

Presentation to the Portfolio Committee on Human Settlements

20 February 2013

1. Human Rights Obligations

The right to housing is recognised in section 26 of the *Constitution of the Republic of South Africa Act, 108 of 1996* (hereinafter “the Constitution”) and in a plethora of international human rights instruments, including the Universal Declaration of Human Rights. As such, the South African government has an obligation to provide basic services to citizens and to ensure the continuous improvement of living conditions. The Constitutional Court of South Africa has pronounced on various cases relating to access to housing. If one is to examine the findings of these cases, one can assume that government has an obligation to meet the basic requirements enshrined in the Constitution and legislations as well as the following:¹

- A reasonable government programme must provide for those in urgent need and living in ‘*intolerable conditions*’ immediately.²
- The state must ‘*meaningfully engage*’ with potential evictees to ascertain if they will be rendered homeless by an eviction and to determine what alternative accommodation can be provided. Engagement must be performed prior to decision-making on the commencement of eviction proceedings.³ If engagement takes place after there has been a decision to institute eviction proceedings, it cannot be considered as 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.⁴
- No evictions in terms of the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* (hereinafter “PIE Act”) should occur until the results of the proper engagement process are known.⁵
- Courts will be reluctant to order an eviction if it will result in homelessness.⁶

¹ <http://www.spii.org.za/agentfiles/434/file/Research/Review%20of%20the%20Right%20to%20Housing.pdf>

² Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC)

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

⁴ *Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009] ZACC 31; 2010 (2) BCLR 99 (CC)

⁵ See notes 3 and 4 above

- The Court may order that temporary relocation units comply with certain specifications. In *Joe Slovo* case, the Court specified that the units had to be at least 24m² 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.⁷

2. Findings from SAHRC Studies

In 2009, the South African Human Rights Commission (hereinafter “the Commission”) hosted public hearings on the realisation of economic and social rights, where representatives from government departments, civil society groups and academic institutions made presentations. In 2011, the Commission sent a protocol (questionnaire) for information to the Department of Human Settlements (hereinafter “DoHS”), which requests information on steps taken by the relevant government department towards the realisation of a specific right. In addition, in March 2012, the Commission hosted a discussion forum on the right to housing relating to high-density or urban centres. From these processes, independent research and *ad hoc* monitoring of the realisation of the right to adequate housing, the Commission has made specific findings which are elaborated upon below in detail.

2.1. Informal Settlement Upgrading

The progressive realisation of rights is concerned with both the content and process of the achievement of rights. Despite the quantitative progress in the delivery of housing opportunities, there is a growing critique of methods of informal settlement upgrading as being synonymous with evictions.

⁶ See notes 3 above; *Residents of Joe Slovo Community, Western Cape v Thebelisha Homes and Others* (CCT 22/08) [2011] ZACC 8; 2011 (7) BCLR 723 (CC)

⁷ See note 4 above

Civil society organisations and panellists at public hearings hosted by the Commission have questioned the methods of slum eradication and highlighted the slow pace of piloting *in-situ* upgrading as provided for in the information settlement upgrading programme.⁸ Civil society organisations have argued that the state is taking increasingly negative measures to do away with informal settlements or slums, which are contrary to the spirit of the legislative and policy framework on the elimination and prevention of slums or informal settlements.⁹

The Breaking New Ground (hereinafter “BNG”) policy of the DoHS refers to ‘progressive informal settlement eradication’ and states that a phased *in situ* upgrading approach in desirable locations is favoured and recommends that informal settlement eradication occurs through upgrading in line with international best practice. It also states that relocation is only to occur when development is not possible or desirable. Most ‘upgrading’ of informal settlements has not, however, followed the BNG principles. Characteristically, occupants have been relocated and subsidised units and low-cost housing developed on the land, which are then allocated to shack dwellers listed on the Demand Database (hereinafter “DDB”). Original occupants are moved to transit camps or settlements some distance from the urban hub. Often, evictions are undertaken by private companies on behalf of the state.

Relocated residents frequently abandon their residence and move closer to urban centres by erecting informal dwellings on unoccupied land or the back yard of existing dwellings.

2.2. Ownership

A study in the township of Makhaza in the Western Cape in 2011, showed that over 80% of residents believe that they own the property on which they are currently living, but the majority of residents do not have access to the title deeds of the property. If this situation is replicated in other townships across South Africa, it is a worrying trend as many South Africans do not have security of tenure. In some cases, beneficiaries have stands allocated to them, but are informed years later, despite consistently contacting their relevant housing authority.

⁸ Chapter 13 of the National Housing Code, 2000

⁹ Particularly the Housing Act 107 of 1997, Chapter 13 of the Housing Code, (2000) & the Breaking New Ground Policy, (2004).

During the Commission's research in Makhaza in November 2011, a community member stated that she found out in 2011 that a stand was allocated to her 2008. At the time of the interview, she was unaware of the location of the stand, and it is likely that the stand is already occupied.

2.3. Location of Housing Developments and the Development of Human Settlements

The concept of 'human settlements' is one that is intrinsically linked with human dignity and life. Homeowners create a bond with land and communities, which cannot be easily measured as a minimum standard. Furthermore, housing provision must be linked to economic opportunities and other services and amenities. As the President Jacob Zuma explained in a State of the Nation Address in 2009, "*human settlement 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.*"¹⁰

However, in the past 15 years, housing developments have been poorly located away from urban centres, hence away from sustainable economic activities. While housing projects have not been solely responsible for this overall trend of spatial polarisation of wealth and poverty, they have been unable to counteract the strong forces contributing to the marginalisation of the poor, and have tended to reinforce these spatial extremities.¹¹ The subsequent impact on poverty and inequality is often exacerbated by the high cost of transport to urban hubs.

2.4. Accreditation System

In 2011, the Minister of Human Settlements announced the implementation of an accreditation system in line with the outcomes based programme of government. This involves municipalities proving their capacity to plan, implement and maintain projects and programmes that are aligned with their Integrated Development Plans (hereinafter "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.¹²

¹⁰ <http://www.info.gov.za/speeches/2009/09060310551001.htm>

¹¹ <http://www.csvr.org.za/wits/papers/papcharl.htm>

¹² Note 1 above

The Commission is concerned with the capacity of poor municipalities and their ability to successfully apply for accreditation, to faster alleviate the housing backlog. Many municipalities are plagued by a lack of capacity to implement planned service delivery programmes and effectively monitor the realisation of economic and social rights. As such, the lack of support for poor municipalities might result in the exacerbation of an existing highly unequal system.

2.5. A Rights-Based Approach

The right to adequate housing is intrinsically linked to various additional cross-cutting human rights. Projects that fail to incorporate these rights and principles before, during and after the implementation are destined for failure. The need for public participation, access to information, and the right administrative justice cannot be overemphasised. Research by the Commission has shown that most housing projects merely inform affected individuals and parties of the implementation of projects and engagement is therefore not meaningful. Communities have no access to information or administrative justice and feel marginalised from the process of decision-making that has a direct affect upon them.

A failure to provide service-delivery from a human rights-based perspective also means that the rights of vulnerable individuals and groups are not considered. For example, people with disabilities are not catered for and neither are people with specific religions or cultural needs. The lack of transitional housing, rental discrepancies for non nationals are also among some of the issues that exacerbate lack of access to housing.

Overall, a failure to frame programmes and projects from a human rights perspective means that the provision of services such as housing is merely treating the symptoms of poverty and not addressing the underlying causes of poverty and inequality.

2.6. Quality of Housing Provision

In respect of the quality of housing provision, the DoHS has acknowledged that many houses have been affected by poor workmanship. However, it maintains that this occurred prior to the implementation of the National Home Builder's Registration Council (hereinafter "NHBRC") warranty scheme and before the home builders were required to register with the NHBRC.

For example, in the 2010/11 financial year, a total of 4 851 houses were repaired and 758 houses were demolished at a total cost of R427.2 million to the DoHS. The registration of home builders is commendable, but it must be emphasised that companies receive tenders not only to build decent houses but to create communities. Therefore, appropriate monitoring and evaluations should be conducted by the relevant authorities and consequences should follow in the event of non-compliance with standards and regulations.

The Commission and associated civil society organisations also received numerous complaints around corruption in the housing sector. In 2010, a national audit task team appointed by South Africa's Department of Human Settlements has recovered R44-million and arrested 1 910 government officials who were illegally benefiting from housing subsidies.¹³ The Commission remains concerned over corrupt officials, contractors and housing syndicates and corruption within the NHBRC.

2.7. The Housing Demand Database

Housing waiting lists were established during the apartheid era but these were effectively abandoned under the new dispensation save for the purposes of recording housing needs. The validity of the waiting list system was questioned by the Auditor-General, which resulted in the development of the national DBB. Potential beneficiaries of housing in a specific location are invited to apply for housing subsidies when the products become available. According to the DoHS, the DBB was initiated in 2005, but provinces are still at various stages of implementation. There is no doubt that there was merit in redeveloping the system, but the complete abandonment of the housing waiting list has caused much confusion and has been prejudicial to those who have been on the list for many years. Many, particularly backyard dwellers and people who share rooms in formal townships, still believe that the waiting list exists and have reacted angrily towards those communities who appear to have 'jumped the queue'. As a result, the common perception in many communities is that one is more likely to get a house if one lives in an informal settlement.

¹³ <http://www.southafrica.info/services/government/corruption-180810.htm#.UKOe6eRazyl>

Secondly, anecdotal evidence indicates that the allocation of houses in communities is less than scientific. When a particular site is earmarked for a housing development, there is very little proper project management, monitoring and evaluation or oversight to determine whether all the houses are assigned to the intended beneficiaries.

2.8. Sanitation

The provision of sanitation that is acceptable, affordable, appropriate and accessible is essential to realise one's right to life, dignity and health. The state has in the past provided sanitation that is unenclosed or sanitation facilities that are not culturally acceptable, safe or appropriate for vulnerable groups like people with disabilities. This shows again, a lack of a human rights-based approach to service delivery.

3. Recommendations

- The state is obliged to provide 'emergency' accommodation for those without access to adequate shelter and basic services.
- The location of new housing settlements must be considered in conjunction with economic opportunities and access to additional services such as transport, education and health care.
- An audit is required to assess the security of land tenure in townships and settlements with government housing.
- Government must ensure that all service delivery projects are framed from a rights-based perspective to including meaningful public participation and access to information. This will ensure that vulnerable and marginalised groups are considered and appropriate services provided.
- There must be engagement over the relocation of communities prior to any decisions on eviction being made.
- Evictions without prior engagement, particularly by private companies, are unacceptable.
- As much as possible, upgrading should be done *in-situ*.
- There is a need for an audit of the Housing DDB and transparency around its implementation and operation.

- The state cannot be the sole provider of housing, but has to monitor and evaluate the performance and delivery of private sector companies.
- Sanitation facilities should be culturally appropriate and accessible and should meet the requirements of the right to dignity.
- Assistance to poor and under-capacitated municipalities is required on the accreditation process.
- Greater transparency around decision-making and the awarding of tenders is required. Furthermore, ongoing partnerships with organisations to alleviate corruption within the housing sector will be welcomed.