 2001 (3) SA 1151 (CC) (*Kyalami Ridge*).

<sup>20</sup> Budlender, "Justiciability of the Right to Housing", p. 213.

<sup>21</sup> *General Comment 14*, E/C.12/2000/4, para 33.

<sup>22</sup> Budlender. "Justiciability of the Right to Housing." p. 218.

## 4.2. Grootboom

*Grootboom* has become a landmark socio-economic rights case and the first significant case brought before the Constitutional Court in terms of section 26 of the Constitution.<sup>23</sup> The case began with the eviction of 900 people from a piece of privately-owned land, including the main applicant in the case, Irene Grootboom. After the eviction, the affected parties built makeshift shelters on the Wallacedene sports field. The group appointed an attorney to write to the Oostenberg Municipality demanding temporary shelter during a period of bad weather. The attorney argued that section 26 of the Constitution obliged the municipality to comply with the request.

When the municipality refused to provide temporary shelter, the community launched an urgent application in the Cape High Court to force the state to take action. The High Court, locating the state's obligations in the child's right to shelter in section 28 of the Constitution, ordered the state to provide temporary shelter to all the children in the affected community and at least one of each of their parents.<sup>24</sup> The state then appealed to the Constitutional Court.

By the time the Constitutional Court handed down judgment in 2000, the parties had reached a settlement agreement, which alleviated the immediate plight of the community. This left the Constitutional Court to pronounce on the general obligations of the state in relation to the right of access to adequate housing. In substance, the Court found that the state had no direct obligation to provide a specific set of goods on demand to inadequately housed individuals. Rather, the state's positive obligation under section 26 of the Constitution was to adopt and implement a reasonable policy, within its available resources, which would ensure access to adequate housing over time. The Court devoted much of its judgment to the requirement of reasonableness in devising medium- and long-term plans.

The Court concluded that, in failing to make reasonable provision for people with 'no access to land, no roof over their heads, and who were living in intolerable conditions or crisis situations,'<sup>25</sup> the housing policy implemented in the Cape Metropolitan area did not adequately give effect to the positive obligations placed on the state by section 26 of the Constitution. The *Grootboom* judgment obliged the state, within its available resources, to provide temporary shelter for those who had been evicted or faced imminent eviction and who could not find alternative shelter with their own resources. Thus, the Court avoided the idea that section 26 could give rise to a right to housing on demand. However, its focus on the need for the state to alleviate the plight of those in desperate circumstances suggested that section 26 could ground a claim for shelter on demand ('shelter' being different from 'housing').

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<sup>23</sup> Much of this case review was taken from Stuart Wilson, "Breaking the Tie: Evictions from Private Land, Homelessness and a New Normality" *South African Law Journal*, vol 2 (2009), pp. 274-275.

<sup>24</sup> *Grootboom*, paras 10 and 11.

<sup>25</sup> *Ibid.*, para 99.



According to Stuart Wilson<sup>26</sup>, the state took this interpretation of the judgment when it adopted Chapter 12 of the National Housing Code in 2004, laying the basis for housing assistance in emergency circumstances. The Emergency Housing Policy, as it has become known, was adopted in terms of section 3(4)(g) of the Housing Act 107 of 1997. Under it, municipalities can apply for funding from provincial governments to implement emergency housing programmes. The policy lists a broad range of emergency housing situations, explicitly including persons who are evicted or threatened with imminent eviction from land or from unsafe buildings. *Grootboom* thus gave rise to a right to emergency housing and a means for its enforcement, at least through the application of the Emergency Housing Policy.<sup>27</sup>

The *Grootboom* judgment revealed the Constitutional Court's thinking on socio-economic rights enforcement and highlighted its developing stance on 'progressive realisation' and minimum core obligations. According to Sandra Liebenberg<sup>28</sup>, the Court interprets 'progressive realisation' to mean the dismantling of a range of legal, administrative, operational and financial obstacles that impede access to socio-economic rights. It also entails, in the author's view, the expansion of such access to a larger and broader range of people over time.

This perspective on 'progressive realisation' contrasts with the idea of a 'minimum core obligation' as endorsed by the United Nations Committee on Economic, Social and Cultural Rights. Interpreting section 26 as a 'minimum core obligation' would oblige the state to ensure that everyone had access to at least a basic level of housing. In this conception, the state would have to gradually improve the quality of goods and services to which people had access until it achieved full realisation of the rights. The Court rejected this 'minimum core' argument in the *Grootboom* and *Treatment Action Campaign*<sup>29</sup> cases. The Court's major principled objection has been that groups are differently situated and their socio-economic needs vary according to their different contexts.<sup>30</sup> The judgment in *Grootboom*, however, held that a reasonable government programme must provide for those in urgent need and living in 'intolerable conditions' and that the provision of a basic level of services need not meet the qualitative standards implied by the full realisation of the relevant right.<sup>31</sup>

### 4.3. PE Municipality and Olivia Road

The Constitutional Court has pronounced on four other housing rights-related cases since *Grootboom*, including *PE Municipality*<sup>32</sup> and *Olivia Road*<sup>33</sup>. Both of these cases deal primarily with the state's obligation to 'meaningfully engage' with those facing eviction to ascertain if

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<sup>26</sup> Stuart Wilson is the co-founder and Director of Litigation at the Socio-Economic Rights Institute of South Africa (SERI). Prior to that, he was Head of Litigation at the Centre for Applied Legal Studies (CALS), where he was involved in litigating several landmark cases on socio-economic rights before the Constitutional Court.

<sup>27</sup> See section 4.8.11 in this paper for more on the Emergency Housing Programme.

<sup>28</sup> Sandra Liebenberg is the HF Oppenheimer Professor in Human Rights Law at Stellenbosch University Faculty of Law and has written extensively on socio-economic rights.

<sup>29</sup> *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) 2002 (5) SA 721 (CC).

<sup>30</sup> Liebenberg, *Socio-Economic Rights*, p. 151.

<sup>31</sup> *Grootboom*, para 52. Cited in Liebenberg, *Socio-Economic Rights*, pp. 187-188.

<sup>32</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).

<sup>33</sup> *Occupiers of 51 Olivia Road and 197 Main Street, Johannesburg v the City of Johannesburg and Others* 2008 (3) SA 208 (CC)

they will be rendered homeless by an eviction. The state is also required to consider what alternative accommodation can be provided. While *PE Municipality* addresses the obligation of state institutions to engage meaningfully prior to taking a decision to institute eviction proceedings, *Olivia Road* expands on the nature and meaning of this obligation.<sup>34</sup>

In *Olivia Road*, the Court's decision concerned an eviction application by the City of Johannesburg to evict over 300 people occupying two 'bad buildings' in the inner city. The application was brought to the Johannesburg High Court in terms of section 12(4)(b) of the National Building Regulations and Building Standards Act 103 of 1997 (NBRA), the Health Act 63 of 1977, and the city's fire by-laws. The city sought an order to evict the occupiers on the grounds that: the buildings were unfit for human habitation, dangerous and unhygienic; evicting the occupiers would promote public health and safety; and the eviction would reverse inner-city decay in line with the city's Inner City Regeneration Strategy.

The occupiers succeeded in challenging the application in the High Court on two main grounds: that the respondent's right of access to adequate housing in section 26(1) of the Constitution would be infringed if the eviction order were to be granted; and that the City had failed to meet its positive obligations to achieve progressive realisation of the right of access to adequate housing.<sup>35</sup> High Court Judge Mohamed Jajbhay found in favour of the respondents and dismissed the application. He also issued a declaratory order regarding the applicant's failure to comply with its constitutional obligations, obliging the municipality not to evict the respondents until it had 'developed a pragmatic, constructive and coherent programme [to] deal with the predicament that the respondents [had] to endure'.<sup>36</sup> The order declared that the City's housing programme failed to comply with its constitutional and statutory obligations and that it had failed to provide suitable relief for people in the inner city in a crisis situation or otherwise in desperate need of accommodation. The order further declared that the City had failed to give adequate priority and resources to people in the inner city in such circumstances. The court directed the City 'to devise and implement within its available resources a comprehensive and co-ordinated programme to progressively realise the right to adequate housing to people in the inner city of Johannesburg who are in a crisis situation or otherwise in desperate need of accommodation.'

The City appealed to the Supreme Court of Appeal (SCA), which reversed the decision. The SCA found that the deprivation of unsafe housing did not amount to an infringement of the right of access to adequate housing.<sup>37</sup> Rather, it held that the eviction itself triggered an obligation on the City to provide emergency basic shelter to those who found themselves in a crisis situation. The SCA ordered the eviction, but further ordered the City to provide housing assistance in terms of the Emergency Housing Programme set out in Chapter 12 of the National Housing Code.<sup>38</sup>

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<sup>34</sup> Kirsty Mclean, *Constitutional Deference, Courts and Socio-Economic Rights in South Africa* (PULP, 2009), p. 150.

<sup>35</sup> *Olivia Road*, paras 10-15. The respondents also opposed the application on the grounds that the provisions of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 ought to be applicable to the eviction of the respondents; that the applicant had infringed the respondents' rights to just administrative action in failing to afford them a hearing prior to taking a decision to evict them; and that section 12 of the NBRA was unconstitutional.

<sup>36</sup> *City of Johannesburg v Rand Properties (Pty) Ltd & Others* 2007 1 SA 78 (W), para 67.

<sup>37</sup> *City of Johannesburg v Rand Properties (Pty) Ltd & Others* 2007 6 SA 417 (SCA), para 46.

<sup>38</sup> The Emergency Housing Programme was established in order to give effect to the obligation elucidated by the Constitutional Court in the *Grootboom* decision, which found that the state's policy was unconstitutional to the extent that it failed to cater for those in desperate need.

The case went finally to the Constitutional Court, whose different approach focused on the decision-making process of state institutions prior to taking a decision to evict. The Court required the City to meaningfully engage with the occupiers prior to taking such a decision. The City's failure to engage meaningfully with the occupiers formed the basis of the Court's substantive finding and the remedy it awarded.<sup>39</sup> The Constitutional Court ordered the parties to engage with one another two days after the hearing in an attempt to reach a settlement over the issues raised on appeal and on ways to improve the safety of the buildings in the interim. This negotiation process took place and the parties presented a settlement agreement to the Court for its endorsement. The settlement committed the City to providing two buildings in the inner city for the occupiers as well as providing interim services to the buildings.

The obligation on state institutions to engage meaningfully prior to taking a decision to evict adds a significant requirement to the list set out in *Grootboom* for reasonable state action.<sup>40</sup> This obligation may have prefigured in the Court's decision in *PE Municipality*<sup>41</sup>, also in the context of engaging in consultation with affected persons threatened with eviction, but *Olivia Road* fleshes it out more fully. Thus, this Constitutional Court decision is important and far-reaching, and has proved helpful in subsequent eviction cases throughout the country.<sup>42</sup>

Disappointingly, however, the Court refused to substantively engage with the occupiers' attack on the constitutionality of the City's housing policy. Rather, the Court sought to resolve the dispute through encouraging the parties to settle despite the parties' contention that they could not resolve a number of issues. The matters in dispute included the City's failure to formulate and implement a housing plan for persons similarly situated to the occupiers; the City's policy for dealing with so-called 'bad buildings'; the constitutionality of section 12(4)(b) of the NBRA; the review of the City's notices to the occupiers; the applicability of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (PIE Act); and the reach and applicability of sections 26(1), 26(2) and 26(3) of the Constitution. Despite identifying all of these remaining disputes, the Court declined to decide all but one of them: the narrow issue of the criminal sanction in the NBRA. According to the Court:

*It is not necessary for this court to consider the question of 'permanent housing solutions' for the occupiers. The city has agreed that these solutions will be developed in consultation with them. The complaint by the occupiers that negotiations have been marred by unclear and inconcrete housing plans is not in my view a sufficient reason for this court to consider this question at this stage... It is*

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<sup>39</sup> Mclean, *Constitutional Deference*, p. 149.

<sup>40</sup> Due to the potential horizontal application of the Constitution, evictions from private property are no longer viewed solely within a private law paradigm. A number of recent cases – including *Blue Moonlight Properties* and *Lingwood* - illustrate how courts are balancing the section 26 housing right and the section 25 right against the arbitrary deprivation of property, making the link between the obligations of organs of state in terms of the *Grootboom* judgment and the courts' need to make just and equitable orders in eviction cases in terms of PIE. Also important to note is the courts' acknowledgement of the interrelatedness of all three subsections of section 26 and the developing jurisprudence on the state's obligations to provide alternative accommodation if an eviction from private land will lead to homelessness (identified after an individualised assessment of the specific circumstances of occupiers through meaningful engagement). Liebenberg, *Socio-Economic Rights*, pp. 286-289.

<sup>41</sup> *PE Municipality*, paras 39-43.

<sup>42</sup> The danger however, is that meaningful engagement becomes a purely procedural 'box to tick' by government and that the quality and purpose of engagement is not maintained and does not fulfil the aim of levelling the playing field between the state or private owners and poor communities, and rather serves to entrench existing power and resource imbalances.

*the duty of both parties to continue with the process of negotiation and for the occupiers or the city to approach the High Court if this course becomes necessary.*<sup>43</sup>

Thus the *Olivia Road* decision showed the Court's reluctance to pronounce directly on the constitutionality of state housing policy, ushering in a new trend in Constitutional Court jurisprudence in housing rights decisions that emphasised meaningful engagement. The following case would test this pattern.

#### **4.4. Joe Slovo**

Shortly after the *Olivia Road* judgment, the *Joe Slovo*<sup>44</sup> case came before the Constitutional Court. This case involved an application by Thubelisha Homes, a national housing parastatal, for the relocation of approximately 4000 households from the Joe Slovo informal settlement to Delft to make way for the N2 Gateway housing project.<sup>45</sup> The Cape High Court had ordered the eviction of the occupiers according to a timetable provided by the Court, and required the state to report back every two months on the implementation of the order and the provision of permanent housing to those evicted. Once evicted, the Joe Slovo residents were interdicted from returning to the land for the purpose of erecting or taking up residence in informal dwellings. The High Court did not regard the case as an issue of mass eviction. Rather, it considered the eviction a strategic move to relocate the affected people, which would not result in homelessness because of the state's obligation to provide alternative accommodation.<sup>46</sup>

The Joe Slovo residents brought a direct appeal to the Constitutional Court against the decision of the High Court, naming as respondents Thubelisha Homes, the national Minister of Housing and the Western Cape provincial Minister of Local Government and Housing. The Community Law Centre of the University of the Western Cape and the Centre on Housing Rights and Evictions (COHRE) were admitted as *amici curiae*.<sup>47</sup> The Court was asked to consider whether the respondents had made a case for the eviction of the applicants in terms of the PIE Act, which required a determination as to whether, at the time the eviction proceedings were launched, the applicants were 'unlawful occupiers' in terms of the Act. The Court thoroughly investigated the related question of whether the residents had tacit or express consent to occupy the land. The second issue for the Court's consideration concerned whether the

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<sup>43</sup> *Olivia Road*, para 34.

<sup>44</sup> *Residents of the Joe Slovo Community, Western Cape v Thubelisha Homes, Minister for Housing and Minister of Local Government and Housing, Western Cape* [2009] ZACC 16.

<sup>45</sup> The N2 Gateway housing development was the lead pilot project of the BNG policy, which will be discussed further in section 6.5.

<sup>46</sup> Lilian Chenwi and Kate Tissington, " 'Sacrificial lambs' in the quest to eradicate informal settlements: The plight of Joe Slovo residents", *ESR Review*, 10.3 (September 2009), p. 18.

<sup>47</sup> The *amici curiae* submission provided the Court with information showing that the N2 Gateway Project was contrary to South African and international housing law and policy, focusing on why the TRUs in Delft (located in what are known as temporary relocation areas [TRAs] or 'transit camps') did not constitute adequate alternative accommodation for Joe Slovo residents. The submission urged the Court to consider their lived reality and the profound socio-economic implications such a move would have on their fragile livelihoods and important social and community networks.

respondents had acted reasonably within the meaning of section 26 of the Constitution in seeking to evict the applicants.<sup>48</sup>

The Court responded with five judgments in the case, all in support of the same order but with different reasoning. The order granted the eviction but included mitigating measures to render the eviction more humane - including the order of meaningful engagement, setting standards for the alternative accommodation at Delft and stipulating that the N2 Gateway development house 70 percent of current and former Joe Slovo residents. The judges also agreed on various grounds that, at the time of the eviction, the applicants were unlawful occupiers in terms of the PIE Act.<sup>49</sup>

With regard to 'progressive realisation', Justice Yacoob stated in his judgment that the occupiers were being evicted and relocated in order to facilitate housing development, and, as such, 'their eviction constitutes a measure to ensure the **progressive** realisation of the right to housing within the meaning of section 26(2) of the Constitution' as is reasonable in terms of the Court's findings in the *Grootboom* judgment. He further found that eviction is a reasonable measure to facilitate the housing development programme (paragraph 115).

Deputy Chief Justice Moseneke found that the High Court misunderstood the submissions made on behalf of the residents. According to him (paragraph 154):

*It's very finding that informal settlements would be upgraded, moved, or redeveloped on a progressive basis, implies that they would remain where they were until those steps were taken in due course. In other words, the occupiers were implicitly allowed on a temporary basis to continue to occupy the land until housing would be provided on a progressive basis. To hold otherwise, as the High Court did, in effect, means that although our constitutional scheme accepts that the right to have access to adequate housing will be achieved progressively and within available resources, those who live on state land waiting to be provided housing do so as perpetual outlaws and are thus open to eviction as unlawful occupiers. In my view, the correct position to take is that ordinarily temporary occupation of this kind occurs with the consent of the state entity that owns the land subject to its right to give proper and lawful notice intended to terminate the right to occupy.*

According to Chief Justice Ngcobo in paragraph 229, 'The Housing Act, the Housing Code, the Breaking New Ground (BNG) policy and the N2 Gateway Project, constitute "reasonable legislative and other measures within [the government's] available resources, to achieve the progressive realisation of [the right of access to adequate housing]" as contemplated in section 26(2) of the Constitution.' He describes how the government initiated the BNG policy 'whose primary objective is to eradicate informal settlements over time, through in-situ upgrading of informal settlements and the relocation of households where development is not possible or desirable' (paragraph 228). Chief Justice Ngcobo further found that it was in the public interest that the residents be relocated to allow for the implementation of the project aimed at benefitting them. He held that this relocation

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<sup>48</sup> *Joe Slovo*, paras 3 and 15.

<sup>49</sup> *Ibid.*, paras 4 and 5.

would be consistent with the obligation of the government to facilitate progressive realisation of the right of access to adequate housing (paragraph 235). In paragraph 250 he stated that:

*What must be emphasised is that the government has a wider range of needs to meet. As we held in Grootboom, "housing must be made more accessible not only to a larger number of people but to a wider range of people". There are those who can afford to buy houses and there are those who cannot. Income determines what form of housing people can afford. In developing a policy to provide access to adequate housing, the government must endeavour to address all these needs. And the primary obligation to achieve the progressive realisation of the right of access to adequate housing rests on government. It must determine how and when this should be done. This, however, is subject to the requirement of the progressive realisation of the right – it must progressively facilitate accessibility. How and when the obligation must be fulfilled depends on the availability of resources, in particular, the availability of land.*

The Court's judgment underscored the obligation of the state to provide alternative adequate accommodation should it evict a settled community and to engage meaningfully with the affected individuals. The various judges dealt extensively with two issues: whether the occupiers had consent to occupy the land<sup>50</sup>, and whether it would be just and equitable to evict the applicants in terms of section 6 of the PIE Act, which regulates evictions instituted by an organ of state.<sup>51</sup> The Constitutional Court ultimately found that the government's decision not to undertake *in situ* upgrading was acceptable. According to Chief Justice Ngcobo, 'It is not for the courts to tell the government how to upgrade the area. This is a matter for the government to decide.'<sup>52</sup>

Further, despite its misgivings on the quality of the engagement between the state and the residents around the project, the Court went ahead to sanction the eviction. It took this position despite its own precedent that courts should be reluctant to grant an eviction order where meaningful engagement had not taken place (see *Olivia Road* and *PE Municipality*). The Court endorsed the decision to relocate the Joe Slovo community to temporary residential units (TRUs) in Delft or other appropriate locations, annexing a relocation timetable to its judgment that detailed the dates by which households would be moved. An interesting aspect of the Court's order is the detail in which it specified the quality and nature of the temporary housing to be provided, including the provision of services and facilities. The Court ordered that existing TRUs

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<sup>50</sup> Justice Yacoob held that the applicants did not have consent (see paras 72–85), while Justices Moseneke, O'Regan and Sachs were of the view that they had tacit consent which was subsequently revoked when the City decided to implement the N2 Gateway Project (paras 149–160, 278–280 and 358). Chief Justice Ngcobo was of the view that the applicants could not be seen as unlawful occupiers during the period they were allowed to remain on the land and until suitable alternative accommodation was found. He further argued that consent was revoked once they were asked to move to Delft (para 180).

<sup>51</sup> Justice Yacoob found the eviction to be just and equitable as it was a reasonable measure to facilitate housing development and to ensure the progressive realisation of the right to have access to adequate housing within the meaning of section 26(2) of the Constitution (paras 115 and 116). Deputy Chief Justice Moseneke observed that on the facts of the case, it was difficult to conclude that it was just and equitable to forcibly evict the applicants and 'relocate them far away from their homes and modest comfort zones in order to give way to the construction of new subsidised homes' (para 138). However, considering that the applicants would benefit directly from the development, this aspect rendered the eviction just and equitable (paras 139 and 175).

<sup>52</sup> *Joe Slovo*, para 253.

had to comply with certain specifications and new ones had to be of equivalent or superior quality. The units had to:

- be at least 24m<sup>2</sup> in size;
- be accessible using tarred roads;
- be individually numbered for identification purposes;
- have walls constructed with Nutec;<sup>53</sup>
- have galvanised iron roofs;
- be supplied with electricity through a prepaid electricity meter;
- be situated within reasonable proximity of a communal ablution facility;
- make reasonable provision for toilet facilities, which may be communal, with waterborne sewerage; and
- make reasonable provision for fresh water, which may be communal.<sup>54</sup>

The Court required the respondents to engage meaningfully on the time frame of the relocation as stated above. It also directed them to consult with the affected residents on each individual relocation, specifying the issues that needed to be included in this engagement. The parties had to ascertain among other things the names, details and relevant personal circumstances of those affected by each relocation; the exact time, manner and conditions under which the relocation would be conducted; the precise TRUs to be allocated to those relocated; the provision of transport for those to be relocated and for their possessions; the provision of transport facilities to those affected from the temporary accommodation to amenities such as schools, health facilities and places of work; and the prospect of the subsequent allocation of permanent housing to those relocated to temporary accommodation, including information on their current position on the housing waiting list and assistance in completing housing subsidy application forms.<sup>55</sup>

While the Court acknowledged the difficulty of balancing competing interests, it failed to properly assess the reasonableness of the government's policy choices, displaying a particularly deferential attitude to the government.<sup>56</sup> It allowed the government to evict a relatively large community to make way for a project that did not include proper consultation or the provision of affordable housing for the intended beneficiaries. Furthermore, the project failed to identify clearly the roles and responsibilities of the different spheres of government as required in *Grootboom*, an observation highlighted by the Auditor-General's special audit report on the N2 Gateway development.<sup>57</sup> The project has been plagued by such problems as mismanagement, overspending and under-financing. The project was inconsistent with international best practices

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<sup>53</sup> Nutec is an environmentally friendly material designed to replace traditional asbestos-cement products.

<sup>54</sup> *Joe Slovo*, para 7(10)

<sup>55</sup> *Ibid.*, para 7(11).

<sup>56</sup> Justice O'Regan in the majority judgment used the following as justifications for the decision to order the eviction: that the N2 Gateway project is 'One of the first attempts at a housing development in terms of the new housing policy... given the huge numbers of people living in inadequate or makeshift housing in Cape Town (and indeed many of our municipalities), and given the fact that this is a pilot project, it is not surprising that it has not been implemented without controversy'; that there was some consultation with residents, however lacking; and that other inadequately housed people stood to benefit from the project and had already co-operated with the respondents in the hope that their co-operation would expedite their receiving permanent housing. *Joe Slovo*, paras 302-303.

<sup>57</sup> Auditor-General, "Report of the Auditor-General on the special audit of the N2 Gateway Project at the National Department of Housing", (2008) <[www.pmg.org.za/files/docs/090610gateway\\_0.pdf](http://www.pmg.org.za/files/docs/090610gateway_0.pdf)>

and the South African housing policy (Breaking New Ground) as it focused primarily on relocation. Further, it appeared to run counter to housing policy stating that informal settlements should be eradicated through *in situ* upgrading where possible, leaving relocation to serve as a last resort.

The social and economic impact of the relocation from Joe Slovo informal settlement to Delft was an immense proposition. Joe Slovo is close to economic hubs where jobs and food can be accessed relatively easily. Children in the settlement can walk to school, young adults can take night classes thanks to their proximity, and churches have developed congregations made up of members that have been in the area for years. The settlement is close to the city centre and a cheap train network improves people's ability to commute to work.

In contrast, there is no train network in Delft, transport is expensive and the temporary residential area (TRA) is 15km further from the city than Joe Slovo. A study by the Cape Town-based NGO Development Action Group (DAG) finds that relocation has an enormous impact on household incomes and expenditure, social networks and security. According to DAG, relocation should be a last resort not only because it negatively impacts those affected but also because it places a burden on the government to provide a larger social safety net and to mitigate the social problems caused by the relocation. The challenges of relocation are evident in the Constitutional Court's order requiring the government to engage with the affected communities on transport to schools, health facilities and places of work.<sup>58</sup>

On 24 August 2009, the Constitutional Court quietly issued an order suspending the evictions until further notice. Their action came after the Western Cape provincial Minister of Housing, Bonginkosi Madikizela, submitted a report to the Court stating that he had 'grave concerns' that the 'massive relocation' might end up costing more than it would to upgrade Joe Slovo. The provincial minister had been newly elected after the national election and represented the Democratic Alliance (DA) as opposed to the ANC, which had formerly been in power. He also raised concerns about the absence of a plan regarding those who would not be accommodated in the new settlement, arguing that the inadequate number of houses would mean people were left behind in TRAs. At present, the government is exploring upgrading the settlement *in situ* and community and NGOs have conducted preliminary enumeration and planning.

On the face of it, the *Joe Slovo* judgment was clearly flawed. It showed extreme deference to government housing policy even when it was implemented wrongly and without proper consultation and engagement. However, despite the Constitutional Court's order for an eviction, it indirectly gave weight to a number of important factors related to the right to adequate housing, including the provision of electricity, water and sanitation as well as transport to schools, clinics and places of work in relation to the temporary housing. It is interesting to note that the Court, despite having rejected the minimum core obligations argument, was willing to discuss, and even order, the content of the right to housing in relation to negative obligations and infringement.

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<sup>58</sup> *Joe Slovo*, para 7.



Subsequent developments have vindicated the issues raised in the case by the residents and the *amici curiae* to an extent. Further, the economic, social and financial desirability of *in situ* upgrading versus relocation has been explored in the academic and public domains at great length as a result of the case.

## 4.5. Abahlali

The most recent housing rights case to be decided in the Constitutional Court was the *Abahlali*<sup>59</sup> case, which was a judicial challenge to the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007 (Slums Act) by the Durban-based shackdweller movement Abahlali baseMjondolo (AbM). The long title of the Act reflects its three purposes concerned with slums: the progressive elimination of slums, measures for the prevention of the re-emergence of slums and the upgrading and control of existing slums. But while the Slums Act aimed to eliminate slums in KwaZulu-Natal, it ended up enabling evictions to occur without meaningful engagement. AbM, along with other organisations, had attempted early on to impede the passing of the Slums Bill; however, they were unsuccessful. Their experiences of illegal evictions and demolitions in Durban made them extremely wary of the impact of the Slums Act, and hence they decided to mount a constitutional challenge.<sup>60</sup>

In the *Abahlali* case, the Constitutional Court heard arguments relating to section 16 of the Slums Act. This section states that a municipality must start proceedings for the eviction of unlawful occupiers if the owner or person in charge of the land fails to do so within the time period prescribed by the provincial Member of the Executive Council (MEC) for local government, housing and traditional affairs. Initially, the applicants in the case unsuccessfully challenged the constitutionality of this section in the Durban High Court. The applicants later appealed the judgment directly to the Constitutional Court, which heard the matter on 14 May 2009. The applicants argued that section 16 violated section 26(2) of the Constitution in three ways: it precluded meaningful engagement between municipalities and unlawful occupiers; it violated the principle that evictions should be a measure of last resort; and it undermined the precarious tenure of unlawful occupiers by allowing the eviction proceedings to begin without reference to the procedural safeguards contained in the PIE Act. The Court ruled that section 16 of the Act was unconstitutional and invalid, as it gave too much power to the MEC and seriously undermined the protections in section 26(2) of the Constitution read with other housing legislation.

In a judgment written by Deputy Chief Justice Moseneke (with all the judges except Justice Yacoob concurring<sup>61</sup>), the Court found that, 'Section 16 cannot be reconciled with the national

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<sup>59</sup> *Abahlali baseMjondolo Movement SA v Premier of the Province of KwaZulu-Natal* [2009] ZACC 31.

<sup>60</sup> For more on the practice of evictions and demolitions in Durban, see Centre on Housing Rights and Evictions (COHRE), "Business as Usual? Housing rights and 'slum eradication' in Durban, South Africa" (September 2008).

<sup>61</sup> The judgment of Justice Yacoob found that the contested provision could be read subject to all the safeguards provided by the Constitution and the PIE Act and that on a proper construction of the Slums Act an owner or municipality had to comply with the PIE Act and all other relevant legislation before an eviction could be ordered. His findings on the legislative competence argument were accepted by the entire court and these essentially dismissed the applicants' contention that the Slums Act was more concerned with land rather than housing, which is a national competence and not within the scope of the province to pass.

Housing Act and the National Housing Code, both of which have been passed to give effect to section 26(2) of the Constitution'. He also held that the MEC's power to issue a notice as envisioned in section 16 is 'overbroad and irrational'. Deputy Chief Justice Moseneke further found that section 16 could not be interpreted in a way that promoted the ostensible objectives of eliminating and preventing slums and providing adequate housing. He also referred to the fact that the challenged Act was a pilot piece of legislation and other provinces were 'awaiting guidance from the Court before deciding on similar legislation.'

According to the Centre for Applied Legal Studies (CALs), which represented Abahlali baseMjondolo in the case:

*'The Slums Act equates the elimination of slums with the eviction of people living in them and was intended to make that a much more frequent and easily facilitated occurrence. The core focus of the Act is on facilitating eradication, not in providing adequate housing. While it ostensibly allows government to fast track housing delivery, the Act has the real and pernicious effect of actively encouraging the eviction of unlawful occupiers living in informal settlements and buildings without taking into account their circumstances or the provision of alternative accommodation. There is a lack of acknowledgment that informal settlements and slum conditions are a symptom of a bigger problem in South African cities around well-located land and access to livelihoods.'*<sup>62</sup>

Key findings from the *Abahlali* judgment include the decision that if engagement takes place after there has been a decision to institute eviction proceedings, it cannot be genuine or meaningful (paragraphs 69 and 120). Another important finding was that proper engagement includes taking into consideration the needs of those who will be affected, the possibility of upgrading the area *in situ* and the provision of alternative accommodation where necessary. The Constitutional Court stated that, 'No evictions [in terms of the PIE Act] should occur until the results of the proper engagement process are known', affirming eviction or relocation as a last resort only after *in situ* upgrading has been considered.

#### **4.6. Summary of key findings from cases**

The Constitutional Court has pronounced on a number of housing-related cases during its tenure, with a number of important findings on the negative and positive obligations around the right to adequate housing. These findings include:

- A reasonable government programme must provide for those in urgent need and living in 'intolerable conditions' - *Grootboom*;
- The state is under an obligation to 'meaningfully engage' with those facing eviction to ascertain if they will be rendered homeless by an eviction and to determine what alternative accommodation can be provided. State institutions are obliged to engage meaningfully prior to taking a decision to institute eviction proceedings - *Olivia Road*;

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<sup>62</sup> CALs press release, "Abahlali baseMjondolo celebrates as Constitutional Court declares KZN Slums Act unconstitutional", Johannesburg, 14 October 2009.

- If engagement takes place after there has been a decision to institute eviction proceedings, it cannot be genuine or meaningful and proper engagement unless it includes taking into consideration the needs of those who will be affected, the possibility of upgrading the area *in situ* and the provision of alternative accommodation where necessary – *Abahlali*
- No evictions in terms of the PIE Act should occur until the results of the proper engagement process are known – *Olivia Road, Abahlali*;
- Courts will be reluctant to order an eviction if homelessness will result – *Joe Slovo, Olivia Road*;
- The Constitutional Court is reluctant to pronounce directly on the constitutionality of government housing policy particularly in relation to permanent housing but in *Olivia Road* ordered that the occupiers and the state engage in consultation over an appropriate solution to the eviction, which more specifically relate to the consequences of the eviction which would be homelessness for the occupiers;
- The Court may order that temporary relocation units comply with certain specifications. In *Joe Slovo*, the Court specified that the units had to be at least 24m<sup>2</sup> in size; be serviced with tarred roads; be individually numbered for identification purposes; be supplied with electricity through a prepaid electricity meter; be situated within reasonable proximity of a communal ablution facility; make reasonable provision for toilet facilities, which may be communal, with waterborne sewerage; and make reasonable provision for fresh water, which may be communal;
- In respect of informal settlements, relocation is a last resort and only after *in situ* upgrading has been considered - *Abahlali*.

## 5. TOWARDS A DEFINITION OF 'ADEQUATE HOUSING'

Formulating a definition of 'adequate housing' is no easy feat. In truth, what constitutes adequate housing depends on the specific context and circumstances of households and individuals, and their needs and priorities. South Africa is characterised by lingering spatial inequalities and a pronounced rural-urban divide. Many different housing typologies exist, including high-density residential (e.g. inner city flats, private rental housing and social housing), shacks in informal settlements on both publicly- and privately-owned land, 'RDP' houses<sup>63</sup> in urban townships, backyard shacks adjacent to formal housing and rural housing. More important than the different housing typologies and geography, however, is the fact that South Africa has an extreme diversity of accommodation and housing needs. Further, individuals and households must have some choice between a wide variety of housing options which take into consideration adequacy of location<sup>64</sup>, shelter, space, size of household, affordability, physical security and tenure security. This epitomises 'adequacy' and 'accessibility' in the truest sense of the words.

Accordingly, while adequate housing concerns more than providing shelter from the elements (as highlighted in the *Grootboom* judgment and beyond), it is difficult or impossible to define the term exactly. Further, a homogenous definition does not apply although some essential principles may be common across cases.<sup>65</sup> After researching land and housing options in the poorer parts of South African cities<sup>66</sup>, Warren Smit<sup>67</sup> develops a matrix to assess their adequacy in terms of the following key criteria: adequacy of location; adequacy of shelter; affordability (in terms of upfront and ongoing costs); adequacy of services (water, sanitation, energy supply, etc); adequacy of space; physical security; security of tenure; future prospects of RDP housing; and accessibility or availability.<sup>68</sup> He concludes that:

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<sup>63</sup> See sections 6.1 and 6.2 of this paper for more on the origin and nature of these houses built as part of the RDP.

<sup>64</sup> Important to note in relation to location are the recent findings by the SHF during a cost-benefit analysis (CBA), which indicate that "the location and density of affordable housing makes a big difference to the overall costs and benefits of housing to South African society over time and that housing that is well-located in urban centres, even though it financially costs much more to build, (due to higher land prices) actually has more benefits for society and costs less over time than does much cheaper housing on the periphery." Social Housing Foundation, "Think Piece 1: Location and Density", Cost Benefit Analysis: Social Rental Housing (September 2009), p. 7.

<sup>65</sup> The Constitutional Court has rejected the 'minimum core' component of socio-economic rights. By including housing in *Joe Slovo*, however, it did prescribe in detail the form of the temporary alternative accommodation to be provided by the state to those evicted. While this is desirable in that the prescription includes some minimum requirements, including access to water, sanitation and electricity, the location of the TRA, the socio-economic disruption caused by such a mass relocation and the severely lacking 'sustainable human settlements' aspect of the N2 Gateway project is cause for concern as it illustrates a fundamental disjuncture between policy and practice with regard to informal settlements. See Kate Tissington, "Joe Slovo residents let down by court", *Pambazuka News* (25 June 2009).

<sup>66</sup> These include: own shack in an informal settlement; rented shack in an informal settlement; rented room within a shack in an informal settlement; rental of space for own backyard shack in established township; rented room in established township; RDP house in upgrading project; and RDP house in greenfield project. The list could also include rented room or space in inner city building or house, or shack erected in an abandoned inner city building.

<sup>67</sup> Warren Smit has researched and written extensively on various city planning and housing-related issues in South Africa, and is currently employed as a researcher at the African Centre for Cities (ACC). He has previously worked for both the Development Action Group (DAG) in Cape Town, and the Built Environment Support Group (BESG) in Durban.

<sup>68</sup> Warren Smit, "Analysis of qualitative survey on accessing, holding and trading land: synthesis report", Report prepared for Urban LandMark Are urban land markets working well for the poor? Exploring a practical method of assessment" (27 August (March 2008), p.

*'All the major land/housing options currently available to poor households have serious inadequacies. Although poor households are, for example, able to access relatively good locations and affordable accommodation in informal settlements or adequate shelter/services and secure tenure in RDP housing settlements, they are seldom able to adequately satisfy all their minimum requirements simultaneously.'*<sup>69</sup>

Ideally, the state should strive to ensure that *all* living in South Africa are able to satisfy *all* the requirements with regard to adequacy of housing. This commitment would represent the transition to transformation, equality and socio-economic well-being for all in a profound way. The reality, however, is that the state *prioritises* housing based on land and financial constraints, amongst other factors. For those unable to access housing through the market, where individuals or households can typically balance the various criteria to choose the most adequate for themselves, state prioritisation should be people-centred, so as to ensure their access to livelihoods and survival. In a country rife with unemployment, poverty and lingering socio-economic and geographical inequality, adequate housing may serve as a trajectory out of poverty, even if this is a gradual process, or only applies to the relatively young members of a household. Affordable housing that caters to household or individual needs in areas close to work, schools, universities, health care facilities, public libraries, Internet access, among other places, can begin to overcome the class and race divisions that continue to rend the country 16 years after the end of apartheid.

The Department of Human Settlements (DHS) has acknowledged the need for a paradigm shift and its 2004 BNG policy epitomises a somewhat more progressive and holistic approach.<sup>70</sup> Their perspective recognises past failures and the need for a demand-driven housing approach, including a focus on quality, sustainability and community participation. President Jacob Zuma stressed recently that 'housing is not just about building houses...it is also about transforming our residential areas and building communities with closer access to work and social amenities, including sports and recreation facilities.' Though the state's policy formation is largely progressive, implementation of policy and the concomitant resource allocation indicates that the state does not place enough emphasis on the right to adequate housing as an *essential component* of poverty alleviation and transformation.

The systemic problems that hinder implementation include land availability; local government capacity and financial constraints<sup>71</sup>; the ineffective ward system; integrated development planning processes and similarly defunct bottom-up planning mechanisms; 'elite capture'<sup>72</sup> and political infighting at the local and community level; rampant evictions and shack demolitions by the state and private landlords and owners; poor inter- and intra-governmental relations; problems in the allocation of the national budget to local government, particularly around subsidised services such as water and electricity; private sector influence and reliance; soaring

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<sup>69</sup> Ibid.

<sup>70</sup> This department was formerly named the National Department of Housing and changed its name in May 2009.

<sup>71</sup> The Department of Housing has acknowledged the 'scant capacity and ability at local authority level in most towns to deliver, [which] continues to exacerbate the capability to meet our national targets'. Annual Report 2006-2007, p. 22.

<sup>72</sup> 'Elite capture' is a term relating to participatory democracy and governance and refers to the paradox that increasing opportunities for participation often increase political inequality, i.e. that participation is often captured by the middle class, party elite or business groups as opposed to communities and residents.

inflation in construction-related costs; and a deteriorating public education and health care system. One can trace most of these problems to the disjuncture between pro-poor national policy and the cost-recovery model used at the local level, as well as the persistent reliance on the private sector in housing provision without appropriate regulation.

Further, as mentioned earlier, access to adequate housing is intrinsically bound up with a number of other cross-cutting rights, including rights to public participation, equality, human dignity, just administrative action, access to information and access to justice. Access to adequate housing is also bound up with other socio-economic goods and amenities including access to land, water, sanitation, electricity, livelihoods, transport, clinics and hospitals, schools, universities and other cultural and recreational amenities such as parks, libraries, public spaces, swimming pools, sports fields and churches. Failures to realise these rights and provide socio-economic goods and amenities in turn compromises progressive realisation of the right to housing adequately. Housing policy and provision must therefore take these rights, goods and amenities into account to have a net positive impact.

Achieving adequacy requires more than meeting a minimum standard. Rather, the concept should embody the constitutional ideal of a more equal, fair and transformed society. Adequacy should be assessed in terms of *inter alia* the following key criteria: adequacy of location (i.e. proximity to schools, clinics, economic opportunities, transport and other social infrastructure); adequacy of shelter (in relation to building standards regulations, health and safety, etc); affordability (in terms of upfront and ongoing costs); adequacy and affordability of services (water, sanitation, energy supply, etc); adequacy of space; physical security; and security of tenure.

## 6. HOUSING LEGISLATION AND POLICY DEVELOPMENT SINCE 1994

In the past sixteen years there have been many shifts in housing policy. This section provides an overview of housing policy development in respect of the realisation of the right of access to adequate housing for all since 1994. As background, it briefly examines the National Housing Forum (NHF) process which preceded the development of a national housing policy, and moves to an in depth analysis of the two guiding national policies, the White Paper on Housing (1994) and Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (2004) among other relevant policy and legislative documents. Below is a list of legislative and policy instruments broadly relating to housing in South Africa, in chronological order.

### Legislative and policy instruments related to housing

- National Building Regulations and Building Standards Act 103 of 1977
- White Paper: A New Housing Policy and Strategy for South Africa (1994)
- Development Facilitation Act 67 of 1995
- Constitution of the Republic of South Africa of 1996
- Housing Act 107 of 1997
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
- Housing Consumers Protection Measures Act 95 of 1998 (amended by Act 27 of 1999)
- Rental Housing Act 50 of 1999 (amended by Act 43 of 2007)
- Home Loan and Mortgage Disclosure Act of 2000
- National Housing Code of 2000 (revised in 2007)
- Sectional Titles Act 95 of 1986 (amended by Acts 24 and 29 of 2003)
- Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (2004)
- Housing Development Agency Act 23 of 2008
- Social Housing Act 16 of 2008

### 6.1. National Housing Forum (1992-1994)

It is perhaps appropriate at this juncture to briefly recount the debates which dominated the National Housing Forum (NHF), a multi-party non-governmental negotiating forum comprising business, political, development, and civic organisations between 1992 and 1994. Critically, the NHF set the tone for the first democratic national housing policy in 1994.<sup>73</sup> The aim of the NHF

<sup>73</sup> While a number of stakeholders participated in the NHF, including civic and labour organisations, criticisms emerged about the dominance of the private sector and big business at the negotiations, and the implications of this on the housing policy that emerged. However, it appears the negotiations were messier than this critique suggests, with overlapping positions and similarities in thought cutting across political divides. Further, the influence of international experience affected the outcome as well as the 'need for pragmatism around operational implementation and the heightened sense of urgency of the need to demonstrate delivery.' Sarah Charlton and Caroline Kihato, "Reaching the

was to formulate a consensus around a new non-racial housing policy and two fierce debates characterised the process: first, whether housing should be provided by the state or the market; and, second, whether the standard should be a completed four-room house or a 'progressive' (incremental) house.<sup>74</sup>

There was a fierce debate over *who* would provide the housing and *how*. According to Mary Tomlinson,<sup>75</sup> the constituencies on the 'left' and the private construction sector argued that the government should provide mass rental housing. The 'left' argued that this would immediately entail a high standard (a four-room house). The private sector held a similar standard with the caveat that the private sector should be employed as contractors and not developers so as to limit their financial risk.<sup>76</sup>

Opposition to this view was based on a concern that the proven financial and administrative burdens of the approach would be too onerous for a fledgling government. Moreover, critics argued that local authorities were already eager to rid themselves of the responsibility of managing rental housing because of difficulties in collecting rent, maintaining stock and applying qualifying criteria to tenants.<sup>77</sup> The 'left' was challenged to explain how the state would finance and manage a mass rental programme. It was unable to do so, however, and this housing option discarded.

The NHF concluded with the decision that the government would provide the framework for housing provision and facilitate delivery. The private sector would apply for subsidies on behalf of communities, identify and service land, and construct structures where possible. This approach was heavily criticised by many who believed that it would perpetuate a market-based housing system, failing to address the flaws endemic to the 'racist capitalist housing market'.

The debate about *what* housing would be delivered concerned the cost of addressing the housing backlog and different estimates of budgets, time-frames and standards. It was finally agreed that a once-off capital subsidy scheme would be adopted to benefit households with an income of less than R3500 per month and the government launched the Housing Subsidy Scheme (HSS). The 'housing option' available to a household – which could be a house, a flat or a serviced site (with or without a top structure) – would depend on the government subsidy it received and access to private funds.<sup>78</sup> The subsidy was linked to individual ownership (as opposed to rental), and households effectively 'bought' a housing option with their subsidy. The aim of the new dispensation was to prioritise quantity over quality, delivering housing options to as many previously dispossessed South Africans as quickly as possible. This trade-off is known as

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Poor: An analysis of the influences on the evolution of South Africa's housing programme" in Udesb Pillay *et al* (eds.), *Democracy and Delivery: Urban Policy in South Africa* (Cape Town 2006), p. 275.

<sup>74</sup> Mary Tomlinson, "South Africa's housing policy: Lessons learnt from four years of the new Housing Subsidy Scheme", *Third World Planning Review*, 2.3 (1999), p. 283.

<sup>75</sup> Mary Tomlinson is a housing policy expert who was actively involved in the NHF and has subsequently worked at various institutions including the Urban Institute, the Banking Council of South Africa as manager of housing research, and at the University of the Witwatersrand Graduate School of Public and Development Management (P&DM) where she coordinated a course on housing policy development and management.

<sup>76</sup> Tomlinson, "South Africa's housing policy", p. 286.

<sup>77</sup> *Ibid.*, p. 286.

<sup>78</sup> *Ibid.*, p. 285.



the 'breadth versus depth' debate. Thus, the subsidised rental housing option was scrapped in favour of full ownership of a free standing house. This policy has only been revisited in the last few years and implemented in a few pilot projects (discussed in more detail later).

A new housing policy, the White Paper on a New Housing Policy and Strategy for South Africa (1994), emerged from the NHF debates and the broad principles of the ANC's RDP. This strategy focused on meeting basic needs and was heavily concerned with delivery.<sup>79</sup> The White Paper failed to reflect the fully subsidised, comprehensive and large-scale plan for housing envisioned in the RDP despite its ambitious aim that 'at minimum, one million low-cost houses should be constructed over five years.'<sup>80</sup>

## 6.2. White Paper on Housing (1994)

The incoming ANC government adopted the 1994 White Paper on Housing after the historic 1994 democratic elections, aiming to 'create viable, integrated settlements where households could access opportunities, infrastructure and services, within which all South Africa's people will have access on a progressive basis, to:

- A permanent residential structure with secure tenure, ensuring privacy and providing adequate protection against the elements; and
- Potable water, adequate sanitary facilities including waste disposal and domestic electricity supply.'

The policy further states that, 'Despite the constraints in the environment and the limitations on the fiscus, every effort will be made in order to realise this vision for all South Africans whilst recognising the need for general economic growth and employment as well as the efforts and contributions of individuals themselves and the providers of housing credit, as prerequisites for the realisation thereof.'<sup>81</sup> The goal of the policy was to increase the national budget allocation to housing to five percent and to increase housing delivery on a sustainable basis to a peak level of 338 000 units each year to reach the government's target of one million houses in five years.<sup>82</sup>

The state wanted rapid delivery to ensure broad access to housing and used individual, income-linked state subsidies to achieve this goal. The subsidies were to be given to private developers for them to develop serviced houses on freehold tenure site, basically a 'site-and-services' model with a house added on top (as negotiated at the NHF). The National Housing Subsidy Scheme (NHSS) made once-off capital subsidies available to low-income households, working on a sliding scale depending on household income levels. According to Sarah Charlton and

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<sup>79</sup> Charlton and Kihato, "Reaching the Poor", p. 253. The NHF culminated in the achievement of the broad housing sector convention also referred to as the Housing Accord, which led to the White Paper on Housing in 1994.

<sup>80</sup> RDP(1994), section 2.5.2. In 1996, the ANC discontinued the RDP's cabinet status, effectively eliminating it, and replaced it with the 'Growth, Employment and Redistribution: A Macro-economic Policy Framework' which favoured a market-oriented approach and relied heavily on the private sector for housing delivery.

<sup>81</sup> Department of Housing, "White Paper: A New Housing Policy and Strategy for South Africa" (1994), p. 19.

<sup>82</sup> Ibid., p. 20.

Caroline Kihato,<sup>83</sup> 'The subsidy is a once-off "contribution" by the state aimed at meeting the African National Congress' (ANC) objective of 'housing for all'.<sup>84</sup> The NHSS included a savings requirement, which meant that beneficiaries had to contribute at least R2 479 in order to receive any housing subsidies. Only people earning less than R800 a month, the elderly and disabled persons were exempt from this requirement.

Thus, households earning between R2 500 and R3 500 per month were entitled to a subsidy of R8 600; those earning between R1 500 and R2 500, a subsidy of R15 700; those earning less than R1 500, a subsidy of R25 800. As of 2002, the state introduced a compulsory beneficiary contribution (savings or credit) to make up the difference between the subsidy and the cost of a minimum standard house. The beneficiary contribution did not apply to beneficiaries earning less than R800 per month who received the full subsidy worth R28 279. Apart from income requirements, beneficiaries had to be married, co-habiting, or have at least one proven financial dependant; be citizens of South Africa; and be 21 years or older.

On adoption of the policy in 1994, according to Charlton and Kihato:

*'The intention was to deliver a "starter house" (sometimes consisting of building materials, where the subsidy only covered land and servicing costs), which beneficiaries would add to and consolidate over time. This incremental way of achieving the right to housing was related to a key assumption in the policy that beneficiaries would be able to access loan finance, which would be spent on improving the house.'*<sup>85</sup>

The state's early housing policy was based on an open-ended concept of a starter house, subject to wide variations in interpretation, that households could acquire with the state capital subsidy. Charlton and Kihato authors argue that by the late 1990s, the government had shifted its conception of a house to a minimum 30 m<sup>2</sup> unit of defined specification.<sup>86</sup> In 1999, new norms and standards placed increasing focus on the size and quality of the top structure or house and stipulated minimum standards. An undesired effect of this new policy, according to Charlton and Kihato, was that service standards relating to sanitation, water and roads were dropped in order to deliver houses in greater numbers and of greater size. Thus, pit latrines, communal stand-pipes and gravel roads were accepted as adequate, reinforcing the trend towards peripheral development as housing projects were built in areas where lower service levels were more common. The state also disregarded the negotiation required around improved service levels that was inevitable when building in close proximity to an existing township.<sup>87</sup> Important to note is the assertion by Charlton and Kihato that:

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<sup>83</sup> Sarah Charlton is a senior lecturer at the School of Architecture and Planning at the University of the Witwatersrand with specific research interest in low-income housing in South Africa. Caroline Kihato is currently theme coordinator for the regional programme at Urban LandMark, and previously worked as a researcher at the Development Bank of South Africa (DBSA) and was also a senior lecturer at the School of Architecture and Planning at the University of the Witwatersrand.

<sup>84</sup> Charlton and Kihato, "Reaching the Poor", p. 254.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid., p. 267,

*'This policy adjustment, driven by a political need to deliver acceptable houses, was not rooted in a deeper understanding of the consequences of the service levels/location/top-structure trade-off on beneficiaries. Rather, it was a reactive move related to the historic rejection of the notion of incrementalism – the gradual consolidation of a starter house over time by the end-user – and may again, in fact, have further contributed to the spatial marginalisation of the poor.'*<sup>88</sup>

The housing subsidy scheme was used to finance the construction of over 1.5 million housing units across South Africa between 1994 and 2003.<sup>89</sup> In March 2007, the National Department of Housing (DoH) announced that a total of 3 043 900 subsidies had been approved and 2 355 913 houses built since 1994.<sup>90</sup> While this achievement has been lauded, the government often notes that the backlog is increasing due to rapid urbanisation, amongst other factors. It currently estimates the backlog at around two million units.<sup>91</sup> That figure is probably lower than the reality, however, as it is generally based on the number of people living in shacks and does account sufficiently for people living in overcrowded township housing and municipal flats.

Despite the efforts of the NHSS to deliver housing to all, there have been problems with both the quantity and quality of housing delivered. More broadly, housing delivery has had a limited impact on poverty alleviation. The subsidy scheme has generally been provided through project-linked subsidies for large-scale housing developments, often located on the periphery of existing townships on land first acquired or zoned for township development under apartheid.<sup>92</sup> This perpetuates the marginalisation of the poor and does not contribute to the 'compaction, integration and restructuring of the apartheid city.'<sup>93</sup> According to COHRE, this trend served to reinforce the 'spatial segregation of cities, the isolation of the poor from livelihood opportunities and social services, as well as the tendency towards urban sprawl.' The centre finds that, 'This problem has often been exacerbated by the fact that there has also been little co-ordination between government departments to ensure that public transport, schools, clinics, libraries and police stations are provided for the new community.'<sup>94</sup> Other factors, such as the cost of home ownership because of rates and service charges and heightened unemployment, have also limited the effect of housing provision on poverty alleviation.

Corruption in the allocation of subsidised housing units and construction tenders, which leads to short cuts and shoddy house quality, are additional difficulties that this model of housing delivery has entailed.<sup>95</sup> Recently, the Minister of Human Settlement Tokyo Sexwale announced that the

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<sup>88</sup> Ibid.

<sup>89</sup> David Gardner, 'Getting South Africans under Shelter: an Overview of the South African Housing Sector', Housing Finance Resource Programme (2003), p. 21.

<sup>90</sup> See the National Department of Housing website at <<http://www.housing.gov.za/>>

<sup>91</sup> "SA housing backlog at two million", SABC News (8 October 2007)

<[http://www.sabcnews.com/south\\_africa/land\\_affairs/0,2172,157125,00.html](http://www.sabcnews.com/south_africa/land_affairs/0,2172,157125,00.html)>

<sup>92</sup> Charlton and Kihato, "Reaching the Poor", p. 268.

<sup>93</sup> Ibid., p. 255.

<sup>94</sup> COHRE, "Business as Usual?", p. 87.

<sup>95</sup> The stated aim in the White Paper was to 'ensure the participation of emerging, largely black contractors' by providing financial assistance to enable the scheme to accredit such contractors despite a lack of resources and adequate track record, and to develop special mechanisms to enable such participation without compromising the right of the consumer to a proper standard product. See "White Paper on Housing", p. 27.

government would be using R1,3 billion, or 10 percent of the department's budget, to rectify badly constructed RDP houses.<sup>96</sup>

### **6.3. Housing Act 107 of 1997, Rental Housing Act 50 of 1999 and National Housing Code (2000)**

#### **Housing Act 107 of 1997**

The Housing Act 107 of 1997 largely gave the White Paper legislative effect, and its reference to 'progressive realisation' echoes that outlined in the policy document. The Act provides for a sustainable housing development process, laying down general principles for housing development in all spheres of government; defines the functions of national, provincial and local governments in respect of housing development; provides for the establishment of a South African Housing Development Board; continues the provincial boards as 'provincial housing development boards'; and lays the basis for financing national housing programmes.

**Housing development** is defined in the Act as:

*'The establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to-*

- (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and*
- (b) potable water, adequate sanitary facilities and domestic energy supply.'*

The Housing Act, and later the National Housing Code (promulgated in 2000, pursuant to section 4 of the Housing Act), sets out the roles and responsibilities of the three tiers of government in respect to housing. These are as follows:

- *National government* must establish and facilitate a sustainable national housing development process.
- *Provincial government* must create an enabling environment by doing everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.
- *Local government, i.e. municipalities,* must pursue the delivery of housing. Every municipality must take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the housing right as set out in Section 26 of the Constitution is realised. It should do this by actively pursuing

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<sup>96</sup> Loni Prinsloo, "NHBC to crack down on unregistered home builders", *Engineering News* (12 May 2010) <<http://www.engineeringnews.co.za/article/nhbc-to-crackdown-on-unregistered-home-builders-2010-05-12>>

the development of housing, by addressing issues of land, services and infrastructure provision, and by creating an enabling environment for housing development in its area of jurisdiction.<sup>97</sup>

The Act requires national government to formulate housing policy and monitor implementation through the promulgation of the National Housing Code and the establishment and maintenance of a national housing data bank and information system. Provincial government, through Provincial Housing Development Boards set up in terms of section 8 of the Housing Act, allocates housing subsidies to municipalities. Under section 9 of the Housing Act, policy implementation, settlement planning and the initiation of housing developments are the responsibility of municipalities. Thus, the Housing Act paved the way for greater involvement by local government in housing development.

Section 9(1)(a)(i) of the Act states that, 'Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis.'

An announcement in 1998 by the DoH signalled an intention to change the procurement regime to allow local authorities with adequate capacity to be developers of low-income housing projects from April 2002.<sup>98</sup> This policy shift towards a more state-centred and state-driven approach was due to a number of influences, which include a combination of the following, according to Charlton and Kihato: a move towards the creation of a strong local state; the political imperative of local government councillors to gain greater influence over a visible aspect of state delivery; the need for spatial and programmatic alignment with integrated development planning (particularly with respect to the delivery of bulk services); reaction to the negative perceptions of the white construction industry, a concern for getting the best deal for beneficiaries through maximising the value of the subsidy and perceptions of poor construction and abuse by private developers; the withdrawal of private sector actors from low-income housing delivery due to tightening environmental regulations, delays in township registration and transfer of title deeds, and increasing financial risk.<sup>99</sup>

Some saw this shift to state control of housing delivery as a positive move that would reduce the interest of the private sector in housing and enable a strong, development-orientated local state. Others, however, argued that the shift was due to the fact that private developers struggled to make profits from low-cost housing projects and wanted to be free of such obligations. The ability of the already overburdened and under-capacitated local government sphere to take on this role was perhaps not sufficiently investigated or acknowledged. Some commentators cautioned that the motivation for the shift included a desire for local councillors to gain control over housing developments, expressing concern that this could lead to clientelism and patronage, undermining the development and allocation of housing on the basis of need.<sup>100</sup>

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<sup>97</sup> National Housing Code, Part 1, Chapter 2, section 2.3.

<sup>98</sup> Charlton and Kihato, "Reaching the Poor", p. 263.

<sup>99</sup> Ibid., pp. 263-264.

<sup>100</sup> COHRE, "Business as Usual", p. 88.

## **Rental Housing Act 50 of 1999 (amended in Act 43 of 2007)**

The Rental Housing Act 50 of 1999 regulated the relationship between landlords and tenants in all types of rental housing. Section 2(1)(a) of the Rental Housing Act stipulates that it is the government's responsibility to (i) 'promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that improve conditions in the rental housing market' and (ii) 'facilitate the provision of rental housing in partnership with the private sector'.

Some of the most important features of the Act include the establishment of Rental Housing Tribunals, the introduction of the Unfair Practices Regulations and the repeal of the Rent Control Act of 1976. In 2007, several amendments were made to the Act concerning the criminalisation of 'constructive evictions', that is, cutting off services without a court order.<sup>101</sup> Some of the persistent problems with rental housing, particularly private rental, are discussed in section 6.5.3 below.

## **National Housing Code (2000)**

The National Housing Code published in 2000 sets out the National Housing Policy of South Africa and procedural guidelines for the effective implementation of this policy. The requirement to develop the National Housing Code is set out in Section 4 of the Housing Act. The Code's 'vision for housing in South Africa' in section 2.1 echoes the definition of 'housing development' as outlined in the Housing Act and states that this vision is reiterated in the Urban and Rural Development frameworks. According to the Code:

*'In each of these documents, the environment within which a house is situated is recognised as being equally as important as the house itself in satisfying the needs and requirements of the occupants. Ultimately, the housing process must make a positive contribution to a non-racial, non-sexist, democratic and integrated society...The goal within both urban and rural areas is to improve the quality of living of all South Africans. The emphasis of our efforts must be on the poor and those who have been previously disadvantaged. To meet this goal in a manner that is viable and sustainable, we understand that we need to undertake a range of interventions.'*

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<sup>101</sup> In 2007, an amendment to the Act was passed, which made a number of important changes including the criminalisation of 'constructive evictions'. This is defined as cutting off services without a court order. Also, important to the Act is that tenants have the right not to have their possessions seized unless by a tribunal ruling or an order of court. Landlords have, amongst other rights, the right to prompt and regular payment of a rental, or any charges that may be payable as part of a lease, and can recover unpaid rental or other amounts due after obtaining a ruling by the tribunal or an order of court. They have the right to terminate the lease on grounds that do not constitute unfair practice but are specified in the lease. A landlord must give a tenant at least two months written notice of an intention to increase rental. See Rental Housing Amendment Act 43 of 2007.

The Code includes the housing vision for rural and urban settlements outlined in the Urban and Rural Development Frameworks. The year 2020 is the deadline by which both aim to achieve their objectives.

The Code further states that government's housing goal is:

*'...subject to fiscal affordability, to increase housing delivery on a sustainable basis to a peak level of 350 000 units per annum until the housing backlog is overcome. It is expected that this process may take several years. Realisation of the goal relies on government ensuring that its implementation systems in all three spheres of government can accommodate the budget allocation and delivery programme.'*

The Code contains the National Housing Programmes and has recently been revised and published in 2009. The revised Code is covered in more detail in section 6.8 below.

## **6.4. People's Housing Process (1998)**

As the state strengthened its role in low-cost housing delivery, a parallel process was underway to increase beneficiary participation in the process. The People's Housing Process (PHP) was adopted by the Minister of Housing in 1998 to assist communities to supervise and drive the housing delivery process by building their homes themselves. The idea of community participation had been part of the White Paper on Housing, reflected in the requirement for a 'social compact' between developers and communities. Despite this provision, the *meaning* of community participation had not been clearly defined and its interpretation varied widely across projects.<sup>102</sup>

The PHP was developed partly in response to lobbying by grassroots organisations, such as the South African Homeless People's Federation (SAHPPF), for greater beneficiary participation and pressure from international organisations, such as the United Nations, which had experience showing that beneficiary participation resulted in more responsive and effective low-cost housing delivery.<sup>103</sup> The PHP aimed to work with NGOs in the housing sector to assist communities in planning and implementing the construction of their own housing settlements through 'sweat equity' (using beneficiaries' labour to build houses) offset against the NHSS savings requirement. This meant that poor households could overcome the affordability barrier and gain access to a house without the long wait to access housing finance. The process was supported by a number of South African development NGOs (who later formed part of a PHP Reference Group to lobby for changes to the PHP) on the basis that it would achieve more response and effective delivery. Some critics have argued, however, that it shifts part of the cost of housing onto the poor and that there is a fundamental dissonance between the collective nature of community-based processes and the individualised – and often random, and therefore individualising – nature of plot allocations by the state.<sup>104</sup>

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<sup>102</sup> Charlton and Kihato, "Reaching the Poor", p. 265.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

The argument made by critics is that participation in the PHP is limited to housing construction, with little influence by beneficiaries over key issues like location of housing projects and layout around the existing patterns of land occupation.<sup>105</sup> According to Marie Huchzermeyer,<sup>106</sup> organised communities have not been able to identify and manage infrastructure projects.<sup>107</sup> Another criticism is that through the PHP the state is abrogating its responsibility and shifting the burden of delivery to the poor. However it could be argued that, due to the horizontal application of section 26, the state, private sector, banks and beneficiaries all have a role to play in fulfilling the right to adequate housing. There have been instances of effective joint partnership in housing delivery, COHRE acknowledges, such as the DoH's extensive financial support for partnerships between various levels of government and the Federation of the Urban Poor (FEDUP), which is administered by Slum/Shack Dwellers International (SDI). Still, the centre maintains that the PHP process has often failed at the local level. EThekweni saw some early success, resulting in over a thousand houses being built from 2002 to 2004. No houses at all were built through this process in 2005 or 2006, however, and numbers were negligible in 2007.

In July 2008 the Enhanced People's Housing Process (ePHP) was adopted to replace the old PHP programme. This policy was the result of lengthy and difficult negotiations with the DoH, dating back to 2004, on the part of a handful of NGOs including Planact, Development Action Group (DAG), the Built Environment Support Group (BESG), Afesis-Corplan, Urban Services Group, Utshani Fund and FED-UP.<sup>108</sup> The NGOs had for some time objected to the narrow definition of the PHP as 'self-build' housing involving contributions of 'sweat equity' as opposed to the use of contractors. They believed it should fundamentally concern a collective, 'community-based process of decision-making that would seek to address housing in the context of other social needs and community priorities.'<sup>109</sup>

The new policy adopted a broader definition of PHP, allowing for greater flexibility and choice while maintaining the central principles of people-centred development. According to the policy framework:

*'ePHP enables/encourages communities to actively contribute and participate in the housing development process so that communities take ownership of the process and not just act as passive recipients of housing....ePHP recognizes that the community is the initiator and driver of the process. The programme is intended to build on existing livelihood strategies so that social capital that has been built up in a community is capitalised on. ePHP therefore builds on the positive steps that communities have taken to organize and house themselves rather than diminish the contribution that communities have made.'*

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<sup>105</sup> Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (2004), p. 48.

<sup>106</sup> Marie Huchzermeyer is a professor at the School of Architecture and Planning at the University of the Witwatersrand who has researched and written on informal settlement policy and practice in South Africa, as well as internationally.

<sup>107</sup> Huchzermeyer, *Unlawful Occupation*, p. 48.

<sup>108</sup> For more on the development of the PHP see Planact and Rooftops Canada, "Success at a Price: How NGO advocacy led to changes in South Africa's People's Housing Process" (2009).

<sup>109</sup> Rebecca Himlin, "People's Housing Process: Enhanced!", *NGO Pulse* (November 2008)

<[http://www.planact.org.za/images/stories/documents/articles\\_presentations/7.%20People's%20Housing%20Process%20-%20Enhanced.pdf](http://www.planact.org.za/images/stories/documents/articles_presentations/7.%20People's%20Housing%20Process%20-%20Enhanced.pdf)>



The new expanded PHP was rolled out in April 2009.

## **6.5. Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (2004)**

From 2002 to 2003, the DoH undertook a comprehensive review of the housing programme after recognising a number of 'unintended consequences' of the existing programme. These unanticipated problems included peripheral residential development; poor quality products and settlements; the lack of community participation; the limited secondary low income housing market; corruption and maladministration; a slowdown in delivery; underspent budgets; limited or decreasing public sector participation; the increasing housing backlog; and the continued growth of informal settlements.<sup>110</sup> The review process aimed at providing a new policy direction and establishing a research agenda to inform and support policy decision-making within the housing programme, particularly to counter the dispersal of knowledge and intellectual capacity that had occurred over the previous decade. The review aimed to use the DoH as a hub to focus and address complex questions of space and economy.

A new research chief directorate was established in the DoH as part of an effort to develop an in-house research culture to feed into policy-making and review. It undertook an intensive process of consultation with housing stakeholders at national, provincial and local levels, as well as a survey of beneficiaries on the impact the NHSS scheme. Six research papers were commissioned on the appropriateness of current policy, the role of the private sector in delivery and international shifts in shelter and settlement policy. Research focused on concepts such as housing as an asset, integrated development and sustainable human settlements. The empirical evidence gathered reinforced the recognition that major gaps existed in the policy.

The review process was meant to lay the foundation for a new housing policy and research agenda and to contribute to a 'second generation' housing policy for the next 10 years. According to Charlton and Kihato, however, these outcomes did not occur as envisioned. A Housing Summit in November 2003, where it was expected that the Minister would unveil a new strategy, was downgraded to a 'listening process'. This may have been because a national election was around the corner and it was politically difficult to introduce new policy. In early 2004, the DoH, in consultation with the Presidency and the National Treasury, produced a 'turn-around strategy', which contained elements of a new policy direction based on the research process. However this strategy was never implemented and did not significantly shift the department's thinking.<sup>111</sup> At best, the research introduced pro-poor language into government discourse, which some argued was 'far ahead of practice'.<sup>112</sup>

Charlton and Kihato assert that BNG did not clearly introduce any new policy direction and should be understood within the context of the president's proposals on housing policy at the

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<sup>110</sup> Department of Housing, Presentation on BNG to the Programme in Housing Policy Development and Management, P&DM (January 2008).

<sup>111</sup> Charlton and Kihato, "Reaching the poor", p. 261.

<sup>112</sup> Ibid.

time. In a 2004 State of the Nation address, President Thabo Mbeki promised that the DoH would present to the Cabinet a policy document that addressed human settlements and social infrastructure within three months. There was thus clear *political* pressure for the department to 'generate a new document that engaged with socio-economic issues around human settlements.'<sup>113</sup>

The influence of international organisations and their discourse is also evident in South Africa's housing policy development, particularly in relation to informal settlement policy. The determination to eradicate informal settlements, referred to by former Minister of Housing Lindiwe Sisulu as the 'war against shacks', corresponds with the Cities Alliance 'Cities without Slums' initiative.<sup>114</sup> This discourse is present in the BNG and other documents of the DoH. However, as various academics and housing practitioners have pointed out, this discourse is somewhat confused with the political discourse that focuses on the 'inferiority of informality' and the need to eliminate the blight of shacks and their concomitant association with poverty. Such a discourse is opposed to the notion of upgrading settlements through the provision of services and tenure in order to integrate settlements into 'the broader urban fabric to overcome spatial, social and economic exclusion.'<sup>115</sup>

It has been argued that BNG lacks clear strategic direction and that the policy is 'confusing and disappointing' given the extensive research and consultation process that occurred prior to its development. As mentioned above, the final document reflected surprisingly little of the review process and lacked the involvement of key officials who drove the process in 2002 and 2003.<sup>116</sup> Instead, 19 different business plans from various sectoral programmes within the department were amalgamated and given to a 'consultant with links to the World Bank' to consolidate. According to Charlton and Kihato, 'Despite this refinement the document does not clearly demonstrate a unifying conceptual foundation which offers policy direction into the future.'<sup>117</sup>

Moving onto the content of the policy, BNG intended to shift away from a focus on *quantity* of houses delivered to *quality* (size and workmanship of housing product, settlement design, alternative technology, etc) and *choice* (tenure type, location, etc). It aimed to increase the rate of delivery of well-located housing of acceptable quality through a variety of innovative and demand-driven housing programmes and projects. BNG was to build on the principles of the 1994 Housing White Paper but also supplement existing mechanisms and instruments to ensure more responsive, flexible and effective delivery. It also sought to place increased emphasis on the *process* of housing delivery, i.e. the planning, engagement and the long-term *sustainability* of the housing environment.<sup>118</sup>

The BNG policy acknowledged the change in the nature of the housing demand, the increasing average annual population growth, the drop in average household size, significant regional differences, increasing urbanisation, skewed growth of the residential property market, growth in

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<sup>113</sup> Ibid., p. 256.

<sup>114</sup> Ibid., p. 258.

<sup>115</sup> Department of Housing, "Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements" (2004), section 3.1.

<sup>116</sup> Charlton and Kihato, "Reaching the poor", p. 259.

<sup>117</sup> Ibid.

<sup>118</sup> "Breaking New Ground", section 4.

unemployment and a growing housing backlog despite substantial delivery over the previous decade. It recognised that the lack of affordable, well-located land for low-cost housing had led to development on the periphery of existing urban areas, achieving limited integration. According to the policy, 'The dominant production of single houses on single plots in distant locations with initially weak socio-economic infrastructure is inflexible to local dynamics and changes in demand... the new human settlements plan moves away from the current commoditised focus of housing delivery towards more responsive mechanisms which addresses the multi-dimensional needs of sustainable human settlements.'<sup>119</sup> Further, BNG acknowledged that subsidised houses had not in fact become the 'valuable assets' envisioned in earlier policy. Moreover, beneficiaries' inability to pay for municipal services and taxes meant that municipalities viewed such housing projects as liabilities, and were not particularly responsive to the national department's more progressive intentions around housing.<sup>120</sup> The document frames housing delivery more explicitly as a catalyst for achieving a set of broad socio-economic goals.

The BNG policy aimed to move from a supply-centred model to a model driven by the needs of those on the ground. Key strategies of the policy included:

- Stabilising the housing environment by creating effective partnerships between a range of stakeholders, the beneficiaries and service providers;
- Building trust within the housing sector through encouraging payments of services by beneficiaries and encouraging lending in affordable housing;<sup>121</sup>
- Mobilising credit for low-income housing by managing and cushioning commercial risk whilst sharing the risk between all role players;
- Releasing and servicing well-located land speedily and efficiently in order to expedite housing delivery; and
- Coordinating state investment in development to maximise the impact of state funding.

Despite these aims, BNG has been criticised for not fully addressing the key weaknesses with the previous policy, as identified in the department's research process, or offering clear direction on the difficult political issues of land ownership, the land market and rights around property values. Charlton and Kihato argue that, 'Although the programme strives for broader outcomes, key indicators of performance appear to remain largely quantitative, focused around numbers of houses produced and budgets spent.'<sup>122</sup> Further, some of the weaknesses of housing policy to date exist *outside* the ambit of the government organs responsible for housing, and there is a worrying lack of alignment between the current focus in government on the contribution of housing to poverty alleviation and the ability of housing policy to achieve these aims.

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<sup>119</sup> Ibid., section 2.2.

<sup>120</sup> Ibid., Part A, section 3.

<sup>121</sup> In BNG, the income band of those benefitting from the programmes was expanded to include those earning up to R7000 a month. According to section 2.3.1 of the policy, 'In order to promote the participation and contribution of the private sector in housing construction, the existing 3 subsidy bands are to be collapsed to enable households earning below R3500 to access a uniform subsidy amount. This mechanism will address housing bottlenecks in respect of households earning above R1500 and will also substantially increase the number of households who qualify for a full housing subsidy.'

<sup>122</sup> Charlton and Kihato, "Reaching the poor", p. 259.

Further, despite the progressive nature of the BNG policy, that is, the choice of housing options it offers as well as its demand-side approach, its stated intent to offer a greater choice of tenure, location or affordability has not been realised significantly to date.<sup>123</sup> The DHS still prioritises fully subsidised, low-density, detached, freehold family accommodation over other delivery modes, tenure systems and accommodation choices. According to a recent report by Urban LandMark and the Social Housing Foundation (SHF), this is not a justifiable response to South Africa's diverse and changing demographic composition.<sup>124</sup> Current housing policy has made little impact on stimulating the supply of rental accommodation affordable to lower-income households (earning less than R3 500 per month). Although the Social Housing Act requires a proportion of all stock to be affordable to households in the two lower subsidy bands (earning R1 500 to R2 500 per month and R2 500 to R3 500 per month), the scale of delivery in these bands is limited (see section 6.6 on the Social Housing Policy below). According to Gardner, there are increasingly better understood and more clearly expressed requirements for alternative tenure arrangements, such as rental, and intermediate accommodation options, such as smaller-scale, better located units. For example, new private and social housing inner-city accommodation providers indicate very large demand for more affordable smaller units.<sup>125</sup>

According to Kecia Rust,<sup>126</sup> it is evident that the:

*'Majority of households in the worst housing conditions (squatting, backyard shack and backyard room rental) are very poor households. It is also clear that pushing them into fully-subsidised, minimum-standard owned accommodation may not suit them from a number of perspectives: their choice of tenure (rental versus ownership), their ability to afford owned accommodation (both capital and running costs), the ability to access the (albeit significant but still insufficient) newly developed subsidised stock and the suitability of this accommodation given their household size.'*<sup>127</sup>

The following four subsections present some of the key areas of focus in BNG, highlighting where it departs from the White Paper on Housing in its approach. The four areas this paper considers are: the role of local government in a demand-driven approach; the approach to informal settlement upgrading; urban renewal and inner city regeneration; and rural housing and farm dweller settlements.

### **6.5.1. The role of local government in a demand-driven approach**

A greater role for local government in the housing delivery process is envisioned in BNG because municipalities were seen to be closer to the ground and better able to respond to housing demand more effectively. According to BNG, the previous housing programme granted private developers a leading role in the delivery of housing within a supply-driven framework. In

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<sup>123</sup> Urban LandMark and SHF "Small -Scale Private Rental", p. 12.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid., p. 13.

<sup>126</sup> Kecia Rust is an expert in housing finance and is the Housing Finance Coordinator at the Centre for Affordable Housing Finance in Africa, based at FinMark Trust.

<sup>127</sup> Kecia Rust, "Analysis of South Africa's Housing Sector Performance", FinMark Trust (December 2006), p. 15.

contrast, the new housing plan shifts towards a more demand-driven process. The plan accordingly increases its emphasis on the role of the state in determining the *location* and *nature of housing* to link the demand for and supply of housing. Municipalities will assume overall responsibility for housing programmes in their areas of jurisdiction through a greater devolution of responsibility and resources to them. The policy assumes that municipalities will proactively take up their housing responsibilities given clear guidelines and resourcing from the national sphere.

## Accreditation

One of the interventions under the BNG is the *accreditation* of municipalities, particularly the metros and secondary cities,<sup>128</sup> by the national department. This involves municipalities proving their capacity to plan, implement and maintain projects and programmes that are aligned with their Integrated Development Plans (IDPs) amongst other requirements. It is envisioned that the accreditation of municipalities will assist them to plan better by allocating funding for three years and concluding payment schedules with the provinces. Accreditation is also meant to improve the transparency of municipal allocations..

Municipalities appear eager to be accredited to get around some of the problems of inter-governmental relations and the dominant role of the provinces in housing delivery. These inter-governmental problems, from the municipal perspective, particularly concern: the allocation of housing subsidies on an *ad hoc* basis and local government's resulting inability to plan long-term; the lack of a mechanism to negotiate the number of subsidies allocated, and confusion over what to do to improve allocations; little control over the appointment of developers; difficulties in multi-year planning in housing development; and the lack of sufficiently long-term allocations to ensure that developments do not simply take place in peripheral areas where serviced sites are available.<sup>129</sup>

In order to be accredited, municipalities must establish housing departments or units with enough staff to execute projects according to existing requirements; establish cross-sectoral Sustainable Human Settlements Planning Committees; submit complete inventories of land owned by municipalities, including land suitable for low-cost housing; and submit a council resolution indicating the willingness of the municipality to meet the national department's anti-corruption, monitoring and reporting requirements.

Successfully accredited municipalities are empowered to manage the full range of housing instruments within their areas of jurisdiction and take control of the demand-driven housing

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<sup>128</sup> The metropolitan municipalities are characterised by a region-wide urban footprint; an established formal core of industrial, commercial and suburban development; formal townships, hostels and backyards; informal settlements with significant subsidised housing on the periphery; high rates of (circular) migration; and the highest concentrations of urban poor. Examples include the City of Johannesburg, Ekurhuleni, eThekweni and the City of Cape Town. Secondary cities are characterised by an established formal core of mining, commerce and suburban development; are often linked to old former 'homeland' settlements in the vicinity; comprise formal townships with backyards, informal and traditional settlements; have significant subsidised housing on the periphery; show rapid urbanisation and extreme levels of poverty. Examples include Nelspruit, Rustenburg, Polokwane and Witbank-Middelburg. (Department of Human Settlements, June 2009).

<sup>129</sup> Malefetsane Mokoena and Lochner Marais, "The Missing Link in Cooperative Governance and Housing Delivery: Lessons from Mangaung Local Municipality", *Urban Forum*, 18 (2007), p. 318-319.

process envisioned in BNG. Municipalities must develop enhanced housing chapters for the IDPs, which include providing a housing needs assessment; the identification, surveying and prioritisation of informal settlements; the identification of well-located land for housing; the identification of areas for densification; the linkages between housing and urban renewal; and the integration of housing, planning and transportation frameworks. Community participation is a key component of this process. Implementation was expected to occur over 10 years, beginning in December 2004 with the nine municipalities and followed by 20 more in year two until all 284 municipalities had been accredited.<sup>130</sup>

Accreditation of municipalities has been proceeding very slowly, however, and as of April 2010, only five municipalities – Polokwane, Emalahleni, Buffalo City, Nelson Mandela and eThekweni – had been granted level-one accreditation.<sup>131</sup> According to the national government, in order to fast-track level-two accreditation of metropolitan municipalities,<sup>132</sup> a municipal accreditation capacity and compliance assessment panel has been established.

### **6.5.2. The approach to informal settlements – *in situ* upgrading**

The BNG policy refers to ‘progressive informal settlement eradication’ and states that a phased *in situ* upgrading approach in desirable locations is favoured. Further, it recommends that informal settlement eradication occurs through upgrading in line with international best practice. Relocation is only to occur when development is not possible or desirable, according to the BNG.<sup>133</sup> The policy recognises that the existing housing programme will not secure the upgrading of informal settlements. It therefore articulates the need to shift the official policy response to informal settlements from one of ‘conflict or neglect’, to one of ‘integration and co-operation, leading to the stabilization and integration of these areas into the broader urban fabric.’<sup>134</sup>

The BNG refers to nine informal settlement upgrading pilot projects, with the N2 Gateway project in Cape Town being the lead project.<sup>135</sup> BNG introduces a new informal settlement upgrading funding mechanism, which would support upgrading on an area-wide basis, maintain fragile community networks, minimise disruption and enhance community participation through a

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<sup>130</sup> “Breaking New Ground”, section 5.2.

<sup>131</sup> Level one accreditation means a municipality can deal with a subsidy budget allocation process, identify housing projects and manage beneficiaries and stock. It must have the ability to draft a plan for level one accreditation, to produce and implement housing strategies, plans and budgets, and to do project identification and assessment. Andisiwe Makinana, “D-Day set for Cape’s housing ambitions”, Cape Argus (27 August 2009).

<sup>132</sup> Level two accreditation gives a municipality full administration and management of housing projects, includes project approval, contract administration and quality assurance. To get this level of accreditation, the municipality must have the capacity to produce and undertake project feasibility assessments, which are carried out by professional engineers, town planners or certified project managers, and to provide programme administration skills in line with the scale of activities planned for the municipality. Andisiwe Makinana, “D-Day set for Cape’s housing ambitions”, Cape Argus (27 August 2009).

<sup>133</sup> “Breaking New Ground”, section 3.1.

<sup>134</sup> *Ibid.*

<sup>135</sup> This pilot project was the subject of a Constitutional Court challenge in the *Joe Slovo* case, when the implementing agent attempted to evict the 4 000 families from the informal settlement in order to relocate them to Delft in what was *not* an *in situ* upgrade. See section 4.4 for more on the case.

phased process.<sup>136</sup> BNG also recognises the need to redefine the nature, focus and content of the PHP in line with some of the contradictions inherent in the process and to adopt an area-wide or community approach.<sup>137</sup>

According to the DoH Annual Report 2008-2009, a National Upgrading Support Programme (NUSP) was recently established in collaboration with the international Cities Alliance movement. Sixteen priority projects were studied with a view to identifying best practices in informal settlement upgrading. It is envisaged that the learning achieved under this programme will lend further substance to policy refinement and the development of a new and improved implementation strategy at project level. The initiative will also provide critical support to housing projects in their early stages. A team of national and international experts support the programme by providing it with advice and guidance.<sup>138</sup> It remains to be seen, however, what will emerge from this process and how it will be taken up in all spheres of government.

Despite the stated aims of the BNG policy and a few pilot projects, there has been a manifest failure on the part of government to implement *in situ* upgrading of informal settlements to date. According to Richard Pithouse,<sup>139</sup> 'At all levels of government and in all parts of the country, there has been a systemic failure to implement the substantive content of BNG that recommends and makes financial provision for participatory and collective *in-situ* upgrades.' He describes how there has been a shift to a 'security driven approach to the urban poor' (i.e. viewing them as a threat). As a result, the progressive legal and policy framework has been overshadowed by the forceful anti-poor discourse around 'eradicating slums' and attempts to formalise this tendency through repressive provincial slum legislation (see section 4.5. on the *Abahlali* case above).<sup>140</sup> Shack dwellers in South African cities live in life-threatening conditions, where two of the biggest threats are fire and diarrhoea. Both of these threats could be easily ameliorated within current budgetary limits by providing basic support to shack settlements, most importantly adequate sanitation and water provision but also electricity. According to Pithouse:

*'It seems that a major reason for the general failure to provide this support is that the housing subsidy system has created a widespread view that shack settlements are temporary phenomena that will soon be replaced by formal housing. Indeed many government officials have stated this directly. However despite the large numbers of houses built via the subsidy system in the first five years after apartheid there was not a decline in the number of people living in shacks. There is, therefore, no rational basis for the assumption that, under*

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<sup>136</sup> "Breaking New Ground", section 4.1.

<sup>137</sup> Ibid. In late 2007, the National Department of Housing announced that it intended shifting from PHP to a Community Driven Housing Initiative (CoDHI) programme. It was explained that, 'CoDHI is where the community members decide what type of houses they want and how they plan to build these houses; as well as providing some form of community contribution to the process, such as labour (not necessarily free), savings, material, land, community projects, etc.'<sup>137</sup> There are plans to create a new and distinct subsidy type for CoDHI that would enable more flexibility in terms of the actual buildings constructed as well as the mode of construction and the partnerships involved in planning and carrying out the construction.

<sup>138</sup> Department of Housing, Annual Report 2008-2009, p. 47

<<http://www.housing.gov.za/Content/Documents/Annual%20Report%202008-2009/Housing.pdf>>

<sup>139</sup> Richard Pithouse is an academic who has written on housing policy, participatory democracy and the right to the city in South African, and is currently a lecturer at the Department of Political and International Studies at Rhodes University.

<sup>140</sup> Richard Pithouse, "A Progressive Policy without Progressive Politics: Lessons from the failure to implement 'Breaking New Ground' ", *Town Planning Journal*, 54 (2009), pp. 1-2.

*current policies and practices, shacks will soon be eradicated. For this reason the failure to provide basic life saving services to shack settlements – such as electricity, toilets, sufficient water, fire hydrants and so on – must be deemed a major failure on the part of the state.’<sup>141</sup>*

Since 2004, most ‘upgrading’ of informal settlements has not followed the BNG principles or vision at all. Generally a greenfields housing development (i.e. development on a piece of previously undeveloped land) is built with some subsidised units and low-income ‘bond’ houses with a specific set of units assigned to people relocated from designated informal settlements. Shack dwellers from ‘qualifying’ settlements are then signed up as part of the development and checked off of the national housing demand database, which lists people to ascertain whether they qualify for a housing subsidy. Corruption is often rife in this process. People who do not find places in the new developments are forced into far flung temporary relocation areas (TRAs). Alternatively, they may end up in ‘transit camps’, where they are left indefinitely and are often worse off than before. Often the movement it is done by force using the notorious private security company Wozani Security – also known as ‘the Red Ants’ - and police officials. According to Pithouse, ‘Across the country it has not been unusual for people to simply abandon relocation houses and move back to better located shacks or to refuse to leave shacks for relocation houses, as often happened under apartheid and has often happened with forced removals to peripheral relocation sites the world over.’<sup>142</sup>

More evidence of growing frustration with the non-implementation of the programme can be seen in recent interventions around land pursued by civil society organisations and shackdwellers. The first intervention involves an initiative called LANDfirst, which is advocated by Afesis-corporation, Urban LandMark, Planact and a number of other civil society organisations. This grouping seeks to develop a creative tenure system (between a shack and an RDP house) that is affordable to establish and maintain and allows the poor to access land and tenure security. Under the initiative, the outer boundary of an existing informal settlement earmarked for future upgrading, or a new piece of land identified for phased and incremental settlement, is identified and communities are afforded the right to settle on a plot and granted permission to build certain types of structures on it. The proponents of this idea are lobbying for government support for a pilot and demonstration projects to explore these different tenure arrangements.<sup>143</sup>

The other intervention of this nature involves frustrated shackdwellers and ‘backyarders’ throughout the country ‘invading’ land and erecting shacks in defiance of government. These

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<sup>141</sup> Ibid., p. 8.

<sup>142</sup> Ibid. This grassroots resistance has been witnessed across the country and has been documented by movements like Abahlali baseMjondolo (AbM), Western Cape Anti-Eviction Campaign (AEC), Anti-Privatisation Forum (APF), Landless Peoples Movement (LPM) and the Informal Settlement Network (ISN). In July 2008, AbM launched a Cape Town branch and soon after AbM joined with the AEC, LPM and the Rural Network to form the Poor People’s Alliance. The Alliance adopted the slogan ‘No Land! No House! No Vote!’ to show its rejection of electoral politics in ‘a context where no political party proposes a programme in the interests of the urban poor and no political party actively supports the struggles of the urban poor this enables the movements to sustain a clear focus on their key issues and, in those areas where the movements are hegemonic, to develop a degree of dual power.’ Ibid., p.p. 11-12.

<sup>143</sup> Ronald Eglin, “Between a Shack and an RDP House: Alternative Forms of Tenure Security”, *Transformer*, 15.5 (October/November 2009), pp. 3-5. See <[www.landfirst.org.za](http://www.landfirst.org.za)> for more on the LANDfirst initiative.



actions also make a statement that the poor have a place in the city and that state housing policy and implementation are failing those in desperate need.<sup>144</sup>

### **6.5.3. Urban renewal and inner city regeneration**

With regard to urban renewal, BNG states that it will encourage the promotion of affordable inner-city housing by municipalities to ensure the inclusion of poor inhabitants in urban renewal initiatives. According to the policy:

*'Inner city areas are traditionally integrated into the benefits of the urban economy, which are close to transport hubs and commercial enterprise and work localities. They also have higher order social amenities including hospitals, libraries and galleries. They accordingly provide a key focus for urban restructuring.'*<sup>145</sup>

The BNG envisions that the use of the social housing interventions, as well as the new incentive to facilitate loan finance for individuals earning above the R3500 (referred to as the 'middle income group'), will create demand for well-located housing and create an incentive for the redevelopment of inner-city properties.

The BNG policy places great emphasis on rental housing, through the Social Housing Instrument, in order to enhance the mobility of people and promote a non-racial and integrated society. It also introduces a new funding mechanism to enhance delivery and accommodate a mix of different social housing forms including medium-density housing, communal housing, transitional housing and hostel redevelopment.<sup>146</sup> The policy states that, 'Social housing interventions may also be used to facilitate the acquisition, rehabilitation and conversion of vacant office blocks and other vacant/dilapidated buildings as part of a broader urban renewal strategy. Social housing developments should be dovetailed with other initiatives such municipal redevelopment projects and the urban development zone tax incentive offered by SARS.'<sup>147</sup> The stated aim of BNG is to increase demand for low-income rental housing. It appears, however, that the real focus is on access to loan finance for the middle income group. This aim is premised on the assumption is that the 're-introduction of demand-driven individual subsidies will have the effect of increasing effective demand for existing, well-located property.' The BNG further maintains that, 'This is expected to provide an incentive for the redevelopment of properties within inner city areas.'

There is a major flaw in BNG's conceptualisation of the social housing policy instrument as a panacea for urban regeneration and low-income inner city housing. The shortcoming exists because social housing projects (where they have been built) often fail to match the income affordability levels of the majority of individuals and households in inner city areas. The

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<sup>144</sup> See, for example, the following: Tokiso Molefe, "We will build shacks on vacant land", *City Press* (14 April 2010); Richard Pithouse, "Land Occupation and the Limits of Party Politics", *SACSIS* (25 May 2009); and Martin Legassick, "Too few houses, too many people to house", *Cape Times* (26 May 2009).

<sup>145</sup> "Breaking New Ground", section 3.9 (footnote).

<sup>146</sup> *Ibid.*, section 4.2.

<sup>147</sup> *Ibid.*, section 3.9.

percentage of social housing units built to accommodate lower-income households is negligible given the scale of demand in a city like Johannesburg, for example. Inner city evictions from private rental accommodation, as well as from so-called 'bad buildings', together with exploitation in private rental accommodation are commonplace in Johannesburg. In part, this situation is due to the huge demand for low-income rental housing, the extremely limited supply of state-subsidised accommodation in the inner city and the lack of public housing stock or rent control in buildings.<sup>148</sup> As a result, there is a crisis in inner city buildings, where access to services are denied and upgrading has been sidelined in favour of market-driven 'regeneration' initiatives by the city in partnership with the private sector.<sup>149</sup>

The BNG policy further acknowledges the need for more research on small-scale rentals, looking into its scale, conditions, rental charges and facilities.<sup>150</sup> Much of this research has been conducted by the Social Housing Foundation (SHF), often in collaboration with Urban LandMark, over the past few years. This work has generated reports on small-scale private rental, supply and demand of rental accommodation and shack rentals in South Africa as well as reports and reviews of the rental market in various provinces and social housing projects around the country.<sup>151</sup>

#### **6.5.4. Rural housing and farm dweller settlements**

Rural housing and farm worker settlements are also a focus of BNG, which acknowledges that there has been an inherent urban bias in the housing programme in the past. The new policy seeks to develop a rural housing programme that would deal with a comprehensive range of rural housing-related issues, such as tenure, livelihood strategies and broader socio-cultural issues. Such a policy would have to respond to the needs of farm workers and farm dwellers and consider a number of issues including the economic, social, and institutional sustainability of farm worker settlements; the roles and responsibilities of implementing agencies; institutional frameworks; technical norms and standards; tenure security; suitable subsidy mechanisms; legislative amendments; and appropriate funding mechanisms to support the rural housing programme.<sup>152</sup>

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<sup>148</sup> It is important to note that according to South Africa's 2007 Millennium Development Goals Mid-Term Country Report, because inner city dwellings with insecure tenure are difficult to isolate, the inner city was excluded from South Africa's discussion of slums. South Africa: Millennium Development Goals Mid-Term Country Report (September 2007), p. 8.

<sup>149</sup> See SHF and Urban LandMark, "An Investigation into an Apparent Increase in Evictions from Private Rental Housing: Report and Position Paper" (June 2010).

<sup>150</sup> "Breaking New Ground", section 3.9.

<sup>151</sup> See the SHF website at <[www.shf.org.za](http://www.shf.org.za)> for all of these publications online. In 2010 the SHF is closing down and transitioning to become the new Social Housing Regulatory Authority (SHRA) as envisioned in the Social Housing Act. Given the importance of research in policy-making and the need to maintain skilled personnel for continuity in housing policy development and implementation, it is cause for concern that institutional change is occurring now in such a critical and rapidly developing area of housing policy. It remains to be seen how research conducted during this process will be taken forward in the future.

<sup>152</sup> "Breaking New Ground", section 4.3.

## 6.6. Social Housing Policy for South Africa (2005)

The Social Housing Policy was passed in 2005, and has recently been included in the revised National Housing Code of 2009.<sup>153</sup> The state defines social housing as 'a rental or co-operative housing option for low income persons at a level of scale and built form which requires institutionalised management and which is provided by accredited social housing institutions or in accredited social housing projects in designated restructuring zones.'<sup>154</sup> Zones provisionally identified for restructuring include Buffalo City, Ekurhuleni, Cape Town, Johannesburg, Mangaung, eThekweni, Msunduzi, Nelson Mandela, Tshwane, Polokwane, Rustenberg, Sol Plaatjie and Nelspruit.

Social housing institutions and projects have been developed in South Africa since 1997 with the introduction of the institutional subsidy mechanism.<sup>155</sup> While the notion of rental housing provided by institutions was included in the White Paper on Housing as one of the subsidy programmes, this form of housing has taken some time to get off the ground.<sup>156</sup> At the Presidential Jobs Summit Pilot Project on Housing held in 1998, the government aimed to deliver 50 000 rental units by the end of 2000. According to the recent social housing policy adopted in May 2005, approximately 60 social housing institutions (SHIs), referring to organisations that administer social housing projects, had been formed, delivering approximately 30 332 units throughout the country. The SHIs have developed social housing stock using the institutional subsidy together with loan funding from the National Housing Finance Corporation (NHFC) and have relied on donor funding and local authority grant funding to cover set-up and operational costs. This system has resulted in an unsustainable situation where the majority of the SHIs depend on donor funding in addition to the government's institutional subsidy in the form of a capital grant. The delivery models employed by SHIs have been diverse and vary from pure rental, to co-operative housing, instalment sale options, and hybrids of these delivery models.

The 2004 BNG refers to the need to expand on the social housing intervention in line with the policy shift inherent in the new strategy. The Social Housing Policy was developed to counter the existing policy vacuum and to 'contribute to the national priority of restructuring South African society in order to address structural, economic, social and spatial dysfunctions thereby contributing to Government's vision of an economically empowered, non-racial, and integrated society living in sustainable human settlements' as well as to 'improve and contribute to the overall functioning of the housing sector and in particular the rental sub-component thereof, especially insofar as social housing is able to contribute to widening the range of housing options available to the poor.'<sup>157</sup>

In 2008, the Social Housing Act 16 of 2008 was passed, providing the enabling legislation for the Social Housing Policy. It defines the functions of national, provincial and local governments in

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<sup>153</sup> Social Housing Policy, Part 3, Volume 6 of the National Housing Code (2009)

<sup>154</sup> Department of Housing, "Social Housing Policy for South Africa: Towards an enabling environment for social housing development" (June 2005), p. 8.

<sup>155</sup> According to the National Housing Code (2009), the institutional subsidy mechanism is "targeted at housing institutions that provide tenure arrangements alternative to immediate ownership (such as rental, instalment sale, share block or co-operative tenure) to subsidy beneficiaries." Part 2, Volume 6, p. See section 6.8.5 below.

<sup>156</sup> Charlton and Kihato, "Reaching the poor", p. 266.

<sup>157</sup> "Social Housing Policy", p. 7.

respect of social housing; provides for the establishment of the Social Housing Regulatory Authority (SHRA) to regulate all SHIs obtaining or having obtained public funds; allows for the undertaking of approved projects by other delivery agents with the benefit of public money; and gives statutory recognition to SHIs.

Despite the social housing policy and enabling legislation, however, there are still a number of concerns with the slow pace of low-income rental housing delivery and the ability of the policy to address the needs of very low-income beneficiaries. Indeed, social housing in South Africa is still largely envisaged as *private* and is not the mass public housing vision that some at the NHF had advocated. The new policy has provided subsidy mechanisms in such a way that there are incentives for reaching down-market and achieving a spread across the monthly household income range of between R1 500 and R7 500 in all qualifying projects. In order to qualify for the capital grant on every unit, a project must have at least 30 percent of the units contributing to what is known as 'deep down-market reach' and maximum rentals can be no higher than R2 500 (implying a household income of R7 500 per month, which is the top of the income band). Moreover the financial arrangements in the law provide incentives for achieving even higher proportions of deep down-market rentals.

Thus, most social housing projects cater for those households earning between R3 500 and R7 500 a month, with a small percentage catering for the bottom end of the market (mostly because the subsidy mechanism makes this mandatory). A major deterrent in the provision of social or public housing for the very poor are the ongoing management, operations and maintenance costs. The reluctance of private SHIs to take on the risks associated with very low-income rental housing provision is cause for concern and necessitates a policy rethink by the national department, particularly as it rolls out its National Rental Housing Strategy aimed at delivering 100 000 units by 2012 (75 000 of which are envisioned to be social housing units).

## **6.7. Inclusionary Housing Policy (2007)**

The Inclusionary Housing Policy (2007) is a national initiative that aims to achieve a 'more balanced outcome of built environment creation in the direction of more racially integrated and income inclusive residential environments.'<sup>158</sup> Its goal is to incentivise or compel the private sector to provide accommodation opportunities for low-income and lower-middle income households (often black households) in areas from which they might otherwise be excluded because of the dynamics of the land market. It also seeks to boost the supply of affordable rental and ownership housing.<sup>159</sup> The policy has a two-fold approach that examines what would first, encourage the private sector to enter the government's housing market either by sanctions or incentives and second, encourage legal mechanisms through provincial legislation supported by municipal by-laws that set the minimum standards of compliance in new residential builds, conversions or major renovations.

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<sup>158</sup> Department of Human Settlements, "Presentation to the Portfolio Committee: An overview of the current Inclusionary Housing Policy and its development progress" (3 December 2009).

<sup>159</sup> The requirements for beneficiaries are that they are older than 18 years of age, are lawfully resident in South Africa and have not benefited previously from access to an inclusionary housing unit.

The Policy proposes two distinct but complementary strategies: a Voluntary Pro-Active component and a compulsory but incentive-linked regulation-based component, referred to as the Town Planning Compliant approach. In the former voluntary approach, municipalities would identify inclusionary housing projects that they wanted to actively pursue with private sector partners, possibly using local government-owned land and other incentives. In the compulsory approach, rezoning or subdivision approval for the private sector would be contingent on meeting specified inclusionary requirements in return for certain development rights. There would be added incentives that include: public investment in bulk and connector infrastructure, density bonuses and the allowance of multi-story units and some commercial rights. However, 30 percent of units developed in the project would have to be affordable. The intention is that these two components would allow for a win-win situation in which the private sector with state support could ensure the provision of low-income rental and ownership options in well-located areas.

While the inclusionary housing initiative has been widely applauded, it has been slow to get off the ground and has been confined to urban and metropolitan areas in its implementation. Gauteng and the Western Cape have implemented inclusionary housing projects and Johannesburg and eThekweni have lead the way in requiring developers to include affordable housing in their projects. These projects have generally involved large-scale greenfields developments with additional private funding, for example, Cosmo City, north of Johannesburg, and Brickfields, in Newtown, Johannesburg. There have been misgivings about continued spatial skewing because the development of such projects has only been in urban areas and very few municipalities have the capacity required to administer the complex programme. Further, tensions have arisen from different income bands and cross-subsidisation within housing developments and buildings. Other concerns are that the capacity and level of sophistication required to model viable projects and implement them successfully may outweigh their limited impact. Also, the impact of the policy on the private sector development market may be negative. Another critical factor is that the size of the middle- and upper-income base is small in South Africa (so the driver of the process is small) and while inclusionary housing is still very important, the scale of impact may not be significant.<sup>160</sup> There is as yet no legislation to give effect to the policy and it has been stated that the policy may remain only policy for a while, until further consultation and review takes places.

## **6.8. National Housing Code (2009)**

BNG makes provision for a new National Housing Code, which is intended to align and cohere with the BNG so that its goals and aims can be implemented. The Code is also meant to accommodate changes since 2000 and to convert the National Housing Programmes into flexible provisions and guidelines. Accordingly the Code, adopted and published in 2009, 'sets the underlying policy principles, guidelines and norms and standards which apply to Government's various housing assistance programmes introduced since 1994 and updated.' The

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<sup>160</sup> Dan Smit, "Review of the International Experience with Inclusionary Housing Programmes: Implications for South Africa", Department of Housing (2 February 2006), p. 27

revised Code reiterates the government's vision for housing development, as outlined in the White Paper and BNG. It states that:

*'Government's housing development mandate emanates from the Constitution. It is therefore Government's duty to work progressively towards ensuring all South Africans can access secure tenure, housing, basic services, materials, facilities and infrastructure. Government will have to apply measures of a legislative, administrative, financial, educational and social nature to fulfil its housing obligations.'*<sup>161</sup>

In terms of informal settlements, the Code states that:

*'Government plans to upgrade informal settlements on a progressive basis in a phased approach. A new tailor-made programme was introduced in 2004 providing for a phased development approach that is flexible, needs-orientated, that will optimally utilise existing land and infrastructure, and will facilitate community participation in all aspects of their redevelopment.'*<sup>162</sup>

The Code is intended to be revised on annual basis in order to ensure that it keeps abreast of legislative or policy changes. The Code itself is wide-ranging and addresses a variety of housing programmes mentioned in BNG and involves removing old programmes too.

The National Housing Programmes include the Individual Subsidy Programme, the Operational Capital Programme, the Consolidation Subsidy Programme, the Social and Economic Facilities, the Emergency Housing Programme, the Integrated Residential Development Programme (IRDP), the Enhanced People's Housing Process, the Informal Settlement Upgrading Programme, the Community Residential Units Programme, the Institutional Subsidy Programme, the Social Housing Programme, the Communal Land Rights: Rural Subsidy Programme Farm and the Resident Housing Assistance Programme.

The following section provides a summary some of the key programmes included in the new Code.<sup>163</sup> At present, it is critically urgent to review which and how these programmes are being taken up, where and by whom, in order to assess whether the programmes appropriately and effectively match the greatest housing needs. Such review is important, given the fear that only the 'easy target' programmes (which do not target the worst off, in housing terms, and the most marginalised) are being mobilised. The review should also address concerns that not enough is being done to implement those programmes that can provide the kind of assistance envisioned in *Grootboom* to the poorest and most marginalised in society. Such an analysis would need to be a collaborative effort between the DHS, civil society organisations and other stakeholder groups.

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<sup>161</sup> Department of Housing, "The National Housing Code" (2007), p. 7.

<sup>162</sup> *Ibid.*, 22.

<sup>163</sup> This summary comes from Margot Rubin, "A Reference Guide on the Legislative and Regulatory Environment affecting Social Housing and the Implication for such on Social Housing Project Development and Management", completed for the SHF (January 2010), pp. 14-17.

### **6.8.1. Integrated Residential Development Programme (IRDP)**

The IRDP was introduced in order to facilitate a new vision of housing in which housing development occurs in well-located areas that provide convenient access to urban amenities, including places of employment. In summary, the IRDP provides for a phased approach to provide for:

- a) Land acquisition where required;
- b) Township planning and municipal engineering services design;
- c) The provision of municipal engineering services to all the stands where no alternative funds are available;
- d) Township establishment;
- e) The sale of the stands not identified for subsidised housing created in the township; and;
- f) The construction of houses by registered contractors for housing subsidy beneficiaries who chose contractor built houses. This can be achieved through a variety of contracting options.<sup>164</sup>

According to the IRDP, "existing housing policy programmes focus primarily on the development of subsidised housing and do not provide much scope for area wide settlement planning and the integration of a range of housing types and price categories, together with commercial and social amenities in a project. The IRDP provides a tool to plan and develop integrated settlements that include all the necessary land uses and housing types and price categories to become a truly integrated community."<sup>165</sup> Further, it provides for planning and developing an integrated project, providing for the housing, social and economic needs of different income categories. It does away with the requirement found in other policy programmes to identify subsidised housing recipients up front and provides for both subsidised, as well as finance linked housing, social and rental housing, commercial, institutional and other land uses to be developed.<sup>166</sup>

### **6.8.2. Upgrading of Informal Settlements**

The DHS, in line with the MDGs, has committed to eradicating all informal settlements in South Africa by 2014. Thus, the upgrading of informal settlements programme is a key housing and human settlements strategy, which takes a slightly different approach to its predecessors and proposes *in situ* upgrading as the strategy of choice where possible. The approach also considers issues of social cohesion, security of tenure and economic development. In an additional break from the past, the programme seeks to provide phased upgrading, beginning with basic services and possibly ending with the provision of a top structure. As discussed earlier in this paper, there have been a number of impediments to the roll out of this programme. However, a National Support Upgrading Programme (NUSP) has recently been launched, which

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<sup>164</sup> "Integrated Residential Development Programme", Part 3, Volume 4 of the National Housing Code (2009), p. 10.

<sup>165</sup> *Ibid.*, p. 9.

<sup>166</sup> *Ibid.*

will hopefully facilitate and support the fast tracking of informal settlement upgrading in South African municipalities.

### **6.8.3. Social and Economic Facilities**

One of the issues facing many new and existing housing projects is the lack of social and economic services in the proximate area. This programme seeks to assist municipalities that are unable to provide these amenities to new or existing communities. Under this programme, capital funding may be provided for medical care facilities; community halls; community parks or playgrounds; taxi ranks; sport facilities; informal trading facilities; and basic ablution facilities. There is, however, no mention of schools and hospitals or clinics specifically, or how locally driven housing development aligns with the provincial competencies of education and health, among others, in practice. In line with the vision of 'sustainable human settlements,' there is a greater need to ensure that social and economic amenities are built and synchronised with housing developments going forward.

### **6.8.4. Social Housing Programme**

According to the National Housing Code, social housing applies only to restructuring zones (as outlined in section 6.6 above). The programme intends to provide comprehensive support in terms of grant funding to establish, capacity and capitalise social housing institutions in order to develop, hold and administer affordable rental units within these identified restructuring zones. The programme has two specific aims: urban regeneration and urban restructuring in terms of racial, social and economic integration. It is further intended that the provision of social housing will give poor households access to cities and the social and economic opportunities that they offer.

### **6.8.5. Institutional Subsidy Programme**

The Institutional Subsidy Programme (ISP) intends to provide rental housing accommodation to the lower end of the market, which is highly under-serviced. The Social Housing Programme is only applicable within restructuring zones but there are other areas that require rental accommodation, such as parts of informal settlements, rural areas and possibly even wealthy suburbs, where the ISP can be used. The ISP has been introduced in order to provide capital grants to social housing institutions, which construct and manage affordable rental units outside of restructuring zones. In addition this programme will allow the sale of rental units by the SHI after a minimum period of four years.



### **6.8.6. Community Residential Units (CRU) Programme**

The Community Residential Units (CRU) Programme replaces the National Hostel Re-Development Programme and the proposed 'Affordable Rental Housing Programme. The CRU programme intends to provide rental accommodation in a variety of settings, namely previous hostel accommodation, backyard and informal settlement rentals, to very low income households. According to the national department, there are approximately 2 000 public hostels that need to be addressed as well as 200 000 residential units owned by the provinces and municipalities. The CRU programme provides a coherent framework for dealing with the many different forms of existing public sector residential accommodation.

Since neither the Social Housing nor the ISP are able to extend fully into the 'bottom-end of the market', the CRU aims to provide a framework for the provision of secure tenure, stable conditions and good quality rental accommodation to the lowest income sector. The programme targets persons and households earning between R800 and R3 500 per month who are not able to enter the formal private rental and social housing market. The programme thus intends to redevelop or develop:

- Public hostels that are owned by Provincial Departments and municipalities;
- Hostels that have both a public and private ownership component due to historical reasons;
- Public housing stock that forms part of the 'Enhanced Extended Discount Benefit Scheme', but which cannot be transferred to individual ownership;
- Publicly owned rental stock developed after 1994;
- Existing dysfunctional, abandoned or distressed buildings in inner cities or township areas that have been taken over by a municipality; and
- New public rental housing assets.

Importantly, hotels and accommodation that are being used to accommodate public sector employees do not form part of the CRU programme.

Under the programme, housing stock must be owned by either a provincial housing department or municipality. It is envisaged that CRU housing stock should remain in public ownership and not be sold or transferred to individual residents, meaning there is no pre-emptive right to purchase. The target market for the CRU programme is existing residents of public housing stock, displaced persons from informal settlement upgrading or evictions, new applicants and qualifying indigent groups. Funding is provided for the development or refurbishment of the properties in question, the capital costs of project development and the long-term capital maintenance costs. The programme is administered by provincial housing departments.<sup>167</sup>

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<sup>167</sup> See <<http://www.dhs.gov.za/Content/CRU/Home.htm>> for more information.

### **6.8.7. Enhanced Extended Discount Benefit Scheme (EEDBS)**

One of the key aims of the EEDBS was to extend home ownership and transform home ownership profiles. As such, it was intended that households that had been provided with state-funded and managed housing stock in the pre-1994 period would be given the opportunity to take ownership of the units in which they had lived. The EEDBS thus made provision for the transfer of state assets to qualifying beneficiaries where either the household or individual who had a legally binding contract with the state regarding their housing unit or they are the sitting tenant in a context where the tenant of record could not be found.

### **6.8.8. Rectification of certain residential units that were created under the pre-1994 dispensation**

The programme intends to improve the quality and condition of housing that was built under apartheid and is still state-owned or has been transferred to individual beneficiaries. The main aim of the rectification is the improvement of municipal engineering services where inappropriate levels of services were delivered and the renovation, upgrading or complete reconstruction of dwellings is deemed necessary.

### **6.8.9. Housing Chapters of the IDP**

Historically, IDPs have not contained housing chapters, which has meant a disjuncture and lack of alignment between planning and housing at the local and provincial levels. The introduction of the housing chapter contributes to the overall spatial development and integration objectives of the municipality in several respects. It facilitates the proper use of housing investment by the government and contributes towards the development of sustainable human settlements by providing for an IDP integration phase that ensures inter-sectoral agreement on them.

The new National Housing Code provides for the introduction of housing chapters in IDPs and also makes provision for municipalities who lack the capacity to draw up their own housing chapters to access expertise for the job.

### **6.8.10. Farm Residents Housing Assistance Programme**

Housing and service provision in South Africa's rural areas has lagged behind the urban centres, and in many cases farm workers have been the worst off of any low-income residents. Added to the issue of service provision has been the key problem of secure tenure; many farm workers have been evicted with little or no due process. The programme attempts to address the wide variety of housing needs of people working on farms and makes provision for both rental and ownership options. The programme also sets out the responsibilities of the landowners as well as housing options and effective dispute resolutions.

### 6.8.11. Emergency Housing Programme

The National Housing Programme for Housing Assistance in Emergency Housing Circumstances was developed to provide for temporary relief to people in urban and rural areas who found themselves in emergencies (see section 4.2. on *Grootboom* above for more on how this programme came to be adopted). Assistance takes the form of grants to municipalities to enable them to respond rapidly to emergencies through the provision of land, municipal engineering services and shelter. It includes the possible relocation and resettlement of people on a voluntary and cooperative basis in appropriate cases. It applies to situations where people have become homeless as a result of a declared state of disaster or a situation which is not declared as a disaster but extraordinary occurrences, such as floods, strong winds, severe rainstorms, hail, snow, devastating fires, earthquakes, sinkholes or large disastrous industrial incidents cause destitution. It also applies to people who live in dangerous conditions such as on land prone to dangerous flooding and who require emergency assistance, as well as to those who live in the way of engineering services or proposed engineering services, such as those for water, sewerage, power, roads or railways and who require emergency assistance.

Further, the programme applies to those who are evicted, or threatened with imminent eviction, from land, unsafe buildings or situations where pro-active steps ought to be taken to forestall such consequences; those whose houses are demolished or threatened with imminent demolition; those who are displaced or threatened with imminent displacement as a result of a state of civil conflict or unrest; those who live in conditions that pose immediate threats to their life, health and safety and require emergency assistance; and those who are in a situation of exceptional housing need, which constitutes an emergency that can be addressed only by resettlement or other appropriate assistance, in terms of the programme.<sup>168</sup>

Assistance is provided through grants to municipalities, which is administered, like all other subsidies, through provincial housing departments. In the case of evictions, this support includes 'assistance with relocation to temporary settlement area.' The affected individuals are relocated once permanent housing is available.<sup>169</sup> Under the Programme, in these circumstances the relief will be in the form of relocation to either a permanent or temporary location with assistance on a temporary basis. It is up to the municipality to decide whether assistance is required under the programme. They have the discretion to determine the approach to project implementation depending on the circumstances of the emergency housing need. The programme differs from other programmes under the National Housing Code in that the normal standard qualification criteria do not apply, so that assistance can be provided for people and households that:

- Earn more than R 3500 per month;
- Are non-lawful residents;
- Have previously received housing assistance;
- Are not first time home owners (i.e. are renters);

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<sup>168</sup> "Emergency Housing Programme", Part 2, Volume 4 of the National Housing Code (2009)", pp. 15-16.

<sup>169</sup> *Ibid.*, section 2.4.1(3.1), p. 32.

- Do not have dependents; or
- Are minor-headed households.

A recent amendment to the Emergency Housing Programme means that, with the approval of the provincial minister of housing, the cost of consumption of the following basic municipal services for a maximum of three years (in cases where the municipality presents proof of its inability to provide the services from its own resources, and the services are actually provided by the municipality) can be funded by the programme:

- Water consumption;
- Sanitation services provision;
- Refuse removal; and
- Street lighting where applicable.

Despite the programme, strategic interventions by municipalities to deal with emergencies under this policy, as well as other interventions to deal with the effects of evictions, have for the most part been minimal and administered on an *ad hoc* basis.<sup>170</sup>

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<sup>170</sup> Social Housing Foundation and Urban LandMark, "An Investigation into an Apparent Increase in Evictions from Private Rental Housing: Report and Position Paper" (June 2010), pp. 18-20.

## 7. 'PROGRESSIVE REALISATION' AND HOUSING POLICY DEVELOPMENT

This section audits the extent to which housing policy formulation is developed with an explicit reference to the constitutional obligations on the state to move progressively towards universal realisation of the right to adequate housing. The South African state can be commended on the number of houses it has built over the years, notwithstanding the problems with them highlighted above, given the mammoth challenge that it faced in 1994 and the extent to which it has reevaluated and reformulated its policies over time given weak assumptions, failures and new challenges. Arguably, most housing practitioners, NGOs, academics, lawyers and activists would agree that the housing policy in South Africa could deliver on the constitutional vision of housing provision if interpreted and implemented correctly.

There is no doubt that explicit in the state's housing policy development has been, and continues to be, the desire to provide better housing to more people and to be more demand-side driven, providing choices to people and creating desirable, integrated and functioning human settlements. State housing policy formulation and development has not, however, occurred with explicit reference to the obligations on the state to move progressively towards universal realisation of the right to adequate housing. While mention is made of the constitutional obligation to housing and it is acknowledged 'officially' (generally only at the beginning of a policy in order to place it within a wider constitutional framework), housing tends to be framed entirely within other paradigms. These paradigms are those of 'speeding up delivery', 'reducing backlogs' and 'eradicating informal settlements'. These are not bad frameworks in and of themselves. However, where they are not informed and driven substantially by their positive impact on the poor and their linkages with livelihoods strategies, they can be disastrously misplaced and even detrimental to households and poverty alleviation efforts more broadly. Further, they appear to primarily concern achieving minimum standards, so as to count as housing opportunities or units 'delivered'. This focus comes at the expense of taking into consideration the realities of those worse off at present in housing terms, improving their situations through services and tenure security and moving forward with a concerted programme of action to address the growing housing needs of the urban poor in South African cities.

'Progressive realisation' cannot simply be about any movement forward in housing. There should be acknowledgment that across the different housing typologies some minimum standards need to be adopted and provided in an expedited fashion. These standards should generally involve the provision of those social and economic goods that the state is responsible to deliver, that is, land, water, sanitation, refuse removal, roads, schools and health care facilities. Indeed, the actual 'house' may well be last on the list. This approach is necessitated by the current and growing number of informal settlements and people living in informal and inadequate living conditions. This situation arises in part because of the failure to speedily address the issues of urban land, mass subsidised transport and unemployment, as well as the state's inability to keep

social and economic development and the provision of socio-economic amenities and opportunities apace with housing development in peripheral areas.

New policy and financial instruments, housing programmes, institutions and capacity building training are among those measures developed to give households and individuals more options better tailored to their situations and needs. BNG and the new National Housing Code are progressive documents that exhibit a far more explicit focus on poverty reduction than previous strategies. When one examines recent court cases related to evictions as well as the positive and negative aspects of the right to housing, however, or reads newspapers and engages with informal settlement, township or inner city residents throughout the country, one hears tales of evictions, shack demolitions, unaffordable housing units, broken promises, private sector influence and rental exploitation, service cut-offs, local government incompetence and the inability of the government to consult or engage with poor communities, housing allocation corruption and the loss of livelihoods. Every day across the country, the obligation to respect and protect the right to housing is violated, often as result of state-run projects aimed ostensibly at *fulfilling* this right but more concerned with delivery and scratching people off the backlog list. This was the case with the N2 Gateway project. This experience gives rise to a nagging feeling that much of what has driven policy formulation and development in the past is political pressure to deliver amidst increasingly violent service delivery protests, the need to adhere to international development goals and law and the involvement of dedicated and professional teams of well-paid housing experts and consultants.

Indeed, according to Charlton and Kihato, the housing policy shifts that have occurred since 1994 were most often reactions to weaknesses in policy implementation, or were driven by other agendas such as political pressure or internal departmental politics. 'They are not, however, explicitly rooted in a rigorous interrogation of the needs of the poor, such as the impact of housing programmes on livelihoods and economic activity of the poor beneficiaries,' the authors conclude.<sup>171</sup> There does not appear to have been a clear process of housing policy evolution underpinned by a rigorous conceptual framework.

Much of this, it appears, had to do with the movement of personalities and senior housing officials out of the policy and research division of the housing department, and a lack of continuity and institutional memory to carry the policy development forward strongly and decisively.<sup>172</sup> Further, a number of factors contributed to the 'rooting' of policy in its initial form i.e. capital subsidy provided for individual ownership of standalone houses. First, key players in the NHF moved into government housing administration so that the NHF did not just produce a policy but an entire *machinery* of housing (i.e. in the operational aspects). Further, politicians in political spaces like MinMECs became a significant force behind housing policy adjustment.<sup>173</sup> Another problem was that, while housing policy may have been relatively progressive, urban policy, IDP processes and land availability – crucial elements for successful housing provision –

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<sup>171</sup> Charlton and Kihato, "Reaching the poor", p. 267. Added here should be the concern that most recently the Constitutional Court has not shown this sensitivity either in relation to the impact of housing policy implementation on the poor in the *Joe Slovo* case by accepting the existence and implementation of a reasonable policy as justification for a mass eviction.

<sup>172</sup> Ibid.

<sup>173</sup> Ibid., p. 268.

lagged behind. Indeed, the contentious issue of well-located land for housing was never adequately addressed and some have asserted that this has to do with the reluctance of the urban elite to grapple with an issue in which they themselves may hold a significant stake.<sup>174</sup>

The reality is that we have yet to see one successful and properly executed *in situ* upgrade of an informal settlement in Cape Town or Durban, or a mass roll out of low-income subsidised CRU units in inner city Johannesburg. Instead, we see much of the same type of housing development occurring, i.e. RDP housing (now called 'BNG' housing), despite the efforts of NGOs and community-based organisations to do things differently and explore other options. Also, we see public interest lawyers inundated with eviction cases, rendering housing one of the most adjudicated socio-economic rights before the Constitutional Court. Some might argue that this is because of the strong negative component of the right to housing that explicitly prohibits evictions without a court order coupled with a few gung-ho lawyers who like testing the Constitutional Court. However, the reality is that the flip side to the progressive BNG policy is less positive than the document's broad ambitions.

The second part of the question posed in this review is whether the state has set itself indicators and benchmarks by which to measure its achievement in regards to the progressive realisation of access to adequate housing for all. Further, this paper investigates the principles that guide policy development in the absence of explicit reference to progressive realisation. According to the DoH Annual Report 2006-2007, the department aims to achieve the 'provision of adequate housing for all South Africans by 2024, through policy, legislation and research that enables housing delivery in sustainable human settlements.'<sup>175</sup> In the 2008-2009 Annual Report, the department stated that, 'In line with government's constitutional responsibility to ensure that every South African has access to adequate housing on a progressive basis and within its available resources, the DoH aims to promote an adequate supply of affordable permanent residential structures with secure tenure and access to basic services, privacy and protection, as well as to regulate the single residential property market.'<sup>176</sup>

The state, and in particular the new DHS which is tasked with housing policy formulation and monitoring of implementation, has over the years developed a range of delivery benchmarks by which it measures its success. The progressive realisation of access to adequate housing for all is directly equated with progressive policy formulation, the delivery of houses and the reduction of the backlog of those 'inadequately housed', a term that generally refers to those living informal settlements. These benchmarks have shifted over time to accommodate successes and failures, new policy developments and instruments and the changing nature of the housing backlog.

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<sup>174</sup> Ibid.

<sup>175</sup> Department of Housing, Annual Report 2006-2007  
<[http://www.housing.gov.za/Content/Documents/Annual%20Report%20-%202007/Annual\\_2005-2006\\_22SEPT\\_Website\\_all.pdf](http://www.housing.gov.za/Content/Documents/Annual%20Report%20-%202007/Annual_2005-2006_22SEPT_Website_all.pdf)>

<sup>176</sup> Department of Housing Annual Report 2008-2009, p. 21. At the same time, the Department admits that, 'Inadequate resources in a number of areas were an impediment in achieving its objectives. This compelled the department to prioritise and thus shift the limited resources to areas with more and urgent need. The inadequacy of resources and its impact emerged and shown itself in various forms like the number of vacant unfunded positions, overcrowding in some areas due to unavailability of space, postponing the commencement date of some important projects to mention just a few. This reality has also brought home a realisation that there is a dire need to exercise more economy in performing our day to day activities as well as ensuring that unnecessary outsourcing of work is avoided as much as possible. The end of the year saw the beginning of attempts to exercise more control on expenditure approvals, identify areas where savings can be achieved so that the allocated resources can be stretched much further.'

## Indicators and benchmarks

The National Housing Code of 2000 sets the government's housing goal (subject to fiscal affordability) as increasing housing delivery on a sustainable basis to a peak level of 350 000 units per annum until the housing backlog is overcome. Furthermore, it outlines the rural and urban housing visions and sets a target date of 2010 for these to be realised. Target 11 of Goal 7 (Ensuring Environmental Sustainability) of the MDGs commits the government to a significant improvement in the lives of 100 million slum dwellers by 2014. The target sets as measurable benchmarks the proportion of the population with access to improved sanitation and access to secure tenure. The South African government has incorporated this measurement into its objective to 'eradicate informal settlements' in South Africa by 2014. More recently, at a Social Protection and Community Development Cluster briefing, the Minister of Social Development Edna Molewa described some of the specific national benchmarks around housing.<sup>177</sup> These include:

- **The Housing Guarantee Fund:** A R1 billion Housing Guarantee Fund by November 2010 to incentivise the private sector to supply housing units at lower prices and encourage low-income earners to build their own homes (DHS, together with the National Treasury);
- **Informal settlement upgrading:** Upgrading 500 000 shacks in informal settlements by 2014 (125 000 informal settlement units annually over the next four years) through the provision of basic services and land tenure rights. According to the Department of Housing Annual Report 2008-2009, a National Upgrading Support Programme (NUSP) was established in collaboration with the Cities Alliance. The provinces have completed a total of 110 858 units and are in the process of completing 245 082 units in terms of the informal settlement upgrading programme;
- **Well-located land:** Increasing the number of rental housing units by offering more housing finance and by setting aside 6 000 hectares of land situated near city centres for affordable housing;
- **Affordable rental housing:** Increasing the rate of affordable rental housing delivery to 300 000 units per year by 2014. The National Rental Housing Strategy for South Africa envisages the delivery of 100 000 rental units by 2011/2012. Of these units, 75 000 will be social housing for middle-income earners (R3 500 to R7 500) and 25 000 will be CRUs for low-income earners;
- **National Rental Housing Strategy:** Delivering 100 000 rental housing units by 2012 through the National Rental Housing Strategy, which was approved in 2008; and
- **Accreditation:** Accrediting most of the metros to allow them to develop housing with any spare capacity they had. In terms of accreditation of municipalities, a benchmark for this was provided. This benchmark has not been achieved, with only five municipalities having received level one accreditation to date.<sup>178</sup>

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<sup>177</sup> "Plan to upgrade 500 000 shacks by 2014", GCIS (23 February 2010).

<sup>178</sup> According to the DoH Annual Report 2008-2009, all eighteen municipalities applied for level one accreditation as per the approved Municipal Accreditation Framework. The capacity and compliance audits have been concluded in nine municipalities and underway in the balance of the municipalities. Only five municipalities - Polokwane, Emalahleni,



In his 2010 Budget Vote Speech, Human Settlements Minister Tokyo Sexwale reiterated a number of current benchmarks. These include:

- In the field of housing opportunities, the target is 220 000 units per year between now and 2014;
- Acquisition of 6 250 hectares of well-located state land for human settlements development and an enabling environment is being created for the provision of 600 000 new loans in the affordable housing sector;
- 500 000 informal settlement dwellings are being upgraded; and
- All six metros and four local municipalities have been assessed to determine their readiness for accreditation and further assessments will be undertaken to bring the total of prioritized municipalities to 27.<sup>179</sup>

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Buffalo City, Nelson Mandela and eThekweni - have been granted accreditation to perform level one function, and the provincial housing departments are facilitating the transfer of accredited functions to these municipalities. Department of Housing Annual Report 2008-2009, p. 66.

<sup>179</sup> Tokyo Sexwale, "Budget vote speech by the Human Settlements Minister, National Assembly" (21 April 2010) <<http://www.polity.org.za/article/sa-sexwale-budget-vote-speech-by-the-human-settlements-minister-national-assembly-21042010-2010-04-21>>

## 8. REVIEWING THE NUMBERS: HOUSING DELIVERY AND BACKLOGS SINCE 1994

The lack of a suitable definition of inadequate housing and unreliable statistics and data makes it difficult to quantify the large housing backlog accurately.

### White Paper on Housing

In 1994, the Housing White Paper estimated the housing backlog to be 1.5 million units (urban informal housing units), with an estimated 720 000 urban sites in need of upgrading and approximately 450 000 people in hostel accommodation that needed upgrading. The 1996 census showed that 1.5 million households lived in informal houses in urban areas and 1.6 million households lived in informal or traditional housing in rural areas. In contrast, the DoH estimated a total backlog of 3-3.7 million households as of 1999.<sup>180</sup>

### Breaking New Ground and MDGs

According to BNG, from 1994 to 2004, R29.5 billion in state-assisted housing investment has generated 1.6 million housing opportunities and provided 500 000 families with the opportunity to secure titles of old public housing stock.<sup>181</sup> In South Africa's 2007 Mid-Term Country Report on the MDGs, the government stated that it had made good progress in eradicating backlogs and providing adequate housing. The government reported that over three million subsidies had been approved, benefiting over 10 million poor people. Cumulatively, the government has spent R40 billion on housing development since the inception of the housing programme, contributing to 2,4 million houses being constructed or sites being prepared.<sup>182</sup>

### Housing delivery since 1994

The table below provided by the DoH shows housing delivery numbers from 1994 to 2008 (houses completed and in the process of completion) both nationally and provincially. In the 2008/9 financial year, 239 533 houses were completed or in the process of completion.<sup>183</sup> Thus, over 2.8

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<sup>180</sup> Department of Housing, "Presentation by NM Karsen, Deputy Director-General, on Strategies Identified to Address Policy Gaps, paper presented at National Housing Conference on Housing Strategy for the New Millennium" (Pretoria, 1999).

<sup>181</sup> "Breaking New Ground", Part A, section 3.

<sup>182</sup> South Africa: Millennium Development Goals Mid-Term Country Report (September 2007), p. 8.

<sup>183</sup> See <http://www.housing.gov.za/Content/Stats/Housing%20Delivery%20Stats.htm> for DHS housing statistics.

million houses have been built or are in the process of being completed in the period from 1994 to March 2009. This obviously does not take into consideration double-counting over financial years or blocked projects. Moreover, there is an alarming discrepancy between the 2.3 million houses that the Minister of Human Settlements said his department had built by 2010 and the figure from the official statistics of 2.8 million houses built. It has to be assumed that 500 000 housing units cannot be accounted for, or have not been completed.

<b>Housing delivery 1994 - 2008</b>										
<b>(Housing units completed and in the process of completion)</b>										
	<b>EC</b>	<b>FS</b>	<b>GP</b>	<b>KZN</b>	<b>LP</b>	<b>MP</b>	<b>NC</b>	<b>NW</b>	<b>WC</b>	<b>RSA</b>
<b>1994-1998/99</b>	63 393	48 434	185 333	149 126	49 750	47 595	13 821	60 631	103 730	721 813
<b>1999/2000</b>	20 345	7 177	45 384	28 997	12 401	4 808	2 600	12 944	26 916	161 572
<b>2000/2001</b>	34 021	16 088	38 547	28 547	20 996	16 457	4 148	14 109	17 730	190 643
<b>2001/02</b>	10 816	7 005	46 723	14 379	16 667	14 584	2 588	13 885	16 634	143 281
<b>2002/03</b>	58 662	9 155	24 344	24 485	14 953	21 649	6 056	23 784	20 500	203 588
<b>2003/04</b>	27 119	16 746	49 034	33 668	15 810	21 232	3 787	10 484	15 735	193 615
<b>2004/05</b>	37 524	16 447	66 738	36 734	16 514	18 000	3 598	10 037	11 756	217 348
<b>2005/06</b>	19 825	20 536	59 310	35 872	10 112	14 986	8 667	35 515	11 310	216 133
<b>2006/07</b>	16 526	19 662	77 044	38 290	23 609	10 651	3 880	46 972	34 585	271 219
<b>2007/08</b>	12 684	12 482	90 886	34 471	18 970	16 569	8 686	19 945	34 157	248 850
<b>Total to March 31, 2008</b>	<b>300 915</b>	<b>173 732</b>	<b>683 343</b>	<b>424 569</b>	<b>199 782</b>	<b>186 531</b>	<b>57 831</b>	<b>248 306</b>	<b>293 053</b>	<b>2 568 062</b>

Source: Ministry of Housing

Housing delivery in the first five years of democracy varied greatly from year to year and from province to province as different systems of reporting and monitoring had to be unified. It is also important to note that no government elsewhere in the world provides free houses.

The table below shows the preliminary units delivered in 2009/10 and estimated delivery till 2014.

	Prelim Units delivered in 2009/10	Estimated Delivery			
		2010/11	2011/12	2012/13	2013/14
EC	28,633	23,400	23,400	24,463	26,058
FS	18,829	21,462	21,462	22,438	23,901
GP	39,922	48,553	48,553	50,760	54,071
KZN	27,376	26,626	26,626	27,837	29,652
LP	23,079	22,613	22,613	23,641	25,182
MP	8,291	8,181	8,181	8,553	9,111
NC	6,257	6,512	6,512	6,808	7,253
NW	35,141	30,954	30,954	32,361	34,472
WC	32,371	31,698	31,698	33,139	35,300
<b>Total</b>	<b>219,899</b>	<b>220,000</b>	<b>220,000</b>	<b>230,000</b>	<b>245,000</b>

Delivery of housing opportunities (DHS, 2010)

According to the current Minister of Human Settlements in 2010, 'Since 1994 more than 2.3 million housing units have been made available for nearly 11 million people.'

## Housing backlogs

Despite all of these commendable efforts, the housing backlog has grown from 1.5 million in 1994 to an approximate figure of 2.1 million. That growth means that **approximately 12 million South Africans are still in need of better shelter**. This data indicates that the backlog has increased since 1994, and continues to increase exponentially due in part to change in household structures, rapid urbanisation, migration to cities and large towns, lack of opportunities in rural areas, structural unemployment, more households falling into subsidy income band and less access to housing finance. According to the DHS, the 'dual residence' of some households (who maintain a rural base while household members migrate temporarily to urban areas) is a deeply entrenched feature of many households whilst, at the same time, permanent urban migration is 'irreversible and growing'.<sup>184</sup>

According to Statistics South Africa (Stats SA), in mid-2009, **13.4 percent of households in South Africa lived in informal dwellings**.<sup>185</sup> The Department of Human Settlements has said that in three years time, R102 billion will be required to clear the housing backlog. This amount required to eradicate the backlog will more than double to R253 billion in 2016 (this is nearly 20 times the entire current annual housing budget). Furthermore, the housing backlog is clearly linked to the country's basic services backlog. According to the DHS, 3.95 million households require access to water; 3.2 million households access to sanitation; 2.6 million households access to electricity and 4.56 million households weekly refuse removal.

The table below is derived from Stats SA's Community Survey 2007 and gives a national and provincial breakdown of the percentage and number of households living in informal dwellings (backyard shacks and informal settlements), hostels and traditional dwellings respectively. The percentage of households living in informal dwellings has declined from 14.4 percent in 2007 to 13.4 percent in 2009, according to the 2009 General Household Survey.<sup>186</sup>

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<sup>184</sup> Department of Human Settlements, "Presentation to the Select Committee on Public Service" (20 April 2010).

<sup>185</sup> "Fewer people living in shacks - Stats SA", *IOL* (6 May 2010)  
<[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=nw20100506160927452C765903](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=nw20100506160927452C765903)>

<sup>186</sup> Statistics South Africa, General Household Survey 2009 (July 2009), p 98.

9.2 Type of dwelling of households, by province

Type of dwelling	N( 1000)									
	South Africa	Western Cape	Eastern Cape	Northern Cape	Free State	KwaZulu-Natal	North West	Gauteng	Mpumalanga	Limpopo
<b>Total</b>	<b>13 812</b>	<b>1 478</b>	<b>1 738</b>	<b>311</b>	<b>861</b>	<b>2 615</b>	<b>954</b>	<b>3 531</b>	<b>978</b>	<b>1 346</b>
Dwelling/house or brick structure on a separate stand or yard or on farm	8 767	967	926	256	646	1 443	732	1 918	753	1 126
Traditional dwelling/hut/structure made of traditional materials	1 417	*	605	14	28	588	*	*	74	100
Flat or apartment in a block of flats	624	91	26	*	17	205	*	251	20	*
Cluster house in complex	78	*	*	*	*	*	*	65	*	*
Town house (semi-detached house in complex)	183	19	*	*	*	21	*	121	*	*
Semi-Detached house	115	62	12	*	*	24	*	11	*	*
Dwelling/house/flat/room in backyard	434	29	30	*	19	31	38	248	15	21
Informal dwelling/shack in backyard	648	119	22	*	58	47	39	308	17	30
Informal dwelling/shack not in backyard, e.g. in an informal/squatter settlement or on farm	1 197	134	104	17	69	176	114	481	64	39
Room/flatlet on a property or a larger dwelling servants' quarters/granny flat	230	12	*	*	*	59	12	90	17	23
Caravan/tent	*	*	*	*	*	*	*	*	*	*
Other	112	39	*	*	*	18	*	38	11	*

\* For all values of 10 000 or lower the sample size is too small for reliable estimates. Due to rounding, numbers do not necessarily add up to totals.

### Distribution of households by main dwelling – 2007 <sup>187</sup>

Province (no. of households) in 2007	Percentage living in informal dwelling i.e. backyard shack or informal settlement (no. of households)	Percentage living in worker's hostel (no. of households)	Percentage living in traditional dwelling/hut/structure made of traditional materials (no. of households)
Gauteng (3 175 579)	22.7 <b>(720 856)</b>	3.1 <b>(98 442)</b>	0.4 (12702)
KwaZulu-Natal (2 234 129)	8.6 <b>(192 135)</b>	3.2 (71 492)	27.4 (612 151)
Western Cape (1 369 180)	14.2 <b>(194 423)</b>	1 (13 691)	0.8 (10 963)
Eastern Cape (1 586 739)	8 <b>(126 939)</b>	0.2 (3 173)	36.7 (582 333)
Limpopo (1 215 935)	5.5 (66 876)	2 (24 318)	9 (109 434)
Mpumalanga (940 403)	11.7 <b>(110 047)</b>	3.3 (31 033)	7 (65 828)
North West (911 120)	23.8 <b>(216 846)</b>	7 (63 778)	2.3 (20 955)
Free State (802 872)	18.5 <b>(148 531)</b>	5.7 (45 763)	4.6 (36 932)
Northern Cape (264 653)	10.5 (27 788)	4 (10 586)	4.5 (11 902)
<b>South Africa (12 500 610)</b>	<b>14.4 (1 800 087)</b>	<b>2.9 (362 517)</b>	<b>11.7 (1 462 571)</b>

The housing situation in major cities and towns in South Africa is also important to understand. The following table shows the percentage and number of households living in informal dwellings in nine major urban hubs as per the 2007 Community Survey.

City/Town (no of households)	Percentage in informal dwelling	No of households in informal dwelling
Ekurhuleni (849 349)	26	220 830
Joburg (1 165 014)	18.4	214 362
Tshwane (686 640)	26.8	184 019
eThekweni (833 859)	17.1	142 589
Cape Town (902 278)	15.5	139 853
Rustenburg (146 542)	37.3	54 660
Buffalo City (208 389)	24.5	51 055
Nelson Mandela (276 881)	13.7	37 937
Mangaung (202 762)	18.2	36 902

The 2009 General Household Survey also provides a number of key observations on the housing situation in South Africa:

- At the time of the survey, 12.8 percent of South African households lived in a 'RDP' or state subsidised dwelling.
- There were 13.5 percent of households with at least one household member on a demand database or waiting list for state subsidised housing.
- Nationally, there was a slight, but not statistically significant, increase in the percentage of households that lived in informal dwellings. <sup>188</sup>

<sup>187</sup> Statistics South Africa, Community Survey 2007: Key Municipal Data (2007)  
<<http://www.statssa.gov.za/publications/Report-03-01-21/Report-03-01-212007.pdf>>

## Informal settlements

According to the Minister of Human Settlements, the number of informal settlements has ballooned to more than 2 700, containing a total of approximately 1.2 million households.<sup>189</sup> According to the General Household Survey of 2009, the Western Cape has 134 000 households living in informal settlements; KwaZulu-Natal has 176 000 households living in informal settlements and Gauteng has 481 000 households living in informal settlements.<sup>190</sup> According to the General Household Survey of 2009:

- The proportion of households living in informal dwellings peaked at 15.7 percent in 2005 and 15 percent in 2007.
- The provinces with the highest percentage of households whose main dwelling was informal in 2009 were Gauteng (22.3 percent), Western Cape (17.1 percent), North West (16 percent) and Free State (14.8 percent).
- Of these provinces, the North West has shown a significant increase in the percentage of shackdwellers from 12.2 percent in 2002 to 21.5 percent in 2007. This may partially be attributed to changes in the housing policy of several mines. In recent years they introduced a housing subsidy for workers who lived in their own accommodation. Many workers opted to erect a shack and use the extra money for the erection of houses in their places of origin or for activities other than housing.
- The following provinces have shown a decline in the percentage of households whose main dwelling is informal. These include: Mpumalanga (-5.6 percent), KwaZulu-Natal (-2.8 percent) and Eastern Cape (-2.2 percent).
- The Limpopo informal housing profile remained largely the same between 2002 and 2009 at 5.1 percent of households.

However these statistics are likely to be unrepresentative of the actual number of households living in informal settlements across the country. According to Mark Misselhorn,<sup>191</sup> "the actual numbers of households residing in informal settlements is likely to be significantly higher than estimates by Stats SA."<sup>192</sup> According to him, evidence from actual research shows that shack counts done by housing officials (aerial surveys supplemented by ground surveys) are more reliable, and sometimes the discrepancy can be as high as 45 percent between Stats SA and municipal department figures. This is due to the fact that often the number of shacks is used as the basis for counting, and not the number of sub-households which might reside in a single shack. Further, official estimates do not factor in high levels of migration into South Africa from neighbouring countries. He states that "it can therefore be argued that the actual number of households living in informal settlements in South Africa is probably substantially more than the

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<sup>188</sup> Statistics South Africa, General Household Survey 2009 (July 2009)  
<<http://www.statssa.gov.za/Publications/P0318/P0318June2009.pdf>>

<sup>189</sup> "Address by the Minister of Human Settlements, Tokyo Sexwale MP, on the occasion of the Human Settlements Budget Vote, National Council of Provinces", Cape Town (6 May 2010)  
<<http://www.info.gov.za/speeches/2010/10050615451001.htm>>

<sup>190</sup> Statistics South Africa, General Household Survey 2009 (July 2009), p. 98.

<sup>191</sup> Mark Misselhorn is CEO of Project Preparation Trust (PPT).

<sup>192</sup> Mark Misselhorn, "Draft Position Paper on Informal Settlements Upgrading: Part of a Strategy for the Second Economy", Compiled for Urban LandMark (April 2008), p. 15.

official Stats SA estimate of approximately 1.2 million, and that, contrary to what official estimates suggest, there has probably not been a rapid decline in numbers of households living in informal settlements in recent years.”<sup>193</sup>

## **Rental accommodation**

Approximately 2.8 million households rent their accommodation in South Africa, or 20 percent of the population. Approximately 2 million of black African households rent their accommodation, which is 18.7 percent of the black African population and 14.5 percent of the total population. Fully-paid ownership stands at 7.8 million households or 56 percent of the population. About 6.4 million black African households fully own their dwellings, or about 59 percent of the black African population and 46 percent of the total population in South Africa. The Gauteng province has by far the largest number of renters at over one million households, or 38 percent of all households renting in South Africa.<sup>194</sup> According to a SHF report, ‘Demand for rental accommodation is likely to grow strongly in the City of Johannesburg, City of Cape Town, Ekurhuleni and Tshwane...within these markets significant growth in demand for rental accommodation is strongest in lower income market segments.’ This is particularly so for households in the income band earning between R1500 and R3500 a month.<sup>195</sup> In Johannesburg, for example, it is estimated that by 2012, the demand for rental housing will be 317 000 units, with 81 000 units in this income band.<sup>196</sup>

## **Household composition**

According to a recent Urban LandMark and SHF report, about a third of all households that constitute part of the “housing backlog” consist of single-person households, one-third consist of two-member households, and the remaining third consist of households with three or more members.<sup>197</sup> The report finds that if one took the backlog to only be only the 1.2 million households currently housed in informal settlements, ‘This implies that there is a demand for approximately 400 000 single-person accommodation options, 400 000 options appropriate for two people and 400 000 units suitable for households with three or more members.’ According to the report, the current subsidised housing policy that delivers, with little variation, 40m<sup>2</sup>, mostly free-standing, freehold houses does not represent a comprehensive or responsive solution to existing demand patterns. Similarly, the MDG target to eradicate ‘informal settlements’ by 2014 by providing more of the same types of accommodation cannot be successful under current conditions.<sup>198</sup>

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<sup>193</sup> Ibid.

<sup>194</sup> Ibid., pp. 101-102.

<sup>195</sup> Social Housing Foundation, “Supply and Demand of Rental Accommodation in South African” (July 2008), pp. 31-32.

<sup>196</sup> Ibid.

<sup>197</sup> According to Gardner, some of these small households may exist out of necessity as households may fragment simply due to the lack of adequate accommodation. He also notes that smaller households also result from normal demographic trends and may include single adults, such as unmarried people, students, widows and widowers and temporary migrants, and two-member household units including young couples, couples without children, same-sex partners and single parents. Urban LandMark and SHF, “Small -Scale Private Rental”, p. 14.

<sup>198</sup> Ibid., pp. 12-14. According to Topham, accommodating these households in a full RDP-package (40m<sup>2</sup> top structure, a 250m<sup>2</sup> stand plus 30 percent of the subsidy amount for roads and amenities) would require 35 750 Ha of land plus the



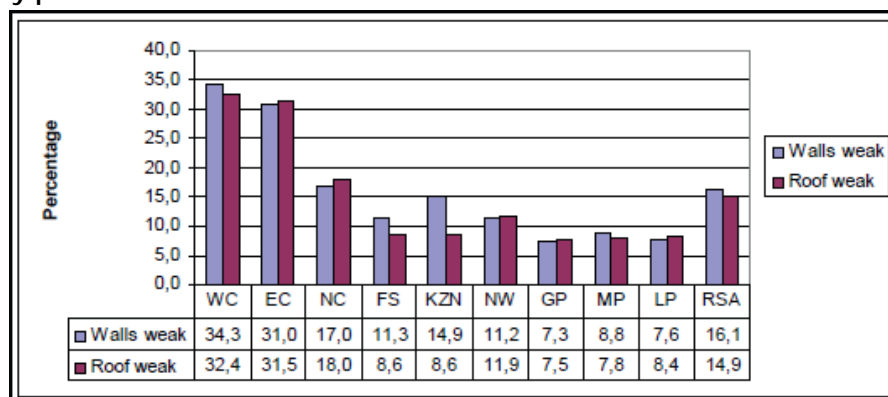
## Housing budgets

In 2009, South Africa's national budget for housing and community amenities was R73.2 billion (8.7 percent of the national budget) of which around R13 billion was distributed to provinces for housing subsidies. In 2010, more than R93 billion was allocated to housing and community amenities, a nominal increase of more than 14 percent on the previous year. Of that, more than R20 billion was earmarked for housing development. Finance Minister Pravin Gordhan recently stated in his first national budget speech that the human settlements grant is 'one of the faster growing items on the budget'.<sup>199</sup>

## Rectification of poorly built houses

Since coming to office, Human Settlements Minister Sexwale has focused heavily on the issue of the quality of houses that have been built previously and corruption in housing projects through his national audit task team.<sup>200</sup> According to the 2009 General Household Survey, across the country, 16.1 percent of households living in 'RDP' or state-subsidised dwellings felt that the walls of their dwellings were weak or very weak, whilst 14.9 percent felt that their roof was weak or very weak.<sup>201</sup> There was considerable variation between provinces in perceptions about housing quality. In the Western Cape and Eastern Cape, nearly a third of all households had a problem with their walls and roofs. In the Northern Cape, 17 percent of households had problems with their walls and 18 percent had problems with their roofs. In KwaZulu-Natal, 14.9 percent of households had problems with their walls. The table below shows the percentage of households reporting that their RDP house had weak or very weak walls or roofs by province.

### Percentage of households that said RDP/state subsidised house has weak/very weak walls and/or roof, by province



bulk and connector infrastructure to service it, which would cost an estimated R84 billion, or 70% of the projected national housing budget from 2009 to 2015.

<sup>199</sup> "Heaps of money for housing delivery", *Realestateweb* (17 February 2010)

<<http://www.realestateweb.co.za/realestateweb/view/realestateweb/en/page196?oid=55885&sn=Detail>>

<sup>200</sup> Edwin Naidu and Maureen Isaacson, "How to build quality houses for R55 000", *IOL* (6 December 2009)

<[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=vn20091206081113931C733613](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20091206081113931C733613)>

<sup>201</sup> Statistics South Africa, *General Household Survey 2009*, p. 23.

Sexwale announced that the government would be using R1.3 billion, representing 10 percent of the department's annual budget, to demolish and rectify badly constructed RDP houses. This commitment implied that 40 000 houses would have to be rebuilt.<sup>202</sup> The Eastern Cape would need approximately R359 million to demolish the province's approximately 20 000 shoddy RDP houses. Towards the end of 2009, the minister identified nearly 3 000 RDP houses in the Eastern Cape and KwaZulu-Natal that had to be demolished because of inferior workmanship. They had been built in the 18 months prior to his identification of them as intolerably poor structures.<sup>203</sup> Unscrupulous and corrupt housing contractors, public servants, lawyers and estate agents have been targeted. The minister expressed a desire to sue contractors who have built substandard housing with government tenders and force others to finish housing projects that they had abandoned. A national audit of housing projects was launched in November 2009, which would supplement an ongoing probe by the Special Investigating Unit and legal cases underway.

The desire to improve the workmanship, unit size and value for money in housing provision, either in rectification and rebuilding or new construction, is undoubtedly a welcome intervention. This policy direction reflects a progressive attempt to improve housing quality in addition to quantity. There is a danger, however, in adopting a narrow focus on the literalities of 'adequate' and 'quality' housing. The broader socio-economic impact of housing provision is as critical to housing provision as questions of formalistic notions of adequacy and access. According to Jane Duncan:<sup>204</sup>

*'In delivering RDP housing, the government has ignored a key principle of the RDP, namely to promote integrated development. RDP housing rectification is an ineffective form of redress if it continues to be implemented in a policy context where services are treated primarily as commodities rather than entitlements, and where the private sector is relied on, in the main, to provide jobs.'*<sup>205</sup>

Further, as highlighted in section 4, the protection of the negative aspect of the right to housing and the progressive tackling of the problem of evictions is fundamentally important given the enormous and growing backlogs in housing provision. A pragmatic and creative approach needs to be adopted by all concerned.

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<sup>202</sup> The National Home Builders Registration Council (NHBRC), the body tasked with ensuring that homebuilders consistently deliver sustainable and quality houses, is looking to government to conduct a legislative review of the Housing Consumers Protection Enforcement Act and to include certain changes and amendments aimed to ensure: the effective protection of housing consumers, adequate and equitable warranty cover, effective processing of complaints, maximum compliance by home builders, effective enforcement of the Act, promotion of administrative action and effective compliance by banks. Loni Prinsloo, "NHBRC to crack down on unregistered home builders", *Engineering News* (12 May 2010).

<sup>203</sup> Xolani Mbanjwa, "Sexwale declares war on housing crooks", *IOL* (3 November 2009) <[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=vn20091103040929776C550492](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20091103040929776C550492)>

<sup>204</sup> Jane Duncan is professor in the Chair of Media and Information Society at Rhodes University, and was previously the executive director at the Freedom of Expression Institute (FXI).

<sup>205</sup> Jane Duncan, "Houses to Die For?", *SACSIS* (1 April 2010) <<http://www.sacsis.org.za/site/article/452.1>>

## 9. CONCLUSION AND RECOMMENDATIONS

This paper has reviewed constitutional jurisprudence and policy development in relation to the right to adequate housing in South Africa since 1994. The study aims to feed into an ambitious research project on monitoring the progressive realisation of socio-economic rights and the development of a measurement matrix tool. A number of conclusions can be drawn in the process of constructing a definition of 'adequate housing'; examining the extent to which policy-making and formulation is developed with an explicit reference to the state's obligations to progressively realise this right; reviewing current government indicators and benchmarks for housing provision; and examining the current housing backlog.

These conclusions will be framed as practical recommendations in the form of appropriate indicators (or sources from which such indicators may be drawn) that could be adopted in reviewing and monitoring the realisation of the right to adequate housing. These indicators should not only refer to the progressive nature of the right but should also assess the protection of and respect for existing access to housing, even if this housing is not yet adequate in terms of location; shelter; affordability; services; space; physical security; security of tenure; future prospects for RDP housing; and accessibility or availability. In short, regressive measures taken in respect of the right to housing should be considered and balanced against progressive measures when assessing the achievement of progressive realisation. This approach is critical given the kind of negative infringement on the right to housing, including state- and private-led evictions, which have contributed to an overall deterioration in people's housing access. This decline is reflected in the housing cases that have come before the Constitutional Court.

Thus, indicators that speak to the number of **evictions and forced relocations** from state- and privately-owned accommodation or land where no alternative accommodation of a better nature is provided should be considered. The number and nature of housing-related cases in the lower courts, the Rental Housing Tribunals and the Constitutional Court should also form part of the evaluation process. In addition, qualitative input from social movements, community-based organisations, shackdweller umbrella groups, development NGOs and legal organisations, among others, should be taken into account. Further, indicators should consider **repossessed houses in townships** and people being put into jail for 'trespassing' in a family house that was repossessed by a bank and auctioned.<sup>206</sup> Disaggregated data and statistics on housing-related cases in Magistrates Courts, banks and auction houses would also be a valuable source of information in this regard.<sup>207</sup>

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<sup>206</sup> A 2008 report by the SAHRC on evictions and repossessions highlighted that, 'The issue of evictions through bond defaulting appears to be systemic and thus requires a creative government intervention.' The report outlined some recommendations including the following: 'A programme... be re-introduced to deal with these issues. It may be necessary to review government's policy of only assisting first-time homeowners. Local government... should consider including the provision of alternative accommodation for those left destitute by evictions in their IDPs. Government should consider whether the suggestion by banks that a 'loss of income cover' be developed as a part of the social security system would be a viable option to ensure that a significant asset like a home is not lost during unemployment or retrenchment.' SAHRC, "Report on the Public Hearings on Housing, Evictions and Repossessions" (2008), p. 44.

<sup>207</sup> A SHF/ Urban LandMark report recommends that, 'Better records to be kept on evictions, which would necessarily involve the Department of Justice and Constitutional Development and provincial/local courts, Sheriffs, Rental Housing Tribunals (these would most often be cases that may lead to evictions later on, or are 'constructive evictions'), Provincial

South Africa faces an undisputed crisis in housing and a growing backlog in housing provision, particularly in cities and urban hubs. People choose to live in shacks, backyard rooms and substandard inner city housing because of the opportunities that urban areas offer to earn livelihoods and access social and economic amenities. In this context, urbanisation is a strategy to ensure survival and constitutes a rational response to structural poverty and marginalisation.

A house is not an end in itself but a social asset and a means to something greater, namely **social and economic transformation, equality, human development and fulfilment** (although we acknowledge that these factors are not as easy to measure). This idea has been readily accepted by the government and exists in national policy and programmes, as well as in recent official statements.<sup>208</sup> According to Urban LandMark research, over the past five years, 11 percent of all RDP houses were unofficially traded by owners who were barred from selling their houses due to a mandatory eight year lock-in period. Over half of these houses were sold for between R5 750 and R17 000. According to Rust, '[The black market] is an indication of failure on the part of the delivery system - they're either targeting the wrong people or building houses in the wrong areas.'<sup>209</sup>

Further, the above-mentioned problems with the *physical quality* of houses and the billions spent on rectification needed needs to be considered. A 2010 survey by Stats SA shows that while the housing subsidy has increased, the quality of houses is in question and at least 16 percent of respondents said the walls of their RDP houses were weak, while 15 percent complained about roof weaknesses.<sup>210</sup> Indicators that simply refer to number of 'housing opportunities delivered', or houses built, are wholly inadequate.

There needs to be an **alignment of benchmarks and housing delivery goals with in-depth and consolidated analyses of data from the Census, Community Survey and General Household Survey**. This alignment will not only ensure that state prioritisation and funding allocations to housing programmes are appropriate given the greatest need, but will also provide important data for key financial, social and economic factors that can be used to assess the *impact* of housing provision. Where data is not available, or the information is not usefully captured, the surveying methods should be improved as a priority.

A recent cost-benefit analysis (CBA) study by the SHF points to some critical shortcomings in accepted national data and statistics on key financial, social and economic factors related to housing. According to the SHF, the study discovered a critical lack of data or research, especially information collected over a relatively long period of time. The study also identified a need for a more concerted investigation into the impact of housing provision on social and economic prospects. The report states that, 'Given that some R10 billion (2009/10) is being spent

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Departments of Housing and the National Department of Housing, or other agencies such as the National Credit Regulator, keeping records of the number of evictions and eviction trends in the country." SHF and Urban LandMark, "An Investigation into an Apparent Increase in Evictions from Private Rental Housing", p. 72.

<sup>208</sup> See, for example, "Human settlements an investment in future — Zuma", SAPA (18 May 2010) <<http://www.polity.org.za/article/human-settlements-an-investment-in-future-zuma-2010-05-18>>

<sup>209</sup> Leani Wessels, "Black market highlights RDP cracks", *Fin24* (31 March 2010) <[http://www.fin24.com/articles/default/display\\_article.aspx?ArticleId=1518-1786\\_2578095](http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-1786_2578095)>

<sup>210</sup> "Fewer people living in shacks - Stats SA", *IOL* (6 May 2010).

each year on the national housing programme, it seems essential that consistent information for assessment should be kept...maintaining a good national statistical base and/or indexes will make it easier and less expensive to undertake these CBAs in the future.' Important for the purposes of our study is the following finding in terms of housing policy:

*'Serious consideration should be given to setting up a formal monitoring and evaluation system that subjects all housing projects to an ongoing impact assessment in order to inform policy. This should be extended to the development of a programme-level review which begins to understand and quantify the specific effects on household welfare and society over time.'*<sup>211</sup>

The SHF strongly calls for more **influence over the national statistics collection programme** and the collection of data that would lay the basis to begin 'developing national indexes of key variables by housing type over time'.<sup>212</sup>

While progressive realisation is a process that will take time and should ideally focus on a number of key areas, immediate needs and access to basic services should be prioritised. Further, state resources should be deployed in a manner that seeks to transform housing realities but also looks after people in their current conditions until it can better provide accessible and affordable options appropriate to their needs. There is the critical urgency to **review which (and how) Breaking New Ground programmes, as outlined in the National Housing Code, are being taken up, where and by whom**, in order to assess whether the programmes being implemented appropriately and effectively meet housing needs. This analysis is important, given the fear that not enough is being done to implement programmes that provide assistance to the poorest and most marginalised in society. While much research and capacity building has occurred in social housing, the reality is that this housing typology is directed at 'medium- to low-income households', with an emphasis on the former, and does not benefit the urban poor. Policy and programme responses should be directed to meeting the broadest and the most urgent housing need.

There is an **urgent need to implement the emergency housing, informal settlement upgrading and CRU interventions** at a faster rate and a larger scale. The problems and bottlenecks experienced with **inter-governmental relations and funding flows** in housing provision need to be examined more closely, and creative solutions found to decrease these urgently.

While there is much to be made of the localised demand-driven approach to housing, and accreditation of municipalities who have the capacity to deliver in this manner is desirable, the 'number of municipalities accredited' is not an adequate indicator of this housing ambition. There needs to be interrogation of **which municipalities are being accredited and if their housing provision plans, i.e. the Housing Chapters of their IDPs, are in line with the broader aims and prioritisation** needed to progressively realise the right to adequate housing. Where the housing provision plans do not reflect these national aims and priorities, they need to be improved through research, lobbying and mass mobilisation. For those municipalities who cannot, and will

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<sup>211</sup> Social Housing Foundation, "Think Piece 4: Social Indicators ", Cost Benefit Analysis: Social Rental Housing, (September 2009), p. 1.

<sup>212</sup> Ibid., p. 7.

most probably never, be able to reach accreditation status, informal settlements should still be targeted and projects supported and funded nationally should be undertaken. These projects should be developed and implemented in **collaboration with those grassroots organisations that have a vested interest in seeing housing development and the provision of basic services** occur in their communities, and have the organisational and leadership capacity to ensure community buy-in, stability during the implementation process and sustainability over time. The extent of collaboration could be measured by the uptake of the CoDHI and ePHP programmes, but should be interrogated and checked with feedback from communities and NGOs and monitoring of the real *impact* of these projects.

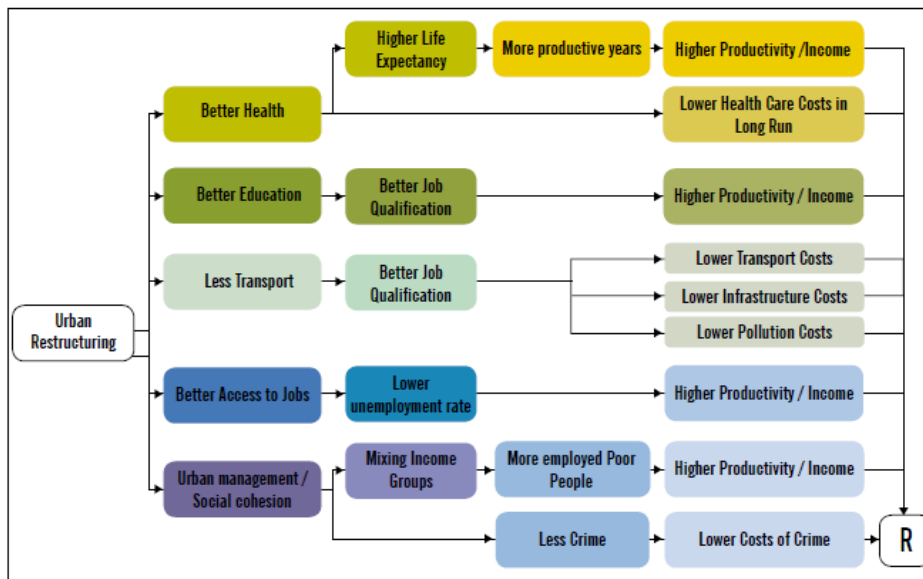
The recent targets to acquire '6 250 hectares of well-located state land for human settlements development' and provide '600 000 new loans in the affordable housing sector' should be interrogated. The following questions should be asked: What programmes are being envisioned for this land, who will benefit from the loans and how will these interventions assist the poorest members of society and those living in informal settlements or bad buildings or backyard shacks? In terms of the critical issue of well-located land and land use, **information should be gathered concerning how much land has not been put to productive use for the poor and most needy, and what exactly land in urban areas is being used for**. That is, are the 6 250 hectares for social or inclusionary housing going to exclude poor households? This concern may prove to be a contentious area of exploration and data will likely be difficult to find and integrate into a matrix. Still, in light of the common phenomenon where inner-city buildings and urban land are auctioned for bargain prices to private businesses (often because people occupy them unlawfully) who use the space for retail and up-market townhouse complexes, this is an avenue worth further investigation.

The politicisation of housing delivery in South Africa, and the role that national politics has played in housing policy development, is evident from the analysis of the White Paper on Housing and BNG. Politics has often hindered the development of a stable and consistent conceptual framework and roadmap for housing in the country. Further, the **documented problems with the current mechanism for local democracy and participation, that is, the ward system** must be taken seriously. These problems are often directly related to the success or failure of housing developments and the negative infringement on the right to housing experienced by poor people across the country. Some **negative indicators here might be necessary, including reports of the repression of non-aligned community-based organisations and corruption in local councils around housing allocation**. Additional information may be gathered by looking at the number of applications for information about housing projects made in terms of the Promotion of Access to Information Act 2 of 2000 as well as the nature and number of parliamentary committee engagements with housing departments over complaints, infringements and questionable policy or practices.

In the effort to develop grounded, meaningful social and economic indicators for a measurement matrix on the progressive realisation of the right to housing, it is useful to draw on existing research and lessons learned elsewhere. Valuable information has emerged from the recent SHF study undertaken to measure the social and economic effects of different types of housing, namely RDP and social rental housing, through CBAs, and the extent to which social housing has succeeded in contributing to **urban restructuring in order to address structural**

**economic, social and spatial dysfunctionalities.** The findings from this study constitute a source from which more general principles and indicators can be extrapolated for use in our 'progressive realisation' measurement matrix. One can also draw indicators from this research to measure the impact of a given type of housing on the lives of its intended beneficiaries. These indicators include: **health and education outcomes; access to services; transport costs and time; income and expenditure; access to employment and job opportunities; motivation to change accommodation and previous dwelling; improved urban management; social cohesion; and crime.** The SHF develops a causality framework hypothesis and links them with monetary variables in order to include the effects, such as higher productivity or income, in the CBA.<sup>213</sup> Below is the broad causality framework hypothesis developed by the SHF:<sup>214</sup>

**Figure 1: CBA Causality Hypothesis**



Employing these kinds of social and economic indicators through a causality framework can really only be useful in a project-level analysis. Ideally this kind of investigation would be conducted over the long-term and could feed into a specific housing programme or typology analysis. Ultimately, such a study could inform a national audit of the fulfilment of constitutional obligations in respect of housing. According to the SHF, one would need to control for a number of variables that might also affect housing outcomes, including income level, parents; educational level, ethnic background as well as the following:<sup>215</sup>

<sup>213</sup> Ibid., pp. 3-4. See Annexure for more on these effects as analysed in the economic CBA.

<sup>214</sup> Ibid., p. 3.

<sup>215</sup> Ibid., pp. 7-8. According to the SHF, in addition to this data there is an urgent need to compile an index of key national costs in respect of a number of areas required to undertake a sound valuation in the CBA. 'These include:

- Cost to provide health care per patient by facility per regional location;
- Cost of productivity lost to the economy per average sick day per employment grade per regional location;
- Cost to provide education per learner by facility per regional location;
- Cost to provide public transportation per person per kilometre per regional location;
- Cost of transport infrastructure maintenance and utilisation per kilometre per regional location;
- Cost to provide utilities/ services per household per regional location;
- Costs of infrastructure maintenance per household per regional location;
- Cost of policing per square kilometre per regional location;

- **Health Outcomes:**
  - Levels of access / proximity (travel time) to healthcare in specific housing forms
  - Costs of healthcare for residents in specific housing forms
  - Healthcare outcomes for residents in specific housing forms measured in respect of sick days, chronic illness etc.
- **Education Outcomes:**
  - Levels of access / proximity to education
  - Costs of education for residents in specific housing forms
  - Drop-out rates in specific housing forms
  - Number of years attending education in specific housing forms
  - Qualifications obtained in specific housing forms
- **Employment Outcomes:**
  - Levels of access / proximity to employment opportunities
  - Employment outcomes for residents in specific housing forms
  - Income effects resulting from changed employment outcomes
- **Transportation Costs:**
  - Cost of transportation for residents in specific housing forms
- **Expenditure:**
  - Changes in household consumption patterns and expenditure in specific housing forms
  - Costs of utilities for residents in specific housing forms
- **Crime**
  - Incidence and type of criminal activity in specific housing forms
  - Costs of criminality for residents/ households in specific housing forms in the long run such as cost of security, insurance claims, lost work days, etc.

A critical focus going forward, as highlighted by the SHF, should be to **conduct impact assessments and longitudinal studies** of existing and planned housing projects and developments. Policymakers require more statistically-sound data that effectively measure the impact of specific housing types on the welfare of households. This implies a need to undertake a greater number of **project-specific surveys** to obtain reliable information from a range of locations and particular conditions. The ability to track impact on a long-term basis is also critical in this regard, and further **empirical analysis of the long-term effects of different types of housing** would greatly enhance policy development and ensure successful decision-making. Thus, there is the need to undertake what the SHF terms 'real experiments', which could be performed over a relatively long period of time and facilitated by a **new national research programme**.<sup>216</sup>

In conclusion, the indicators discussed are not exhaustive or definitive but provide a starting point for both quantitative and qualitative measures for use at a project level and which could be aggregated to provide nation-wide data. Beyond such measurements, however, a broad social perspective is necessary to evaluate progressive realisation. Accordingly, this paper has attempted to provide a broad background on the historical development of law, policy and

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- Cost of criminal justice (including imprisonment) per crime type per regional location;
- Incidence of crime by type per regional location;
- Conviction rate per crime type per regional location.'

<sup>216</sup> Ibid., pp. 6-7.



judicial review relating to the progressive realisation of the right to access adequate housing. Not only does this analysis flag critical issues going forward in housing policy development and housing provision, but it also highlights areas that should not be ignored when developing a measurement matrix.

## 10. BIBLIOGRAPHY

### Journal articles

Lilian Chenwi and Kate Tissington, "'Sacrificial lambs' in the quest to eradicate informal settlements: The plight of Joe Slovo residents", *ESR Review*, 10.3 (September 2009).

Malefetsane Mokoena and Lochner Marais, "The Missing Link in Cooperative Governance and Housing Delivery: Lessons from Mangaung Local Municipality", *Urban Forum*, 18 (2007).

Richard Pithouse, "A Progressive Policy without Progressive Politics: Lessons from the failure to implement 'Breaking New Ground'", *Town Planning Journal*, 54 (2009).

Mary Tomlinson, "South Africa's housing policy: Lessons learnt from four years of the new Housing Subsidy Scheme", *Third World Planning Review*, 213 (1999).

Stuart Wilson, "Breaking the Tie: Evictions from Private Land, Homelessness and a New Normality", *South African Law Journal* vol 2 (2009).

### Books

Geoff Budlender, "Justiciability of the Right to Housing - The South African Experience" in Scott Leckie (ed.), *National Perspectives on Housing Rights* (Kluwer Law International, 2003).

Sarah Charlton and Caroline Kihato, "Reaching the Poor: An analysis of the influences on the evolution of South Africa's housing programme" in Udesch Pillay et al (eds.), *Democracy and Delivery: Urban Policy in South Africa* (Cape Town, 2006).

Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (2004).

Sandra Liebenberg, *Socio-Economic Rights Adjudication under a Transformative Constitution* (Juta, 2010).

Kirsty Mclean, *Constitutional Deference, Courts and Socio-Economic Rights in South Africa* (PULP, 2009).

### Research reports and publications

Auditor-General, "Report of the Auditor-General on the special audit of the N2 Gateway Project at the National Department of Housing" (2008):  
[www.pmg.org.za/files/docs/090610gateway\\_0.pdf](http://www.pmg.org.za/files/docs/090610gateway_0.pdf)

Centre on Housing Rights and Evictions (COHRE), "Business as Usual? Housing rights and 'slum eradication' in Durban, South Africa" (September 2008).

Ronald Eglin, "Between a Shack and an RDP House: Alternative Forms of Tenure Security", *Transformer*, 15.5 (October/November 2009).

David Gardener, "Getting South Africans under Shelter: an Overview of the South African Housing Sector", Housing Finance Resource Programme (2003).

Rebecca Himlin, "People's Housing Process: Enhanced!", NGO Pulse (November 2008): [http://www.planact.org.za/images/stories/documents/articles\\_presentations/7.%20People's%20Housing%20Process%20-%20Enhanced.pdf](http://www.planact.org.za/images/stories/documents/articles_presentations/7.%20People's%20Housing%20Process%20-%20Enhanced.pdf)

IDASA, "IDASA Budget 2007: Poverty Amidst Plenty": <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1784>

Cameron Lee Jacobs, "Demystifying the Progressive Realisation of Socio-Economic Rights in South Africa", South African Human Rights Commission (October 2009).

Planact and Rooftops Canada, "Success at a Price: How NGO advocacy led to changes in South Africa's People's Housing Process" (2009).

Mark Misselhorn, "Draft Position Paper on Informal Settlements Upgrading: Part of a Strategy for the Second Economy", Compiled for Urban LandMark (April 2008).

Margot Rubin, "A Reference Guide on the Legislative and Regulatory Environment affecting Social Housing and the Implication for such on Social Housing Project Development and Management", completed for the Social Housing Foundation (SHF) (January 2010).

Kecia Rust, "Analysis of South Africa's Housing Sector Performance", FinMark Trust (December 2006)

Dan Smit, "Review of the International Experience with Inclusionary Housing Programmes: Implications for South Africa", Department of Housing (2 February 2006).

Warren Smit, "Analysis of qualitative survey on accessing, holding and trading land: synthesis report", Report prepared for Urban LandMark (March 2008).

Social Housing Foundation and Urban LandMark, "An Investigation into an Apparent Increase in Evictions from Private Rental Housing: Report and Position Paper" (June 2010).

Social Housing Foundation, "Supply and Demand of Rental Accommodation in South African" (July 2008).

Social Housing Foundation, "Cost-Benefit Analysis: Social Rental Housing and RDP Housing – Final Report" (2009).

Social Housing Foundation, "Think Piece 1: Location and Density", Cost Benefit Analysis: Social Rental Housing (September 2009).

Social Housing Foundation, "Think Piece 4: Social Indicators", Cost Benefit Analysis: Social Rental Housing, (September 2009).

South African Human Rights Commission (SAHRC), "Report on the Public Hearings on Housing, Evictions and Repossessions" (2008).

Kate Tissington, "Joe Slovo residents let down by court", *Pambazuka News* (25 June 2009).

Urban LandMark and Social Housing Foundation (SHF), "Small -Scale Private Rental: A Strategy for Increasing Supply in South Africa" (January 2010).

## Media articles, press releases and speeches

"SA housing backlog at two million", *SABC News* (8 October 2007):  
[http://www.sabcnews.com/south\\_africa/land\\_affairs/0,2172,157125,00.html](http://www.sabcnews.com/south_africa/land_affairs/0,2172,157125,00.html)

Richard Pithouse, "Land Occupation and the Limits of Party Politics", *SACSI* (25 May 2009):  
<http://sacsis.org.za/site/article/290.1>

Martin Legassick, "Too few houses, too many people to house", *Cape Times* (26 May 2009):  
<http://www.capetimes.co.za/index.php?fArticleId=4998648>

Andisiwe Makinana, "D-Day set for Cape's housing ambitions", *Cape Argus* (27 August 2009).

CALS press release, "Abahlali baseMjondolo celebrates as Constitutional Court declares KZN Slums Act unconstitutional" (Johannesburg, 14 October 2009).

Xolani Mbanjwa, "Sexwale declares war on housing crooks", *IOL* ( 3 November 2009):  
[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=vn20091103040929776C550492](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20091103040929776C550492)

Edwin Naidu and Maureen Isaacson, "How to build quality houses for R55 000 ", *IOL* (6 December 2009):  
[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=vn20091206081113931C733613](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20091206081113931C733613)

"SA dealing with Haiti like situation every day: Sexwale", *Herald* (21 January 2010).

"Heaps of money for housing delivery", *Realestateweb* (17 February 2010):  
<http://www.realestateweb.co.za/realestateweb/view/realestateweb/en/page196?oid=55885&sn=Detail>

"Plan to upgrade 500 000 shacks by 2014", *GCIS* (23 February 2010).

Leani Wessels, "Black market highlights RDP cracks", *Fin24* (31 March 2010):  
[http://www.fin24.com/articles/default/display\\_article.aspx?ArticleId=1518-1786\\_2578095](http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-1786_2578095)

Jane Duncan, "Houses to Die For?", *SACSI* (1 April 2010):  
<http://www.sacsis.org.za/site/article/452.1>

Tokiso Molefe, "We will build shacks on vacant land", *City Press* (14 April 2010):  
<http://www.citypress.co.za/SouthAfrica/News/We-will-build-shacks-on-vacant-land-20100414>

Tokyo Sexwale, "Budget vote speech by the Human Settlements Minister, National Assembly" (21 April 2010): <http://www.polity.org.za/article/sa-sexwale-budget-vote-speech-by-the-human-settlements-minister-national-assembly-21042010-2010-04-21>

"Address by the Minister of Human Settlements, Tokyo Sexwale MP, on the occasion of the Human Settlements Budget Vote", National Council of Provinces, Cape Town (6 May 2010): <http://www.info.gov.za/speeches/2010/10050615451001.htm>

"Fewer people living in shacks - Stats SA", *IOL* (6 May 2010): [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=124&art\\_id=nw20100506160927452C765903](http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=nw20100506160927452C765903)

Loni Prinsloo, "NHBRC to crack down on unregistered home builders", *Engineering News* (12 May 2010): <http://www.engineeringnews.co.za/article/nhbrc-to-crackdown-on-unregistered-home-builders-2010-05-12>

"Human settlements an investment in future — Zuma", *SAPA* (18 May 2010): <http://www.polity.org.za/article/human-settlements-an-investment-in-future-zuma-2010-05-18>

## **Department of Human Settlements (Housing)**

Department of Housing, Presentation on BNG to the Programme in Housing Policy Development and Management, P&DM (January 2008).

Department of Housing, Annual Report 2008-2009:  
<http://www.housing.gov.za/Content/Documents/Annual%20Report%202008-2009/Housing.pdf>

Department of Human Settlements, "Presentation to the Portfolio Committee: An overview of the current Inclusionary Housing Policy and its development progress" (3 December 2009).

Department of Housing, Annual Report 2006-2007:  
[http://www.housing.gov.za/Content/Documents/Annual%20Report%20-%202007/Annual\\_2005-2006\\_22SEPT\\_Website\\_all.pdf](http://www.housing.gov.za/Content/Documents/Annual%20Report%20-%202007/Annual_2005-2006_22SEPT_Website_all.pdf)

Department of Housing, Presentation by NM Karsen, Deputy Director-General, on Strategies Identified to Address Policy Gaps, paper presented at National Housing Conference on Housing Strategy for the New Millennium (Pretoria, 1999).

"South Africa: Millennium Development Goals Mid-Term Country Report" (September 2007).

## **Housing policy and legislation**

Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (August 2004) (Breaking New Ground):  
[www.capegateway.gov.za/Text/2007/10/bng.pdf](http://www.capegateway.gov.za/Text/2007/10/bng.pdf)

Constitution of the Republic of South Africa Act 108 of 1996 (Constitution):  
[www.info.gov.za/documents/constitution/index.htm](http://www.info.gov.za/documents/constitution/index.htm)

Extension of Security of Tenure Act 62 of 1997:  
<http://www.forestry.co.za/uploads/File/legislation/land/Extension%20of%20Security%20of%20Tenure%20Act.pdf>

Framework for an Inclusionary Housing Policy (IHP) in South Africa (June 2007):  
[www.nasho.org.za/attachment\\_view.php?pa\\_id=474](http://www.nasho.org.za/attachment_view.php?pa_id=474)

Housing Act 107 of 1997:  
[www.housing.gov.za/Content/planned/Acts/Housing%20Act%20107%20of%201997.pdf](http://www.housing.gov.za/Content/planned/Acts/Housing%20Act%20107%20of%201997.pdf)

KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007 (Slums Act):  
<http://abahlali.org/files/KZN%20Slums%20Act.pdf>

National Housing Code (2007): [www.housing.gov.za/Content/The%20Housing%20Code](http://www.housing.gov.za/Content/The%20Housing%20Code)

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act):  
[www.housing.gov.za/Content/planned/Acts/Prevention%20of%20Illegal%20Eviction%20from%20and%20Unlawful%20Occupation%20.pdf](http://www.housing.gov.za/Content/planned/Acts/Prevention%20of%20Illegal%20Eviction%20from%20and%20Unlawful%20Occupation%20.pdf)

Promotion of Administrative Justice Act 3 of 2000 (PAJA):  
[www.capecoast.gov.za/Text/2004/8/a3-00.pdf](http://www.capecoast.gov.za/Text/2004/8/a3-00.pdf)

Promotion of Access to Information Act 2 of 2000 (PAIA):  
[http://humanresources.co.za/free/Sub\\_for\\_legres/Data/POIDA/act2.pdf](http://humanresources.co.za/free/Sub_for_legres/Data/POIDA/act2.pdf)

Reconstruction and Development Programme (RDP) (1994):  
<http://www.anc.org.za/rdp/rdp.html>

Rental Housing Act No 50 of 1999: <http://www.info.gov.za/view/DownloadFileAction?id=70618>

Rental Housing Amendment Act No 43 of 2007: [http://us-cdn.creamermedia.co.za/assets/articles/attachments/14073\\_gg31051\\_nn539\\_pg1-6.pdf](http://us-cdn.creamermedia.co.za/assets/articles/attachments/14073_gg31051_nn539_pg1-6.pdf)

Social Housing Act 16 of 2008: <http://www.info.gov.za/view/DownloadFileAction?id=91903>

Social Housing Policy for South Africa (May 2005):  
[www.nhfc.co.za/files/Social\\_Housing\\_Policy\\_May\\_2005.pdf](http://www.nhfc.co.za/files/Social_Housing_Policy_May_2005.pdf)

Upgrading of Informal Settlements' Programme (October 2004):  
<http://web.wits.ac.za/NR/rdonlyres/74FBBB09-90B0-40CE-A04D-A60BCA2E18C4/0/Ch13finalversion19Oct2004InfSettleUpgrProgr.pdf>

White Paper on Housing (1994):  
[www.housing.gov.za/Content/planned/Docs/Housing%20White%20Paper.pdf](http://www.housing.gov.za/Content/planned/Docs/Housing%20White%20Paper.pdf)

## **Statistics South Africa**

Statistics South Africa, Community Survey 2007: Key Municipal Data (2007):  
<http://www.statssa.gov.za/publications/Report-03-01-21/Report-03-01-212007.pdf>

Statistics South Africa, General Household Survey 2009 (July 2009):  
<http://www.statssa.gov.za/Publications/P0318/P0318June2009.pdf>

## Constitutional Court cases

*Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others* Case CCT 12/09, 2009 ZACC 31 (CC):  
[www.saflii.org/za/cases/ZACC/2009/31.pdf](http://www.saflii.org/za/cases/ZACC/2009/31.pdf)

*Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC): [www.saflii.org/za/cases/ZACC/2000/19.pdf](http://www.saflii.org/za/cases/ZACC/2000/19.pdf)

*Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* Case CCT 22/08, 2009 ZACC 16 (CC): [www.saflii.org/za/cases/ZACC/2009/16.pdf](http://www.saflii.org/za/cases/ZACC/2009/16.pdf)

*Mazibuko and Others v City of Johannesburg and Others* 2008 JOL 21829 (W):  
[www.cohre.org/store/attachments/Mazibuko%20Judgment.pdf](http://www.cohre.org/store/attachments/Mazibuko%20Judgment.pdf)

*Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others* 2008 (3) SA 208 (CC):  
[www.saflii.org/za/cases/ZACC/2008/1.pdf](http://www.saflii.org/za/cases/ZACC/2008/1.pdf)

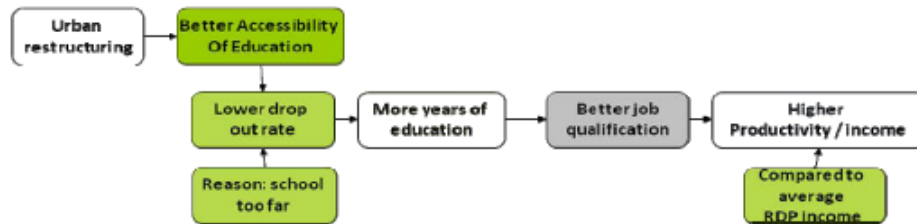
*Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC):  
[www.saflii.org/za/cases/ZACC/2004/7.html](http://www.saflii.org/za/cases/ZACC/2004/7.html)

## 9 Economic CBA

### 9.1 The effects of Social Rental Housing - theory

As mentioned before, the primary intended effect of SRH is to contribute to urban restructuring in order to address structural economic, social and spatial dysfunctionalities; and improve and contribute to the overall functioning of the housing sector. In order to value the effects of SRH, we translated this primary intended effect to measurable variables. In this section we will elaborate on the operationalisation of the causality chains in the model. The actual outcomes are discussed in the next section.

Figure 35: Causality education



The link between urban restructuring and education was operationalised as shown in the graph above. Due to the location of social housing within the urban centre of the city, education becomes more accessible. Accessibility is measured by the difference in drop out rate between RDP and SRH, linked with the reason given for the drop out, namely the school being too far. These two variables are measured by the survey. It is assumed that staying in school instead of dropping out leads to 4 additional years of education. These additional years of education in turn will lead to a better job qualification, which will cause a higher income. We assumed the additional income to be 7% of the average annual income of an RDP resident or R 41,100. The causality of lower drop out rates, leading to additional years of education, which leads to higher income, is based on literature study. The assumptions used are based on expert opinions based on earlier research in this field.

Figure 36: Causality health

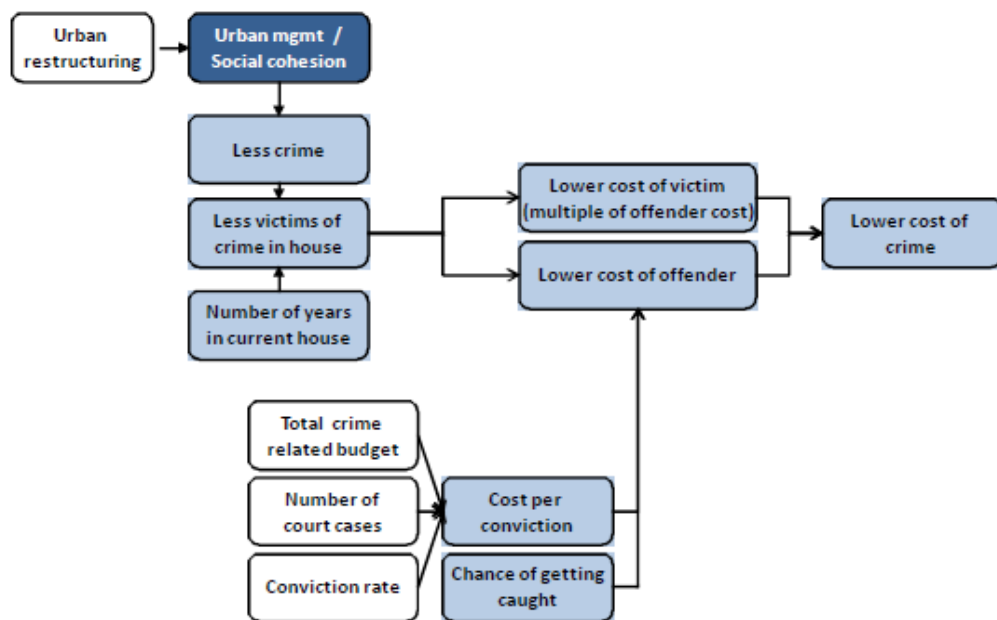


<sup>217</sup> SHF, "Cost-Benefit Analysis: Social Rental Housing and RDP Housing – Final Report" (2009), pp. 87-90.



The causality link between urban restructuring and health is operationalised as follows. First, actual accessibility is measured by the number of minutes it takes to get to public health care. Furthermore, this improved accessibility should lead to additional hospital visits. This higher investment in health care should then lead to a better level of health, and in turn, less sick days. These sick days can then be valued as productive income. However, the survey results did not confirm this causality chain. In Actuality, the number of sick days for RDP residents was lower. This could be the result of a lower rate of formal employment, in effect not having a possibility to “call in sick”. This poses a problem for the monetarisation of this effect. We could decide to quantify the linkage anyway, which results in a negative effect (additional costs for social housing). However, this would lack a logical explanation for this effect to occur, and it cannot be reasoned why the project case would lead to additional sickness. Therefore, it has been decided to take this effect into account in a qualitative manner.

Figure 37: Causality crime



The link between urban restructuring and crime is operationalised as follows. Social housing includes extra measures of urban management, safety measures and social cohesion due to higher density. These measures affect the crime level. This variable has been measured by the number of crime victims within the house. This effect has been corrected for the average number of years that the residents have been living at this location. These variables were taken from the survey results. The difference in crime between RDP and SRH can be quantified along two lines. The first is the costs relating to the offender. These costs are built up from the total crime related budget of R 27.8 billion<sup>5</sup> and the total number of court

<sup>5</sup> Blackmore, F.L.E. (2003). A panel data analysis of crime in South Africa. SAJEMS. 6(3), pp. 439 – 458.

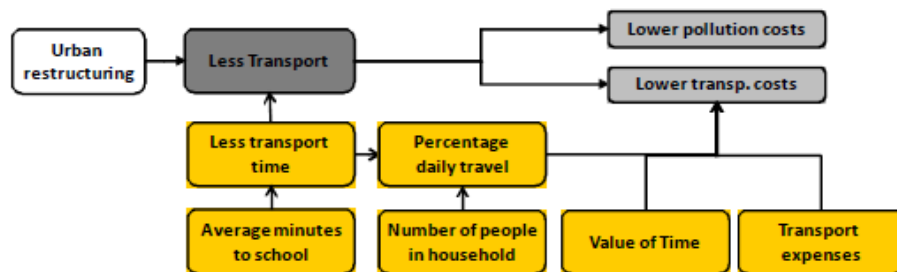
cases of almost 1 million and a conviction rate of 87%.<sup>6</sup> These factors lead to the costs of a conviction of an offender. In order to find the victim costs, we have to take into account the chance of getting caught, which we have assumed to be 50%. Furthermore, literature shows that victim costs can be assumed to be 3 times the costs of the offender.<sup>7</sup>

Figure 38: Causality employment



The link between urban restructuring and better employment opportunities is operationalised as follows. The location of SRH near employment opportunities leads to residents finding better jobs when moving to the area. The survey results were used for finding a better job, with reasons given that are related to the housing location. In addition, we have inserted a causality correction. We have done so to correct for the uneven income levels of RDP and SRH residents. We have set this factor at 50%. We have assumed that a better job leads to additional income, and we have assumed the income increase to be 7% compared to the average RDP income.

Figure 39: Causality transport



The link between urban restructuring and less transport is operationalised as follows. As a proxy for less transport we used the average of the minutes to primary and high school from the survey results. We have to relate these costs to household level, therefore we have multiplied by the number of people in the household, but corrected for the percentage of the people in the household that are travelling daily. We have assumed this percentage to be 75%, which resembles the employment rate of the RDP households. This then results in a transport time differential, the number of hours that RDP residents spend less travelling.

<sup>6</sup> 2006\_adminjustice, Justice and Correctional Services

<sup>7</sup> Cohen, Mark A., and Ted R. Miller. (1999). The monetary value of pain and suffering due to criminal victimization: Evidence from jury awards. Working paper, Vanderbilt University, Nashville.

Next, we value transport savings in two ways. First is the savings in transport expenses. We assume that the taxi driver finds a more efficient allocation of the product, and therefore we can assume the expenditure of households as a saving. We have used the expenses from the survey results. Transport expenses are approximately 16 Rand per hour. Second, we value the savings in transportation time. We have used value of time standard numbers from the CBA manual for South Africa.<sup>8</sup>