

SECTION 3

THE SOUTH AFRICAN HOUSING CONTEXT

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I. International context

Policies of the democratic government in South Africa were informed by international codes and practice as well as the needs of the people.

The international definition of the **right to adequate housing** is generally more comprehensive and detailed than the South African definition. Interpretations of the obligations imposed by the international right to adequate housing are thus important in determining the key components of a rights-based approach to housing. They can be a useful tool in arguing that a particular strategy meets the requirements of the right to adequate housing.¹

The right to adequate housing is protected by various international human rights policy instruments, such as covenants, conventions and declarations. Together these form the body of international law recognising housing rights. In legal terms, the most powerful documents are *conventions*, *covenants* or *charters*. They are legally binding treaties for the countries that have ratified or acceded to them, and States Parties have clearly identifiable legal obligations to fulfill the particular housing rights provisions they contain.

United Nations *declarations* (e.g. Habitat Agenda) are accorded less legal weight but are important political documents that represent the commitment of States towards a particular goal.

The *recommendations* of UN treaty bodies are also important, as they are generally regarded as being authoritative interpretations of the treaties.

Declarations and recommendations are generally documents of intent, but usually do not create legally binding obligations on the countries that have signed them, although a declaration may gain the force of binding law if it achieves the status of customary law.

Resolutions are adopted by bodies consisting of governments (with the exception of the Sub-Commission on Protection and Promotion of Human Rights), and others, such as 'individual experts' rather than government representatives. *Resolutions* are generally not considered to be legally binding, except resolutions of the UN Security Council.²

The international human rights policy instruments state clearly that governments have obligations, including legal duties in terms of these instruments, to enable people to access shelter and to improve their living conditions. This implies that a government must create an enabling policy environment to eventually achieve the objective of providing adequate housing for all its citizens but does not mean that government must immediately provide the homeless with houses.³

The most significant international policy instruments are listed below:⁴

Universal Declaration of Human Rights (1948)

- was adopted by the United Nations General Assembly;
- was the first major international agreement on human rights, and is the motivation for all subsequent human rights treaties and is widely regarded as having achieved the status of international customary law; and
- specifically recognises housing rights in Article 25.

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

- is the most significant articulation of the international right to adequate housing; and
- has not yet been ratified by South Africa (for reasons that are unclear) but the fact that it was

signed (in 1994) indicates intent to ratify, and in terms of international law, government should not act contrary to it.

General Comments

- are official interpretations or elaborations on a specific right enumerated in an international instrument; and
- General Comments Numbers 3, 4 and 7 are significant General Comments on the right to adequate housing in the ICESCR.

Other international human rights treaties of the United Nations

- Those that establish committees of experts ('treaty bodies') to monitor their implementation include:
 - the Convention on the Elimination of All Forms of Discrimination Against Women;
 - the Convention on the Rights of the Child;
 - the International Convention on the Elimination of All Forms of Racial Discrimination;
 - the International Convention Relating to the Status of Refugees.
 - the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families includes a housing clause, but South Africa has not yet signed and it has not yet entered force.

Agenda 21 (1992) and Habitat Agenda (1996)

- are two significant United Nations declarations that impose certain obligations on governments in terms of the right to adequate housing, although they have less legal weight than treaties;
- have been adopted by 171 countries, including South Africa; and
- the Habitat Agenda contains over 100 commitments and 600 recommendations on human settlements issues.

Other United Nations recommendations on the right to adequate housing in terms of governments' obligations

- UN Commission on Human Settlements Resolution 14/6, 'The Human Right to Adequate Housing' (1993);
- United Nations Commission on Human Rights Resolution 1995/12 on the Right to Adequate Housing (1995): 'The Realisation of Economic, Social and Cultural Rights: The Right to Adequate Housing'; and
- the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1997/19 entitled 'Women and the Right to Adequate Housing and to Land and Property'.

Regional human rights instruments

- There are an increasing number of regional human rights instruments, such as the African Charter on Human and People's Rights (adopted in 1981 by the Organisation of African Unity), which South Africa has ratified. While this document does not specifically mention housing, it is regarded as containing an implied right to housing.

2. South African context⁵

The following sections provides a cursory overview of the South African government's response to the right to adequate housing.

South Africa has a long history of colonisation and institutionalised racism, which resulted in great inequalities and racial divisions. The effects are still very much present today. Until 1996, there was no single housing market for South Africans and there were no coherent national housing and settlement policies. Housing therefore became a political rallying point during the struggle for liberation and majority rule, and

a top priority for the post-1994 government. Today, the housing crisis is an important dimension of the overall poverty problem in South Africa. Many people live in inadequate shelter and do not have access to basic services such as water and sanitation. Inadequate housing conditions lead to many health and social problems. Despite the delivery of about 1.8 million subsidised houses between 1994 and 2005, the number of families living in inadequate housing in urban areas grew rapidly during this period.

The national housing vision includes the values of sustainability, viability, integration, equality, reconstruction, holistic development and good governance.⁶ Since 1994, the government's advancement of the right to adequate housing and related policy shifts has been significant. Major inroads have been made into the complicated housing framework inherited from the previous government⁷ to meet the challenge of housing millions of homeless and inadequately housed citizens. Major policy shifts resonating with a rights-based approach emphasised co-ordination and policy alignment, improving the quality of the end product and urban environment increasing the delivery rate and the People's Housing Process. Yet, housing rights as an organising principle for housing policies and programmes are not explicitly mentioned and the participation of citizens and civil society in housing-related decision-making is not emphasised.

The most significant shortcomings are that:

- inadequate quantitative progress has been made;
- a lack of integrated development has resulted in unsustainable settlements; and
- there has been a shortage of programmes that address specific housing needs and specific vulnerable groups.⁸

In 2004, there was a major shift in housing policy with the introduction of the BNG plan, which focuses on the upgrading of informal settlements and the creation of sustainable human settlements. In practice, however, pilot projects, such as the Joe Slovo N2 Gateway Project (Phase 1) in Cape Town, show that delivery is still usually happening in a top-down non-participatory way that does not address the real needs of people. The first phase of this project involved the relocation of residents of the Joe Slovo informal settlement to the distant area of Delft and the building of blocks of flats in Joe Slovo. The rentals for these flats are unaffordable for most of the people who previously lived on the site. **N2** The BNG strategy also introduced a new subsidy mechanism, the finance-linked individual subsidy. This was linked to housing loans from accredited lenders for borrowers in the R3,501–R7,000 monthly income range. The subsidy ranges from R3,369–R23,584 (2006), depending on income. The introduction of this programme has its roots in the Financial Sector Charter, which is a commitment by banks to extend their services to lower-income earners. Some banks have subsequently introduced affordable mortgage loan programmes aimed at this income group.

The Constitution of the Republic of South Africa (Act no. 108 of 1996)

Through its commitment to the Habitat Agenda (1996), South Africa is obliged to

*“...Improve living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is healthy, safe, secure, accessible, affordable, and that includes basic services, facilities and amenities and will enjoy freedom from discrimination in housing and legal security of tenure”.*⁹

Section 26 of the Constitution states:

- Everyone has the right to have access to adequate housing.
- The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- No one may be evicted from their home, or have their home demolished, without an order of court made after considering the relevant circumstances. No legislation may permit arbitrary evictions.

This provision corresponds with the ICESCR and accordingly, 'adequate housing' is measured by:

- legal security of tenure;
- the availability of services, materials, facilities and infrastructure;

- affordability;
- habitability;
- accessibility; and
- location and cultural adequacy.

South Africa's housing policy is consistent with this concept of housing. Constitutional Court rulings on housing rights (and the South African Human Rights Commission's Reports on Economic and Social Rights) often refer to the General Comments of the UN Committee on Economic, Social and Cultural Rights.

The Grootboom Case

Residents of Wallacedene (Cape Town) lived in severe poverty in a waterlogged area without basic services such as water, sewerage or refuse removal. Many had been on the government's waiting list for low-income housing but to no avail. In September 1998, faced with the prospect of remaining in intolerable conditions indefinitely, 900 people moved from Wallacedene onto adjacent, vacant, privately-owned land that had been earmarked for low-cost housing, called 'New Rust'.

The private landowner obtained an eviction order and on 18 May 1999 occupants' shelters were bulldozed and burnt, and their possessions destroyed at the municipality's expense. The magistrate recommended that the community and the municipality negotiate the community's temporary or permanent relocation to alternative land. Unable to move to their former sites in Wallacedene, they moved onto the Wallacedene sports field and erected temporary structures. Through their legal counsel, the community formally notified the municipality of the situation and demanded that it meet its constitutional obligation to provide temporary accommodation.

In the absence of a satisfactory response from the municipality, the community launched an urgent application on 31 May 1999 in the Cape High Court under the name of 'Irene Grootboom and 900 others'. The community based their case on two constitutional provisions:

1. Section 26 of the Constitution provides that everyone has a right of access to adequate housing. It obliges the State to take reasonable measures, within its available resources, to make sure that this right is realised progressively.
2. Section 28(1)(c) says that children have a right to shelter.

Not satisfied with the ruling of the High Court, government appealed to the Constitutional Court where it was affirmed that national government bears the overall responsibility for ensuring that the state complies with its Section 26 obligations. It further found that:

- the current housing programme fell short of the State's obligation to provide relief to people in desperate need, and that a reasonable part of the national housing budget should be devoted to providing such relief. If this was not done, the State's housing programme could not be considered reasonable for the purposes of Section 26(2); and
- the State's direct obligation would apply primarily when children were removed from their families, orphaned or abandoned.

The Grootboom case confirmed that the State must respect and fulfil the realisation of socio-economic rights as enshrined in the Constitution. The Constitutional Court recognised the close relationship between the right to equality and socio-economic rights, including housing rights.¹⁰

Section 25 of the Constitution is also important in that it relates to property rights. It states that government "must take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis".¹¹ The cases of *Soobramoney vs. Minister of Health* in 1997 (KwaZulu-Natal),¹² the *Grootboom* judgment and other court rulings have, with the assistance of international recommendations, interpreted what this right means for the State.

The key principles are as follows:

- the State must establish comprehensive and coherent programmes capable of facilitating the realisation of the right;
- the measures adopted by the State must be ‘reasonable’ within their context and within the availability of resources;
- the needs of the most vulnerable require special attention, and the State must “*devise, fund, implement and supervise measures to provide relief*”¹³ to those in desperate need. In contrast to international interpretations of the obligations of the State, the South African courts have rejected the concept of an individual right to a minimum core entitlement, and have instead emphasised the collective right to a reasonable policy.

2.1 Housing challenges

The housing crisis means that rapidly growing numbers of people are unable to access adequate housing. They are forced to live in poor conditions, with inadequate access to basic services, protection from the elements, living space and protection from arbitrary evictions. It is difficult to quantify the large housing backlog due to a lack of reliable statistics and lack of agreement on a suitable definition of inadequate housing. At the time of South Africa’s first democratic elections in 1994, it was estimated that approximately 1.5 million families lived in inadequate housing conditions in urban areas.¹⁴ This figure included families living in shacks in informal settlements and the backyards of formal houses, sharing overcrowded formal houses and living in overcrowded hostels. Seven years later, in 2001, the number of families living in inadequate housing conditions in urban areas had increased to 2.4 million (and this figure is believed to still be increasing).¹⁵ The rapid increase in informal settlements is a very visible manifestation of the increasing housing backlog. From 1996 to 2001, the number of families living in shacks increased from 1.45 million to 1.84 million. This is an increase of 27%, which is far greater than the 10% increase in population over the same period.¹⁶

The root of the housing problem lies in South Africa’s apartheid history. Apartheid was a model of social engineering that pervaded every level of existence and social fabric. Under apartheid, more than 80% of South Africans were denied land and housing rights. Apartheid laws controlled where people could live and resulted in large numbers of people having to live in unacceptable conditions in informal settlements, backyard shacks and hostels. Growing poverty and unemployment and increasing income inequality have increased these problems. The South African Cities Network’s *2004 State of the Cities Report*¹⁷ was the first to analyse development trends in the nine cities and metros since 1994, in terms of the Habitat Agenda’s categories of demographics, productive cities, inclusive cities, sustainability and governance. The report confirmed that:

- migration into the major cities had stabilised to 1970s rates;
- the traditional economic sectors (primary, secondary and tertiary) were declining;
- the apartheid spatial patterns of growth were being reinforced in cities, with hard class lines replacing the racial structure;
- cities were more unequal than they were 10 years ago; and
- capacity and institutional frameworks for managing growth and transformation were facing complex challenges.

In terms of housing affordability, the Banking Council of South Africa estimated that only 20% of new households could afford mortgage loans to buy housing through the market, and only 22% of households had access to non-mortgage finance (typically loans of less than R10,000). Up to 80% of new households were therefore unable to gain access to adequate housing on their own, and this proportion has continued to increase.¹⁸ Inadequate housing conditions have enormous implications for health and the quality of life. Inadequate access to water and sanitation are strongly linked to a variety of illnesses, especially diarrhoea, which is the leading cause of death in most areas for children aged one to five.¹⁹ Households storing water are 4.6 times more likely to have diarrhoea than those who do not have to store water.²⁰ It is estimated that improving access to water and sanitation can reduce the number of cases of diarrhoea by up to 50%.²¹ There are also strong linkages between the prevalence of damp and respiratory diseases. Women are especially affected by inadequate housing as they are usually the homemakers and housing is the base for raising children and family life. Children are also severely affected, as

overcrowding and inadequate access to services can negate the effects of health and education programmes.

In quantitative terms, delivery has been impressive since 1994 (see Table 3). However, this level of delivery has been insufficient to decrease the backlog. An average of about 200,000 subsidised houses per year were delivered from 1996–2001. However, during this time the number of households living in shacks increased by about 400,000, i.e. by about 80,000 per year. This indicates that almost 300,000 new households per year are unable to access housing through the market.

Reasons for these inadequate levels of housing delivery and the growing housing backlog are, among others, attributed to inadequate resources devoted to the housing problem, poor capacity in government departments and skills shortages. This is partially because of the government’s macro-economic policy, which has cut state expenditure in order to reduce the budget deficit. The housing budget is particularly vulnerable to cuts as over 90% of it typically comprises capital expenditure, whereas other budget lines, e.g. health and education, are over 95% operational expenditure (mainly salaries) and are consequently considerably more difficult to cut.

As stated earlier, the Housing White Paper gave the National Housing Goal of increasing the housing budget to 5% of the total budget, in order to achieve a delivery rate of 350,000 houses a year (which was estimated to be necessary to reduce the housing backlog). In reality, housing expenditure has declined to below 2% of total government expenditure, and the housing delivery rate has decreased to less than 200,000 housing units per year (see Table 4). By comparison, the international average for developing countries is that about 2% of government expenditure is spent on housing and in many countries the proportion has been considerably higher – for example, the average proportion in South Asia has been more than 5%.²²

Table 3: Subsidised houses delivered per financial year 1994-2008²³

Housing units completed & in process of completion	Eastern Cape	Free State	Gauteng Province	Kwa-Zulu Natal	Limpopo Province	Mpumalanga	Northern Cape	North-West Province	Western Cape	South Africa TOTAL
Accumulated total 1994 - 1998/1999	63,393	48,434	185,333	149,126	49,750	47,595	13,821	60,631	103,730	721,813
1999/2000	20,345	7,177	45,384	28,997	12,401	4,808	2,600	12,944	26,916	161,572
2000/2001	34,021	16,088	38,547	28,547	20,996	16,457	4,148	14,109	17,730	190,643
2001/2002	10,816	7,005	46,723	14,379	16,667	14,584	2,588	13,885	16,634	143,281
2003/2003	58,662	9,155	24,344	24,485	14,953	21,649	6,056	23,784	20,500	203,588
2003/2004	27,119	16,746	49,034	33,668	15,810	21,232	3,787	10,484	15,735	193,615
2004/2005	37,524	16,447	66,738	36,734	16,514	18,000	3,598	10,037	11,756	217,348
2005/2006	19,825	20,536	59,310	35,872	10,112	14,986	8,667	35,515	11,310	216,133
2006/2007	16,526	19,662	77,044	38,290	23,609	10,651	3,880	46,972	34,585	271,219
2007/2008	12,684	12,482	90,886	34,471	18,970	16,569	8,686	19,945	34,157	248,850
Units completed & in process of completion: 31 March 2008	300,915	173,732	683,343	424,569	199,782	186,531	57,831	248,306	293,053	2,568,062

There have also been problems with the quality of housing delivered. Evaluations of the impact of the Housing Subsidy Scheme have found that though it has contributed towards an overall general improvement in people’s lives (e.g. with regards to access to secure tenure and basic services), in general, the real needs of people have not been adequately met and beneficiaries are highly dissatisfied. The location of new housing projects, typically on the periphery of towns and cities where large amounts of cheap land are usually available, was also found to be a major problem due to the inaccessibility of employment and

urban opportunities. Equally troubling has been the lack of people-centred approaches, with low levels of community participation in most aspects of housing projects.

Table 4: National housing expenditure²⁴

Year	Housing expenditure (millions of Rands)	National expenditure (millions of Rands)	Housing expenditure as % of national expenditure	Number of subsidised houses delivered
1997/98	4,520	189,947	2.4%	295,811
1998/99	3,748	201,416	1.9%	248,391
1999/00	3,494	214,750	1.6%	161,572
2000/01	3,329	233,934	1.4%	190,643
2001/02	3,721	262,905	1.4%	143,281
2002/03	4,218	291,529	1.4%	203,588
2003/04	4,560	331,685	1.4%	193,615
2004/05	4,808	368,904	1.3%	178,612
2005/06	5,256	404,654	1.3%	-

Reasons for the inadequate quality of much of the subsidised housing have been:

- a lack of government capacity for supporting housing delivery;
- the severe constraints of the subsidy amount, which is insufficient for an adequately sized housing unit on an adequately-located and -serviced piece of land; and
- a lack of real support for people-driven housing processes.²⁵

Evaluations have shown that projects where there has been real participation by the beneficiaries are more successful in providing good quality housing and better living environments than conventional top-down mass contractor-delivery of standardised units.²⁶ Although the People's Housing Process (PHP) programme was introduced in 1998 to support people-driven housing processes, government staff generally lack the skills to work in a participatory, bottom-up way, and there has been insufficient funding available to support the facilitation of people-driven housing processes by NGOs.²⁷ Since 1994, international donor finance has shifted away from the NGOs that support people-driven housing and development projects towards government bodies. These have generally not been effective in utilising donor funds.

2.2 Economic context

South Africa has an estimated population of 46.7 million people (2005 estimate), of whom 79.3% are Black, 9.4% are White, 8.9% are Coloured and 2.5% are Indian.²⁸ South Africa is characterised by great cultural diversity and enormous inequalities. Between 1991 and 2001, South Africa's Gini-coefficient (which measures income inequality) increased from 0.68 to 0.77 (0 being absolute income equality and 1 being absolute income inequality).²⁹ A survey on household expenditure by Statistics South Africa revealed that the country's Gini-coefficient currently stands at 0.72. Without social grants the measure weakens to 0.8.³⁰ South Africa is ranked as one of the ten most unequal countries in the world in terms of income. Income inequality has increased within all race groups (see Table 5).

Table 5: Changes in Gini-coefficient in South Africa 1991–2001³¹

Race group	1991	1996	2001
Black	0,62	0,66	0,72
White	0,46	0,50	0,60
Coloured	0,52	0,56	0,64
Asian	0,49	0,52	0,60
TOTAL	0,68	0,69	0,77

South Africa has been experiencing modest economic growth, with real growth in Gross Domestic Product (GDP) of 5.0% in 2005, up from 4.5% in 2004 and 3.0% in 2003.³² The economic growth over the past decade has, however, been accompanied by a decrease in formal sector employment. It is estimated that the number of formal sector jobs in South Africa decreased by 15% in the decade to 2000, and, despite fairly strong growth in the economy, decreased by 3% in the year 2000 alone.³³ The 2001 Census showed an unemployment rate of 42%, up from 34% in 1996.³⁴

Poverty is an enormous problem. In 2002, 48.5% of the population lived below a national poverty line of R355 per adult (1995 prices), a slight decrease from 51.1% in 1995.³⁵ Using this measure, 56% of Black, 36% of Coloureds, 15% of Indians and 7% of Whites can be classified as poor.³⁶ The population living in extreme poverty, using the international poverty line of \$1 per day, was 10.5% in 2002 (up from 9.4% in 1995).³⁷

HIV/AIDS is expected to have a severe social and economic impact and the government has been much criticised for not responding effectively to this challenge. South Africa has a larger number of people with HIV/AIDS than any other country in the world and AIDS is believed to be the leading cause of death in South Africa. HIV/AIDS has resulted in average life expectancy in South Africa decreasing from 61.4 years in 1995 to 51.4 years in 2002.³⁸

2.3 Social context

The last ten years have seen a complex and evolving policy framework and a related persistent restructuring of local government bodies. They have also seen a gradual decline and evolution of civil society in South Africa. Changes in macro-economic policy have meant that many social development initiatives are under-funded and have not had an optimal effect.

Despite this, South Africa has a rich tradition of community-based organisations. Participation in stokvels (savings clubs), burial clubs, church associations and sports clubs help people to cope with everyday life. In the early 1980s, civic associations, i.e. organisations claiming to represent everybody in a specific geographical area, arose as a result of the apartheid government's clampdown on Black political movements. Due to political parties such as the African National Congress being banned, civics were at the forefront of resistance against apartheid in the mid-1980s. In the early 1990s South Africa underwent major change and civics became increasingly involved in development projects, usually via community-based trusts. In 1992 the South African National Civics Organisation (SANCO) was formed.

Many SANCO leaders became local government councillors in the 1995–1996 local government elections. This weakened the civic movement, which was already suffering as the spirit of voluntary involvement declined after the 1994 national election. Local government, which set up development forums and ward committees to facilitate participation in local government matters, has also increasingly marginalised the civic movement. The 1990s also saw the rapid growth of organisations such as the South African Homeless People's Federation and other independent housing associations, which acted as community self-help organisations concerned with housing and development issues and which were not linked to the civic movement or political parties. There was also a rise of social movements opposed to particular State programmes, such as the Anti-Eviction Campaign, which campaigned against the eviction of people for non-payment of rates and service charges.

The NGO sector has undergone great changes. Non-profit welfare and charity organisations have a long history in South Africa, but the real growth of the NGO movement occurred during the 1980s. Voluntary organisations were formed to support community groups in their struggle against the apartheid state and many of these subsequently obtained foreign funding, which was fairly accessible at the time.

Since 1994, however, much foreign donor funding has been redirected from NGOs to the government. Government has often been inefficient in the use of funds for development, for example, in failing to spend over R1 billion set aside for employment creation initiatives and for being very slow and inefficient in channelling funds through the National Development Agency (NDA) and in allocating funds from the

national lottery. However, NGOs continue to play a major role in many government programmes and are able to address the needs of the very poor and pioneer innovative approaches where government bodies are unable to do so. The Department of Housing in its latest review of housing expenditure says:

“... In recent years, the number of NGOs that are active in the housing sector has declined, mostly as a result of declining levels of donor funding. In 2005, the Urban Sector Network was dissolved and many of its former affiliates have since been disbanded. This reduces institutional capacity in the sector and weakens housing delivery outcomes because of the absence of advocacy and community consultation capacity”.³⁹

2.4 Political context

In 2003, in a foreword to a comprehensive report published on the growing problem of urban slums worldwide, United Nations secretary-general Kofi Annan said:

“... The locus of global poverty is moving to cities, a process now recognised as the urbanisation of poverty. Without concerted action on the part of the municipal authorities, national governments, civil society actors and the international community, the number of slum-dwellers is likely to increase in most developing countries”.⁴⁰

The report's chief concern is that the world's rural population has reached its peak and almost all further population growth will be absorbed by urban settlements. The sheer magnitude of the housing demand, particularly in cities and towns of the developing world, makes it difficult to set targets. The rates of urbanisation and pent-up demand often overshadow and even backlash against the gains made from slum improvements.⁴¹ This critical situation is recognised by the South African government, which is committed to the Millennium Development Agenda, Goals and Targets.

Goal 7 is the most relevant of these goals as it relates to environmental sustainability, especially Target 11: *by 2020, to have achieved significant improvements in the lives of at least 100 million slum dwellers.*⁴² However, despite the South African government's acknowledgement of the pressure to deliver and to 'accelerate delivery', the approach taken by government towards meeting Millennium Development targets is often inconsistent with Millennium Development intentions, and the way in which these targets are pursued is further impacting on poverty.

Service delivery protests across the country and the court case in Joe Slovo, Cape Town (related to government's N2 Gateway project in Cape Town) represent a desperate call for appropriate solutions to our housing problems. Fourteen years into democracy, despite shifts in policy and vision, very little has changed for millions of households in need of adequate housing. Communities countrywide, anguish over inferior quality housing. They have lost patience with slow and/or non-delivery of housing and settlement-related services, as well as with the lack of communication clarity from government. Although some protesting has become violent, the concerns of protestors are legitimate and need to be addressed.

The scale of the problem is increasingly evident as informal settlements mushroom. The settlements themselves are continually growing and many reach densities significantly higher than the average low-income housing development, with some reaching densities as high as 300 dwelling units per hectare. The proliferation of informal settlements testifies to the absence of a plausible and comprehensive plan to deal with the land and housing problem. It also illustrates that many people in backyards and overcrowded housing have lost faith in the government's housing programme. More importantly, it speaks to the failure of the market-driven economy to provide for the most basic needs of the poor.

The N2 Gateway Project, government's most substantial attempt to tackle the problem head-on, was billed as a national pilot to demonstrate the new housing vision articulated in BNG. Initially, it was promised that the project would demonstrate co-operative governance between the State's three spheres, employ a range of alternative typologies and fast-track delivery. The project has been riddled with technical and

political difficulties and, more recently, seems set to demonstrate some of the fundamental problems with housing delivery in South Africa. In 2005, DAG wrote:

“... The top-down approach in the N2 project undermines its overall sustainability... the casual, continued and increasing practice of excluding people from decision making about development processes that directly affect their lives is an obstacle that communities are unlikely to tolerate for much longer”.

Whereas BNG makes an important shift towards upgrading informal settlements, the N2 Gateway project is a completely unsustainable approach to doing so. Relocating informal settlement dwellers to badly located housing developments in the name of ‘slum eradication’ does not address government’s objectives of building sustainable settlements. Nor does it address the Millennium Development Goals. This antediluvian approach to community participation works against *Batho Pele* principles and against the notion of a developmental local government. Moreover, it pits one poor household against another in the desperate battle to secure shelter. This compounds the pressures on the state to deliver and spurs the ongoing protests.⁴³

The politics of housing and other areas of delivery has made politicians and officials averse to collaborative action, placing sustainable solutions further out of reach. The competitive nature of party politics and the tendency to use housing as a political football perverts the delivery process. Even within parties, individuals use housing delivery to leverage support bases and to secure their places within party ranks. This generates a low trust environment all round and gives rise to the ‘cloak and dagger’ shenanigans manifesting in the N2 project.

Politicians need to look beyond a five-year horizon and commit to resolving the problem in a lasting way. Politicians need to be less self-congratulatory about massive capital investments that make little meaningful impact, and must sacrifice short-term gain for the long-term benefit of all.⁴⁴ Meeting the future challenges of South Africa largely depends on how the three spheres of government and other important role players, such as civil society and the private sector, are able to work together to address problems and seize opportunities.

2.5 Policy response

The most pertinent policies concerning medium-density housing are discussed below. Broader policy and institutional contexts can be found in the Addendum.

2.5.1 The Department of Housing’s White Paper: A New Housing Policy and Strategy for South Africa (1994)

The overall housing policy approach taken by government in 1994 responded to the housing crisis through the scale delivery of subsidised housing for low-income households. They delivered over two million houses, predominantly in the form of low residential density individual ownership RDP houses. These were typically a 30m² subsidised unit, usually one room with a toilet, on a 250m² plot, generally located on the periphery of towns and cities. This may have been due to the lack of legal access to land, shelter and property rights for the majority of South Africans under apartheid, and the perception that individual ownership was a way of rectifying injustices of the past.⁴⁵

From a numbers perspective, the success of the housing programme has been astonishing: to date, the Department of Housing has delivered more than two million subsidised houses, providing secure tenure for over six million people. However, there has been some criticism.

Housing quality has been a main concern, together with the location and value of subsidised housing. New township developments have perpetuated rather than overcome apartheid spatial patterns and have been little more than expensive shelter, failing to provide beneficiaries with the financial asset that higher-income households realise in their housing. Despite policy intentions set out in the White Paper to develop more compact towns and cities, the delivery of medium-density housing for low-income households on well-

located land (typically in the form of rental or sectional title tenure) has been limited since 1996, despite the introduction of the institutional housing subsidy. In a media briefing in September 2001 the national Minister of Housing declared that:

*“... Within the 1,194 million houses that we have built to date, only 33,000 units were medium density. 100% of this stock has proved to be of better quality and the maintenance thereof has not proved to be difficult as the beneficiaries are also involved in the management of their structures”.*⁴⁶

However, the demand for well-located affordable housing is increasing, fuelling a sense of impatience with government’s progress. This is evident in the proliferation of informal settlements and other informal living arrangements as the poor search for access to the city and the urban opportunities it provides. The complex nature and scale of the housing crisis necessitates a sustainable solution that requires more than the simple provision of thousands of houses, based on the suburban model of freestanding residential dwellings, to rectify the enormous backlog.



Low-density suburban sprawl in South Africa

An approach to housing delivery must take into account factors such as spatial and social segregation, a dysfunctional market, inequality, poverty, an absence of social and human capital formation, and a range of other problems.⁴⁷ The National Housing Code cautions against an approach that is not integrated:

*“... Our response to this crisis must be innovative and diverse. If we respond only to the numbers that must be built, we risk replicating the distorted apartheid geography of the past. If we respond only to the dysfunctional market, we risk alienating households so impoverished that they are unable to access any market. And if we develop our houses as though the housing crisis is only about bricks and mortar, we risk wasting the enormous potential for gearing the massive reconstruction and development effort happening in our country”.*⁴⁸

Integration requires high level planning. However, urban development processes are not planned and consciously

used to achieve integration and resolve our housing woes. Dominant practice focuses on the physical delivery of houses, underpinned by a greenfields-type engineering-driven development practice, characterised by big delivery arrangements. Social and economic development programmes are added afterwards, if at all.

This disjointed incremental experimentation prevents progressive and innovative improvements in human settlement development practices. In informal settlements, the priority should become the *in situ* upgrading of shelter and livelihood conditions of these established communities, rather than the eradication approach adopted merely to enhance the aesthetic appeal of our urban landscape. Broader strategic and integrated planning is also found wanting, as is innovation in addressing the questions of financial packaging, alternative design and capacity constraints.

Careful forward planning which draws on international best practice and on the experiences of various local communities can generate viable well-informed solutions and cheaper, shorter learning curves. Inclusive city-wide visions and strategies that are politically led are needed to address inadequate housing within a broader framework of poverty alleviation, in order to create a city spatial structure and urban economy that equitably redistributes the benefits of economic growth to all communities, especially the poor.

Recent discourse has shifted broadly from a housing supply emphasis to one that seeks to enhance the housing assets of low-income earners so that urban land markets work for the poor. The government may have accepted a markets framework in its poverty alleviation and reconstruction objectives; however, engagement with actors in the sector is needed, in order to develop a credible, coherent position around the cost of land, the persistence of informality, access to and availability of land to the poor, urban-rural linkages, legislative and regulatory issues, and the intention for sustainable human settlements. The nature, extent and variety of interventions may need to be more aggressively progressive and innovative if they are to speak to the need for a developmental state that is able to:

- use land and other resources to influence pro-poor investments in the land, property and financial markets; and
- use innovative planning and land developments to influence urban socio-spatial and economic restructuring.

Housing policy and practice in South Africa has recently shifted towards alternative tenure arrangements and more compact urban development, as put forward in BNG. Taking into account the shift in policy towards providing sustainable human settlements and achieving balanced growth and development across the country, it becomes apparent that a shift is needed in the implementation approach. This has implications for both institutional capabilities and capacity. Capacity and skills levels in government are currently at a deficit, impacting severely on implementation.

2.5.2 Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (2004)

In September 2004 the BNG plan was approved by MinMEC, marking a turnaround in housing delivery countrywide. The strategy refocused policy attention on the development of sustainable human settlements, as opposed to the delivery of subsidised housing units. BNG re-evaluated housing delivery and recommended bold changes to the traditional ways in which housing has been delivered:

*“ ... The new human settlements plan reinforces the vision of the Department of Housing, to promote the achievement of a non-racial, integrated society through the development of sustainable settlements and quality housing”.*⁴⁹

The sustainable human settlements discourse, as articulated in BNG, is couched within the emerging international language for addressing global urbanisation, as encapsulated in the goals, principles and commitments set out in the Habitat Agenda and Global Plan of Action, endorsed by world governments for urban sustainability. It was also informed by the Millennium Development Goals, which has led to the

national housing minister's goal of 'eradicating informal settlements' by 2014. The announcement of BNG provided the impetus for new thinking around developing sustainable human settlements through targeted investment in infrastructure and using revised housing instruments (such as social or medium-density housing). BNG proposes a shift from product uniformity to demand responsiveness:

"... 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 on housing delivery towards more responsive mechanisms which address the multi-dimensional needs of sustainable human settlements".⁵⁰

The plan envisages a:

"... diversified range of support measures which are able to accommodate qualification and affordability variations, tenure preferences and investment priorities" and recognises the need to "stimulate the supply of a more diverse set of housing environments and settlement types through greater choices of housing types, densities, location, tenure options, housing credit, and delivery routes".⁵¹

The plan offers additional housing instruments to supplement existing instruments, "to provide flexible solutions to demand-side needs",⁵² and attempts greater levels of responsiveness to local circumstances. The plan is underpinned by an increased focus on the development of sustainable human settlements to aid housing delivery (emphasising planning and engagement), the quality of the housing product (both in terms of location and final housing form), as well as the long-term sustainability of the housing environment (leading to a focus on institutional capacity). BNG has the specific objectives of:

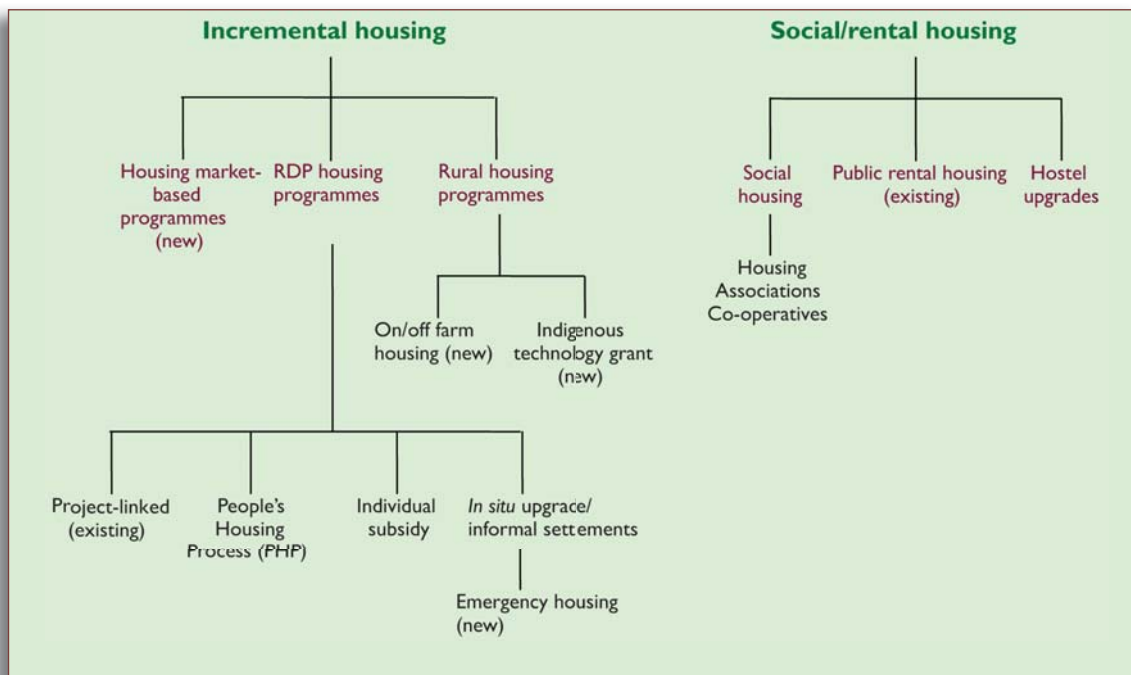
- accelerating the delivery of housing as a key strategy for poverty alleviation;
- using the provision of housing as a major job creation strategy;
- ensuring property can be accessed by all as an asset for wealth creation and empowerment;
- leveraging growth in the economy;
- combating crime, promoting social cohesion and improving quality of life for the poor;
- supporting the functioning of the entire single residential property market to reduce duality within the sector, by breaking the barriers between the first economy residential property boom and the second economy slump; and
- using housing as an instrument for the development of sustainable human settlements, in support of spatial restructuring.

Specific objectives put forward in BNG include, but are not limited to, the following five areas:

1. *Promoting densification and integration:* The National Department of Housing in conjunction with the Department of Provincial and Local Government will investigate the development of suitable policy instruments and adjustments to promote densification. Aspects such as planning guidelines, property taxation, zoning, subdivision, land swaps and consolidation will be included in a draft densification policy. Measures to promote higher-density development include:
 - a. the promotion of higher-density in existing built areas, i.e. densification;
 - b. promoting the development of large vacant sites within built urban areas, i.e. infill development; and
 - c. restricting the outward expansion of urban areas and forcing development inward, i.e. containment.Residential permits will be introduced, aimed at facilitating income generation by obliging developers to either set aside units within residential developments for lower-income groups, or developing lower-income residential accommodation in adjacent areas. It is proposed that 20% of all residential development constitute low cost to affordable housing.
2. *Enhancing the location of new housing projects:* The location of housing projects has been criticised for reinforcing apartheid spatial settlement patterns. The plan acknowledges that the objective of spatial restructuring demands a more decisive intervention in land markets and envisages the

- following interventions:
- a. accessing well-located state-owned and parastatal land: an inter-governmental overall strategy to facilitate the release of well-located public land to municipalities will be developed. Public land and land held by parastatal organisations, where deemed suitable for housing purposes, is to be transferred to municipalities at no cost;
 - b. acquisition of well-located private land for housing development: land will be acquired by municipalities in line with municipal IDPs and spatial development frameworks. Private land will only be acquired where there is no appropriate state-owned land and does not exclude expropriation at market value as a final resort;
 - c. funding for land acquisition: the cost should not be borne by the poor, but should be treated as a broader social cost. Therefore, funding for the acquisition of land will no longer form part of the housing subsidy; and
 - d. fiscal incentives: the development of fiscal incentives to promote the densification of targeted areas and disincentives to sprawl, will be introduced in co-operation with local governments, the South African Revenue Services, Treasury and the Department of Local and Provincial Government.
3. *Supporting urban renewal and inner city regeneration:* Housing plays an important role in resuscitating urban centres and exclusion areas, and municipalities are striving to prevent inner city housing from becoming unaffordable. The BNG plan will support incentives for the redevelopment of properties within inner city areas by encouraging social (medium-density) housing. They will increase effective demand by facilitating access to loan finance in the middle-income group (above the R3,500 per month income limit) as well as the reintroduction of demand-driven individual subsidies.
 4. *Developing social and economic infrastructure:* The plan recognises the need to move away from a housing-only approach towards the more holistic development of human settlement. It proposes the following:
 - a. construction of social and economic infrastructure determined through a community profile and facilities audit, to ensure that facilities are appropriately targeted;
 - b. introduction of a new funding mechanism to fund the development of the primary social/community facilities; and
 - c. municipalities will be the primary implementation agencies, and responsible for the operational and maintenance costs. Facilities may be managed/operated by CBOs and NGOs.
 5. *Enhancing the housing product:* There is a need to develop more appropriate settlement designs and housing products and to ensure appropriate housing quality. BNG proposes the following:
 - a. the development of design guidelines for designers and regulators to achieve sustainable and environmentally efficient settlements; and
 - b. Changing the face of the stereotypical RDP houses and settlements through the promotion of alternative technology and design, including support and protection of indigenous knowledge systems.

More specifically, the social (medium-density) programme covering rental housing options and alternative tenure housing options such as housing co-operatives is one of four main programme thrusts proposed in BNG (see figure below).⁵³ In June 2005, MINMEC approved *A Social Housing Policy for South Africa* in order to ensure alignment with the broader national strategy (see addendum on the policy context for details on the social housing policy). However, to date, delivery of a medium-density housing programme has been limited, especially in light of a non-functional medium-density rental-housing instrument able to provide for the needs of low-income households. (The Community Residential Units Programme has been introduced recently and is not yet operational.) This under-performance is mainly due to severe capacity constraints (institutional, and in terms of knowledge and human resources) in government departments, a non-commitment to the overall goals of sustainability, as well as political tension between and within spheres of government, despite the official obligation to advance inter-governmental relations.



Broad programmatic thrusts of BNG⁵⁴

Although the social/rental housing thrust of BNG concerns itself primarily with medium-density housing, the subject matter of the present research does not exclusively deal with housing as it pertains to the social housing programme. In fact, the research demonstrates some of the shortcomings of social housing in meeting current demand and highlights the need for medium-density (public rental) housing that is well located. Case studies contained in the resource book containing lessons regarding social housing include Carr Gardens, Newtown Urban Village, Stock Road Housing, and the N2 Gateway project. **CG NU SR N2**

Section 4.8 provides insights into the social housing vs. public rental housing debate. The Missionvale, Samora Machel and Sakhasonke Village case studies demonstrate that medium-density housing can be delivered successfully using subsidies such as project-linked and individual subsidies generally associated with RDP housing delivery, alternative architectural typologies such as semi-detached and row housing, and other spatial, social and institutional preconditions. **MV SM SV**

Endnotes

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10. IDASA *The Grootboom Case and Women's Housing Rights*. Budget Information Service, Budget Brief No. 111 October 2002. <http://www.idasa.org.za/bis>
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12. In the case of *Soobramoney vs. Minister of Health* the patient was sent home to die as treatment was considered too expensive. Bongani Majola argues that this case created the impression "that the courts will not lightly interfere with the state's failure to protect, promote and fulfill socio-economic rights when the state pleads that the required resources are not available".
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24. National Treasury 2002-2006
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26. Public Service Commission 2003
27. The People's Housing Process (PHP) policy facilitates community involvement in housing delivery projects and provides for PHP establishment grants of up to R570 per subsidy to assist communities responsible for managing their own housing delivery, either by building houses themselves or by hiring local builders to build for them. The establishment grant can be used to cover the costs of support mechanisms such as housing support centres and community staff to manage the project. PHP projects have generally provided bigger and better quality housing than conventional contractor housing delivery while simultaneously empowering community organisations and providing local jobs.
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30. Hamlyn, M 2008
31. Schwabe, C 2004. Note that there are various ways of calculating Gini-coefficients, which can result in different figures
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