

Urban Shelter: Citizen Rights – Understanding the role of cities

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EXECUTIVE SUMMARY

Growing urban populations have placed increased pressure on metropolitan municipalities to provide services, shelter, access and opportunities. In the absence of available, affordable and accessible shelter many city residents have taken their shelter needs into their own hands, often illegally, resulting in the evictions that have become commonplace in South Africa's largest cities. In response, the courts have ruled that it is the responsibility of municipalities to find alternative shelter for those evicted, whether from public or private residences. Given the already overstretched programmes and fiscus of municipalities, and metros in particular, it is important that there is a reflection on the implications of this for our big cities, where the biggest need exists.

While the literature on urban shelter provision and rights realization in South Africa is vast and nuanced, there has been relatively little written from the perspective of the municipal experience of the urban shelter rights terrain.

This document is an attempt to reflect on the experience of metro municipalities with regard to urban shelter rights. It poses some recommendations to address the current challenges faced by cities.

BACKGROUND

The South African Cities Network has commissioned a research project on the topic of urban shelter rights in South Africa. This topic is part of the strategic content of their work. The right to urban shelter is fundamental to the housing and human settlements question in South Africa and the judicial rulings over the past ten years have created a new set of imperatives for all South African municipalities. Municipalities are now required to provide temporary accommodation for those subject to both public and private landholder evictions.

While these rulings are welcomed in the 'rights based discourse' of cities, they present substantial obligations for mainly municipalities in metropolitan areas, many of whom are already under severe pressure to meet a growing demand for shelter. The state is left with the rather difficult situation of having part of their housing policy dictated by the courts.

There is a vast and comprehensive literature covering many aspects of urban shelter rights and housing provision by the state. This report will focus on the challenges facing municipalities in South Africa in the progressive realisation of urban shelter rights. In order to do this it is necessary to sketch the legal and policy frameworks and undertake an analysis of national and local government housing policy and delivery versus the demands of those who lack access to housing, who lack tenure or who have been evicted from their homes. The report attempts to determine whether there is a constructive means through which these might come together.

This work is done within a context in which the devolution of housing responsibilities and funding to local government¹ is underway. It raises further the urgency for municipalities to begin to think through much more programmatically how they will respond to their new roles and responsibilities, including the provision of housing within a broader human settlements and spatial transformation agenda. If, as the current research suggests, municipalities are not efficiently and effectively delivering certain housing typologies, how much more difficult will it be in a future of greater responsibility through devolution? Or will this greater flexibility allow them to respond more effectively to their local context?

In an attempt to capture the status quo on urban shelter rights, the report will look specifically at the following key elements:

¹ Revenue is allocated to municipal housing departments as per the Division of Revenue Act.

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1. A brief overview of the context of urban shelter rights in South Africa.
 2. An overview of the evolution of state policy and approaches to responding to urban shelter needs from 1994 to the present.
 3. The influence that the judiciary has had on the devolution of responsibility for urban shelter provision through certain key cases and judgments.
 4. Understanding different roles and responsibilities of the different tiers of government and the implications for the provision of urban shelter.
 5. Unpacking the key challenges faced by municipalities in trying to give effect to the urban shelter rights and the rulings of the courts.
 6. Outlining the critical components for effective municipal responses to realising urban shelter rights.

Each of these aspects of the research report will be tackled separately with a view to proposing a set of viable methods in which the requirements of the ruling can be fulfilled by municipalities. The end point of the research report is a set of recommendations to municipalities, provinces and national departments to understand better urban shelter rights, legal and other obligations. In order for South African cities to begin to provide urban shelter rights, they will be required to more efficiently equip themselves both financially and logistically in order to begin delivering more temporary accommodation at scale. Furthermore, until such time as the scale and cost of the challenge is calculated, there cannot be a successful response.

Approach and methodology

Research for this project involved a combination of desktop analysis and qualitative research interviews. The overall approach to this study has been to briefly map out the generative and causal context that has given rise to the lack of universal urban shelter rights in South Africa. This has included undertaking a detailed desk based analysis that looks specifically at macro-issues such as urbanization, housing policy and municipal constraints to delivering universal housing rights and thereafter reviewing the experience of three South African cities: Cape Town, Johannesburg and eThekweni.

Within the discourse on the right to housing in South Africa is a significant role played by the judiciary. Over the past 20 years, South Africa's judiciable socio-economic rights have been used to fundamentally change what is considered acceptable housing rights. Thus, in addition, to analyzing existing national and local policy and in order to fully understand the evolution of the urban shelter rights debate, there is an analysis of some of the most influential judicial rulings on urban shelter rights. This is done by unpacking the orders resulting from the court cases and thereafter reviewing the various ways in which local government has or has not been able to respond to emerging urban shelter jurisprudence.

The selected cities included in this study have been confronted with some of the most challenging housing issues to date. In addition, significant court rulings were imposed in their jurisdiction. The report reviews various types of urban shelter rights battles that emanated within a given city as well as the varying conditions in differing socio-spatial contexts.

In order to reach a point where viable recommendations could be proposed, the investigation into the impacts of court rulings on urban shelter rights were then focused on analysing how municipalities have been able to respond to the responsibilities prescribed to them by the courts and by other spheres of government and what the results of these efforts have been. Furthermore, the challenges faced by municipalities in meeting their urban shelter rights obligations were critical in the proposed recommendations.

Literature sources

The desktop research explored the following types of written sources:

- Housing legislation
- Policy documents from the municipalities and the national Department of Human Settlements
- Court rulings and statements of the courts
- Published academic research papers and research reports on the topic
- Accounts of urban shelter rights' battles from print and online media

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- Policy documents from selected metros including housing policies. These include:
 - City of Johannesburg
 - City of Cape Town
 - eThekweni Metropolitan Municipality

Interviews

In addition, interviews were undertaken in order to complement the research. The interviewees were:

1. Andreas Bertoldi – Independent consultant
2. Steve Topham– National Department of Human Settlements (NDHS)
3. Trevor Mitchell – City of Cape Town
4. Mark Byerley and Dumisani Ndlovu- Ethekewini Metropolitan Municipality
5. Zunaid Khan – City of Johannesburg
6. Michael Clark – Socio-Economic Rights Institute (SERI)
7. Margot Rubin – Private Consultant and Researcher
8. Ahmed Vawda – Department of Performance Monitoring and Evaluation (DPME)
9. Neville Chaine – Head of Department, Ekurhuleni Metropolitan Municipality

We wish to thank all interviewees for sharing their time and expertise during this process.

THE PROBLEM STATEMENT

In order to locate urban shelter rights in a macro-context this report will briefly map out a broad background to the increased demand for housing in urban areas and analyse some of the key factors that have led to the struggles for urban shelter rights in South African cities.

The report will begin with a brief historical tracing of conditions and events in recent history that have made South African urbanisation and urban shelter rights particularly challenging, over and above global trends of rapid urbanisation.² To date, South Africa's housing backlog is calculated as 2.8 million houses. This backlog will continue to grow in many urban centres as South Africa continues to urbanise and as affordable housing delivery slows down. This combination presents somewhat of a national crisis as the Financial and Fiscal Commission (FFC) calculates that a budget of R300 billion is required to eliminate the current housing backlog; a sum not affordable to the state (FFC 2012).

There are a myriad of factors which account for the lack of adequate low-income, emergency, transitional and social housing in South Africa.³ This report will not endeavour to discuss all of them; instead the report will focus on some of the critical macro factors which play a role in the urban shelter rights debate because they arise in most of the literature.

South Africa is 69 urban according to the 2011 census. In work done by Harrison and Todes (2013) for the Integrated Urban Development Framework (IUDF), they show how Census 2011 numbers indicate that Gauteng and the Western Cape Province are experiencing the greatest growth in population. While these areas have to accommodate the bulk of the population growth, they benefit from economic growth. At the same time however they are burdened with growing urban infrastructure and housing needs. Trends in population growth, according to Todes and Harrison, follow existing economic agglomeration patterns with in-migrants moving to areas with economic opportunity.

The City of Johannesburg has by far seen the greatest population growth with an increase in population from 2,6 million in 1996 to 4,43 million in 2011 according to Census data. The population influx into metropolitan areas has created a plethora of service delivery difficulties for local government. We have seen ongoing social discontent and service delivery protests as a consequence of local government's inability to deal with its urban issues.

The reality of South African cities is that 20 years post-apartheid the spatial legacies of apartheid remain. Many commentators in fact argue that the housing policies post-1994 have unintentionally exacerbated existing spatial patterns given that the main thrust of housing policy has focused on the provision of RDP (named after the Reconstruction and Development Plan) houses with other forms of housing receiving limited attention. Harrison and Todes (2013) state:

'Peripheral growth has been driven by lower land costs and the availability of large unencumbered parcels of land on the periphery, particularly given that most new middle and upper income development is taking the form of gated complexes (2013: 24).

Work done by the FFC (2012) demonstrates too that during the past 20 years informal settlements have mushroomed in some urban centres as housing delivery fails to keep up with the backlogs. This is particularly important because many new migrants to urban centres enter the city through informal settlements.⁴ The

² There is no analysis of apartheid housing policies presented in this report.

³ It is important to consider too that there are different typologies of housing which are required and some have been delivered more successfully than other.

⁴ The HDA report on Informal Settlements (2013: 6-7) very usefully provides a definition of informal settlements according to different metropolitan areas. Some of the most pertinent ones for this study are as listed.

State of the Cities Report (SACN, 2011) indicates that in Gauteng, the number of households living in informal dwellings rose from 0.5 million to 0.7 million in the period between 2002 and 2009. In Cape Town, 100 000 additional households were living in informal dwellings in the same period while in eThekweni, the number dropped (SACN, 2011: 5). In total there are estimated to be 2800 informal settlements. One of the fundamental principles of the 2004 *Comprehensive Plan for Sustainable Human Settlements* (Breaking New Ground (BNG) as it is commonly known) is the national upgrading support programme yet to date there has not been sufficient scale uptake of the programme at a municipal level (Harrison and Todes, 2013: 39).

One of the main concerns in housing policy, and one which is very pertinent to the issues discussed in this report, is the lack of availability of low-income rental housing and a dearth of available well located land that allows people to be situated close to social and economic opportunities. The rental market in South African cities is growing amongst low income households with a total of 20 of South African households being renters⁵ (SHF,2008: 4). Of these, 40 of households live in slum like conditions. Johannesburg has the highest number of renting households in South Africa. Critiques of existing housing policies point out that although in policy terms, rental housing is encouraged, in reality, the state has emphasised home ownership as a model to the unfortunate detriment of other housing typologies. Work such as that done by Sarah Charlton in Alexandra demonstrates that in many cases home ownership is not desirable among urban residents (Charlton, 2010).

Coupled with this housing delivery has slowed down. The housing backlog comprises the original list of people waiting for housing since 1996 when the lists were first compiled plus an ever-increasing stream of new applicants. Rapid urbanisation and growing unemployment in the past decade has exacerbated housing pressures in most urban centres. The increase in rural to urban migration has also contributed to this. Meanwhile many municipalities still face the growing challenge of increasing land costs and a rapid increase in the cost of providing services.

The kind of housing that has been rolled out does not sufficiently address a diverse set of needs especially for people requiring alternative options. While social housing has been introduced to respond to rental needs, this has not reached the necessary scale particularly in terms of reaching the 'deep down' market ie. those requiring rentals between R500 and R1166.⁶ Tissington (2010) refers to the deep down market as the segment of shelter seekers who are at the lowest end of the subsidy scheme criteria. The Housing Code suggests that the average rental amount for this market should be approximately R825 per month. Indeed housing policy and implementation are failing many of the most vulnerable residents of urban centres. There are a number of factors discussed in this paper which begin to address the reasons why.

A set of contextual realities provide the context to the challenges faced in housing South Africa's urban poor. These are depicted in Figure 1 below. It is against this backdrop that the realities of the housing crisis must be viewed.

„An informal settlement comprises “An impoverished group of households who have illegally or without authority taken occupation of a parcel of land (with the land owned by the Council in the majority of cases) and who have created a shanty town of impoverished illegal residential structures built mostly from scrap material without provision made for essential services and which may or may not have a layout that is more or less formal in nature.” (City of Johannesburg).

In eThekweni “Structures which are made of rudimentary materials (wood, cardboard, metal sheets, mud, etc.) without any building plans approved, often on land that has been illegally occupied. Services are very basic or not available at all.”

In the City of Cape Town “An unplanned settlement on land which has not been surveyed or proclaimed as residential, consisting mainly of informal dwellings (shacks).”

Definition of an informal dwelling :“A makeshift structure not approved by a local authority and not intended as a permanent dwelling”

5 In Gauteng, 38% of households rent. The Social Housing Foundation study (2008) demonstrate that 51% if households that rent earn between R1500 and R7500 per month. A further 27% earn less than R1500. This demonstrates the size of the low income rental housing market but also the affordability levels.

6 The 2009 National Housing code estimated the rental amount appropriate for the a deeper down reach to be between R500 and R1166. This amount is calculated at approximately 30% of income ie. Income between R1500 and R3500.

Contextual Realities

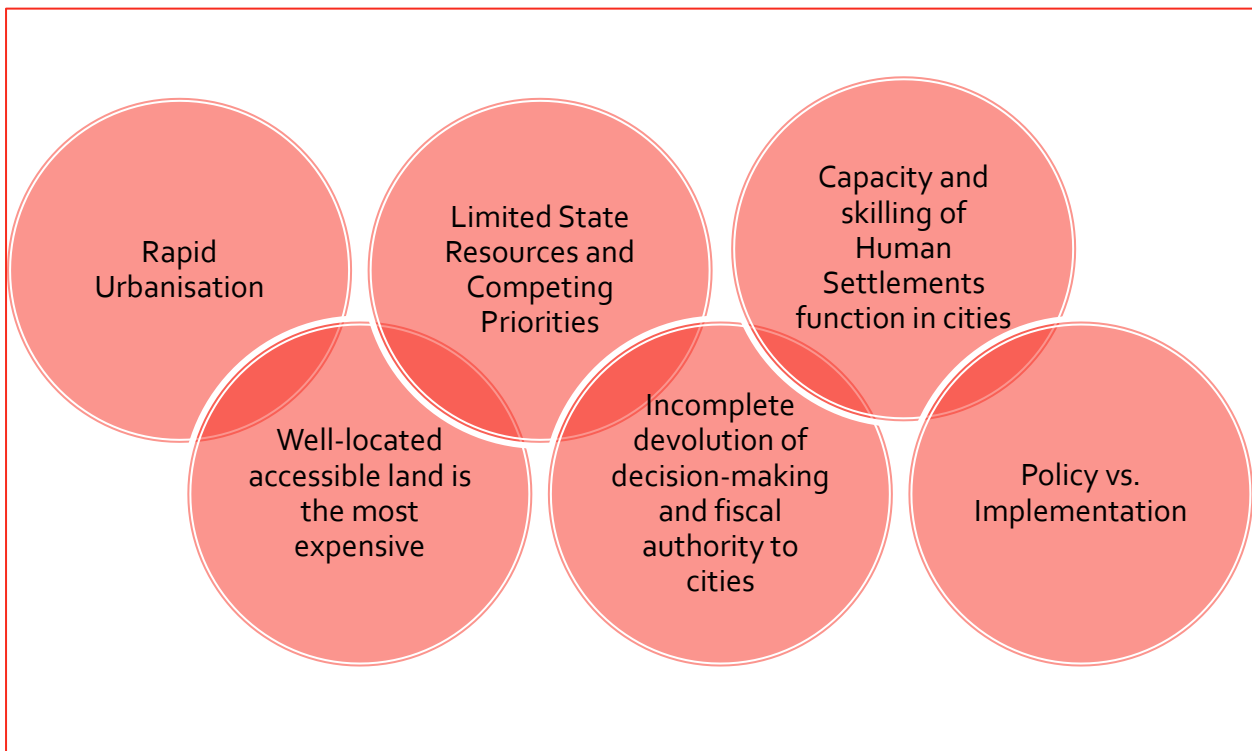


Figure 1: Contextual Realities faced in housing the urban poor

Rapid urbanisation

After 1994, when influx control laws and oppressive state regimes controlling the movement of people were abolished, South Africa's major metropolitan areas quickly became labour receiving areas for those who were being moved off farms or for those living in relative rural poverty and searching for opportunity. Lower barriers to entry in the formal economy, and the flight of white capital from inner city areas are also factors that enabled the opening up of space for an inflow of migrant labour into cities. This has dramatically increased the demand for housing in municipalities and has forced cities to confront the realities of a rapidly growing population who have dynamic and varying housing needs. In most cases the need for housing is most desperate amongst the poorest segments of the population. These are people who do not have sufficient income to access housing in the free market economy.

Barriers to accessing land

The effective acquisition, development and management of land are critical to addressing the urban shelter rights question. The lack of accessible land and bulk infrastructure are two key inhibitors in the current housing response. These are always factors that are not easily going to be overcome in the short term.

Napier (2013: 6) notes 'As cities and towns continue to grow, competition increases among urban actors (such as current and prospective land owners, developers, investors and landlords) for well-located land near existing public infrastructure and services and the poor are likely to come off second best.' Urban Landmark, through the extensive body of work that they have produced, argue that understanding how land markets work is crucial to the process of addressing access to land in cities, and by extension, access to housing. Critically, they draw attention to the co-existence of formal land markets which are primarily accessible to the middle classes and informal land markets which are accessed and used by the urban poor.

Limited state resources for delivering housing

As indicated earlier, one of the major constraints in the full realisation of housing rights is the inability of the state to deliver adequate housing both in terms of administration but also limited state resources. The FFC suggest that the housing subsidy itself is 'inadequately financed but fiscally unsustainable' (2012). They argue further that in the housing delivery supply chain there is inefficiencies in nearly every step and that there are problems with land acquisition and location as well as with infrastructure delivery and tenure provision. Furthermore, the housing market is structured in such a way that there are limited possibilities for low-income households to access housing markets aside from through the state subsidized housing programme.

Incomplete devolution of authority to municipalities

The process of accreditation as introduced in the Housing Act and detailed later through the Housing Code has been very slow in devolving decision making and fiscal planning responsibilities to municipalities. In the meantime, the housing pressures cities face have increased unrelentingly. This mismatch between the set of responsibilities municipalities face in housing the urban poor and the real decision making and fiscal authority they have been allocated over the years has resulted in cities being highly dependent on their provincial human settlement departments to be able to effectively respond to housing demand. It is suggested that this has in turn created a subconscious disengagement and complacency about proactive solution-driven housing delivery at the municipal level.

Capacity and skills for building sustainable human settlements

Difficulties in recruiting and retaining housing specialists at the municipal level has over the years resulted in a steady decline of technical and strategic capacity in many human settlement departments in municipalities. Some argue that this is inextricably linked to deficiencies in the tertiary education and training sectors and a shortage of opportunities to study towards being housing practitioners. In other cases a lack of insight within cities as to what type of skillset and training is required to adequately capacitate housing departments, has resulted in a tendency to recruit generalist, administrative capacity in these departments.

Policy versus Implementation

In housing, as in other functions of the state in South Africa, it has often been difficult to translate policy into practical implementation. While the policy is extensive and progressive and has been amended to improve its relevance and correct its previous mistakes, the mechanisms for implementation have not changed in tandem with the policy. Topham argues (interview, 2014) that the housing delivery model pursued to date in South Africa, for the most part, remains the same as when it was first designed to produce low income RDP housing. Progress made in housing policy has not been able to significantly shift the way in which housing is delivered by the state.

In light of the above context, municipalities face a host of challenges in giving effect to the progressive realisation of urban shelter rights. These challenges relate to:

1. Shortage of well-located affordable developable land.
2. Constraints on the extent to which municipalities can intervene posed by legislation that needs to be reviewed.
3. Inability to swiftly reallocate funds for emergency housing.
4. Difficulties accessing funds from Emergency Housing Programme as per the code.
5. Emergency housing becomes permanent, because of the growing backlog of rental and permanent housing.
6. Mechanisms for accessing National grants.
7. A never-ending need – a limitless right to realise – coupled with an inherited backlog means that there will always be a significant backlog and difficulties with evictions.
8. Management of decant and emergency accommodation.
9. Insufficient rental housing response and guidance from national government.
10. Poor rental housing management by municipalities.
11. Difficulties entering private sector partnerships and engagement.

12. Having to continuously re-prioritise between short-term versus long term investment in housing stock.
13. Institutional arrangements and capacitation of human settlement departments.
14. Land use management approval processes.

Key question

The overarching question asked through this work is:

The Question?

Given that our Constitution provides for the right to Housing, and in light of various eviction struggles ruled on by the Judiciary over the past 20 years, how do municipalities engage with the requirements made of them for the progressive realisation of shelter rights for the poor?

In order to sketch the terrain and really understand these challenges it is essential that we explore the following central questions:

1. How are urban shelter rights defined and understood in South Africa?
2. What are the various forms of urban shelter provision?
3. How have government's approaches to urban shelter evolved over time - from delivery of houses en-masse to the delivery of integrated and sustainable human settlements?
4. How have responsibilities and decision-making authority been devolved across the three spheres of government to municipal level?
5. Which legal instruments set the rules of the game for urban shelter provision?
6. What impact has the judiciary had on the role of the state in the progressive realisation of the right to urban shelter?
7. What have the roles and responsibilities of various actors within the urban shelter rights realisation pipeline been to date?
8. How can land markets be understood in relation to the urban shelter rights realisation?
9. How is urban shelter provision currently funded through the various spheres of government?

Sketching the terrain

The terrain of urban shelter rights is already extensively documented. We do not seek to repeat all of this material and cannot do so in any radically new and different ways but it is vital to this report that we provide a synthesis of the context of urban shelter rights in order to discuss how they relate to municipalities.

Notable amongst work done to date is the series of research reports published by the Socio-Economic Rights Institute (SERI). Research published by SERI in February 2014 in particular covers much of the subject matter discussed herein though it does so through a slightly different lens and from the point of view of socio-economic rights activism on behalf of vulnerable communities. Further notable contributions to this body of knowledge are made by the works of Huchzermeyer, Rubin and Rust.

This report explores this material in relation to its implications for the state, but in particular its implications for municipal governance, budgeting and policy making.

HOW ARE URBAN SHELTER RIGHTS DEFINED AND UNDERSTOOD IN SA?

There is a wealth of local multi-disciplinary research that has focused on the evolution of housing delivery and shelter rights in South African cities. Important contributions to this piece of work can be gleaned from legal studies, human rights discourse, urbanisation research and specific writings on local case studies in housing and housing policy. The writings of CALS, SERI, Jackie Dugard, Kate Tissington, Stuart Wilson, Margot Rubin, Sandy Liebenberg and Bonita Meyersfeld are some of the key sources that provide a starting point from which to engage with the research.

There is a growing focus both locally and internationally in the Global South on deconstructing the “right to the city”.⁷ Within this work, there is also significant reference to a more holistic developmental state thus embedding urban shelter provision within a broader set of developmental and human settlement obligations. The UN Habitat World Urban Forum 5 had as its theme ‘The Right to the City: Bridging the Urban Divide’. It is significant that at this international forum the importance of a city accessible to all was highlighted. In the international context, the right to the city has been appropriated most strongly in Latin America and the Caribbean with it being written into law in some cities. In terms of the World Urban Forum however, the Right to the City was discussed within the context of the following themes:

1. Taking Forward the Right to the City
2. Bridging the Urban Divide: Inclusive Cities
3. Equal Access to Shelter and Basic Urban Services
4. Cultural Diversity in Cities
5. Governance and Participation
6. Sustainable Urbanization: Cities in a Changing Climate (UNHabitat, 2010: 5).

This is a fairly broad-based acceptance of the concept of the ‘right to the city’. The international definition however coexists with urban life which is highly unequal. Most often, urban governments are unable or unwilling to actively pursue policies which ensure universal ‘rights to the city’. Henri Lefebvre’s notion of the ‘right to the city’ speaks to the rights of all urban residents to experience urban life in its totality. Coggin and Pieterse paraphrase it thus: ‘It consists of claims of habitation (to inhabit the city, to use its spaces and share in its spoils), appropriation (to be present in, to experience and make use of the fullness of the city) and participation (to imagine the city and to constitute its form, meaning and operation, through the practices of daily life)’ (2012: 259).

In Attoh’s work he lists how the ‘right to the city’ is understood differently contingent upon the philosophical inclination of the author. He refers to the concept as a fuzzy one and suggests there are a range of interpretations including the right to occupy, the right to housing, the right to transportation, the right to basic services and so on (Attoh, 2011: 675).

The World Charter on the Right to the City includes housing and adequate shelter (Coggin and Pieterse, 2012: 261). Within the South African context, given the Constitution and Bill of Rights, there is a broad understanding of ‘rights’ which includes housing rights. Coggin and Pieterse suggest that the right to equality before the law is the most appropriate to the discourse pertaining to the ‘right to the city’, and the right to housing is embedded within these rights (2012: 263).

To date, city policy has articulated, at least in theory, an intention to create a city welcoming to all, including the urban poor. This is articulated in Johannesburg’s Growth and Development Strategy (2006) and its Inner City Charter. However, in many instances, the City responds to the presence of the urban poor with some measure of indifference. Marie Huchzermeyer writes about the ‘right to the city’ in our local context using

⁷ In Attoh’s article ‘What kind of right is the right to the city?’ he outlines the different conceptions of rights in the discourse.

Lefebvre's framework. She argues that there are a number of actions, such as getting rid of informal traders for instance, which undermine the rights of the urban poor (Huchzermeyer, 2013: 3).

Coggin and Pieterse (2012) contend that in inner city neighbourhoods, the urban poor remain vulnerable and unwelcome by local government. It is the divergent imperatives between the need to be competitive and poverty reduction that creates this tension. This is often the cause attributed to the inability of cities to create and produce competent alternative housing and employment for poor urban residents. However, it is not a binary option, creative thinking and policy making could facilitate both objectives, and it is a matter of how the public sector chooses to allocate funds.

In urban centres seeking to attract investment (such as the inner city of Johannesburg, Cape Town and Ethekweni) the conflict between an economic and pro-poor agenda is often played out. The private sector has as one of its investment criteria good urban management. The private sector requires good urban management in order to optimise its investment given their limited control over public space. Unfortunately, to date, the pursuit of good urban management has often been to the detriment of the urban poor who live and try to survive in those spaces.

Given the Constitution includes the 'right to housing' as a justiciable right in South Africa, the housing policy terrain has been fundamentally impacted on by a series of seminal court cases. Non-governmental organisations, such as SERI, have been very effective in using the judicial system to influence how rights and responsibilities are determined. This in turn has emanated in an ever-changing set of municipal roles and responsibilities which will be discussed later in this report.

An equally significant result of socio-economic rights, as mentioned above, is the question of private property rights which are at the heart of some of the struggles for urban development. The tension between private property rights and those of the urban poor have been visible in the Constitutional Court rulings. Significantly, these rulings have ensured that the rights of private property owners do not automatically supersede broader socio-economic rights. This too is an important departure from past legislation which invariably favoured private property rights.

Defining Urban Shelter

The 'right to housing' is considered to be part of a broader discussion on the 'right to the city'. It is necessary to unpack the various definitions and concepts that construct the current rationality around urban shelter. This will involve looking at how meanings have evolved over time and how they could be interpreted differentially in practice.

The report reviews legislation, court judgments, housing policies of selected South African cities and contemporary research work in order to further understand the interpretation of urban shelter rights in a South African context.

In an international context 'urban shelter rights' as presented in the Universal Declaration of Human Rights is broadly considered thus: 'The right to housing should be interpreted in a broad and inclusive sense as the right to live in "security, peace and dignity" rather than a narrow or restrictive sense. The right to housing is inextricably linked to other fundamental human rights and should be seen as referring to not only housing but adequate housing (paragraph 7). The right to adequate housing must be viewed in conjunction with other human rights included in the two International Covenants and other international instruments (paragraph 9) (www.hrea.org).

The interpretation of what constitutes adequate housing is a matter of discussion. The Commission on Human Settlements' Global Strategy for Shelter to the Year 2000 (1998) suggests a further definition of adequacy:

"Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost" (www.hrea.org).⁸

In the South African context, adequate housing has not been fully defined as yet. In SERI's detailed Housing Resource Guide (2011), they argue that adequate housing should be conceived as follows:

'Access to housing is also bound up with access to 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 etc. Further, achieving the right to housing is intrinsically bound up with a number of other cross-cutting rights, including rights to public participation, equality, human dignity, just administrative action, freedom of expression, access to information and access to justice etc.' (SERI, 2011: 25).

They argue further that given the number of housing typologies in South Africa, a uniform understanding of adequate housing is not helpful. Rather, there should be a more nuanced approach when definitions are applied.

Therefore it is difficult to suggest a definitive definition of urban shelter rights for municipalities. We would argue that urban shelter rights are embedded within a broader set of human rights but is focused on a right to housing. This right to housing however should be understood within a human settlements approach which includes elements such as transport, security, services and amenities.

The definitions of what constitutes adequate housing is critical in the South African context because it underpins much of the legal and judicial work done to date on this topic. National, provincial and local government have been accused of not producing adequate housing in various instances ranging from RDP housing to temporary accommodation. What is considered adequate to the public sector can differ vastly with occupants and NGOs supporting the rights of the urban poor. This must be one of the key definitional considerations in the ongoing 'right to housing' debate.

HOW HAVE GOVERNMENT APPROACHES TO HOUSING AND URBAN SHELTER EVOLVED OVER TIME?

As part of the evolution of legislation and policy development has been a slow devolution of powers from national government to local government. Over time, specific municipalities have been given greater housing development responsibilities. A housing timeline suggests that housing policy can be divided into 5 time themes namely:

- 1992-1997 – Policy formulation
- 1995-2001 – Private sector/ developer driven delivery
- 2001-2004 – Public sector driven delivery
- 2004-2009 – Focus on sustainable human settlements
- 2010 onwards – Focus on informal settlement upgrading (2011: 23).

Each of these periods in South African housing policy has played a contributory role to the housing status quo of today. The three key policy documents however that guide South African housing policy are:

- White Paper: A New Housing Policy and Strategy for South Africa, 1994
- Comprehensive Plan for the Development of Sustainable Human Settlements, 2004 (Breaking New Ground – BNG).

⁸ A detailed list of definitions of 'the right to housing' can be found on www.hrea.org

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- More recently, the National Development Plan has impacted on the work and strategic direction of all government departments.

In addition to the national department policy directives, it is important to review some of the housing policies of key metros with a view to understanding local government approaches to housing in general, and urban shelter more specifically. This will be discussed in detail later in the document.

A 2006 analysis by Rust reflects on how successful South Africa's housing policy had been to date. She outlines in this paper the key points of the existing housing policies beginning with the New Housing Policy and Strategy for South Africa. Rust notes that the following two approaches were pursued:

- Firstly, a focus on developing low-income subsidised housing in order to begin to address the housing backlogs, and
- Secondly, government sought to create a unified housing market in order to begin to stabilise the housing market. This was done, in part, through encouraging banks to lend to the low-income market (2006: 6).

Tissington (2011 (citing Charlton and Kihato) states that changes to housing policy from 1994 to date have been made often in reaction to the failures of policy implementation and in response to political pressures or other less transparent reasons. The shifts in the housing policy for South Africa was rarely ever brought about in response to any kind of empirical studies of the real impact of the prevailing policy on housing recipients or shelter seekers in terms of whether the housing they received improved or worsened their quality of life and access to livelihoods.

Furthermore a constant shuffling of housing professionals out of housing departments or between them meant that there was often very little institutional investment and long-term commitment in the policies, nor the institutional memory and consensus to really follow through on the original intentions of policy development.

Nevertheless certain key changes in policy must be traced here in order to understand how municipalities have inherited certain approaches to urban shelter provision.

Key Housing Policies

What follows is a timeline of policy development and a discussion of its impacts.

The National Housing Forum (NHF) 1992 – 1994

The NHF was a non-governmental body that brought together stakeholders from the private sector, development activist agencies, civic organisations, government and various political parties to discuss post-apartheid housing in the lead up to the first democratic election.

Its aim was to develop consensus for the way forward in developing a housing policy for the New South Africa. Its key debates centred around two main questions:

1. Should housing be delivered by the state or by the market?
2. What form should housing provision take? Is it better to provide complete 4 room houses or a basic structure that could be incrementally extended and improved by recipients?

The NHF also grappled with debates about whether the state should be delivering mass rental housing instead of ownership. This idea was eventually discarded on the basis of the massive fiscal and management burden it would place on the incoming government and on municipalities who were already battling to manage their rental stock. Debates in the NHF set the basis for post-apartheid housing policy.

1994 National Housing Summit

This summit held by the new government in Botshabelo managed to reach a multi-stakeholder agreement (the Botshabelo Accord 1994) to proceed with two main approaches:

-
- That the state would facilitate housing delivery processes.
 - That the private sector would identify land and perform the construction of housing by accessing subsidies on behalf of shelter seekers.

This was followed by the introduction of the National Housing Subsidy Scheme. The subsidy was intended to help households to buy and not rent different tiered housing options by securing private finance.

1994 - The National Housing Subsidy Scheme

A significant element of the National Department of Housing's low-income housing policy was the introduction of the National Housing Subsidy Scheme in 1994 (Behrens and Wilkinson, 2003).

The subsidy scheme has been written about and analysed extensively. This scheme introduced a subsidy which took the form of a capital grant made available to households who earned less than R3500 per month. Over time however, this subsidy has assisted in consolidating patterns of spatial inequality as the bulk of new housing was built on the periphery. This is attributable to the size of the subsidy which has required that new housing be built on affordable land. Land prices in most cities are most affordable in peripheral areas that are not particularly well-located in terms of economic opportunities or access to public transport.

Notwithstanding the aforementioned, the National Department of Housing did manage to deliver a substantial number of RDP housing units. The Housing Subsidy scheme also led to the mass delivery of a single housing typology with only a few exceptions; delivery of the single simplex house on a single stand is the form of most of this housing. It is a typology that is land-intensive and achieves lower densities and thus fewer dwelling units per hectare. Large tracts of land are in most cities only available in peripheral areas and therefore many people have received houses far from economic nodes. This has a stream of related consequences on their social well-being, their household income and their ability to access social and public services. It also means municipalities have to continually stretch the reach and capacity of their infrastructure networks further and further away. Overall, the longer term downstream lifecycle costs of providing this type of housing escalate, even though more people have been given home ownership opportunities.

1994 - "White Paper: A New Housing Policy and Strategy for South Africa"

Government developed this policy to give effect to its intention to provide large scale housing opportunities in the new South Africa

Tissington (2011: 60) sets out the 7 key principles contained in this policy as follows:

1. Stabilising the housing environment in order to ensure maximal benefit of state housing expenditure and mobilising private sector investment;
2. Facilitating the establishment or directly establishing a range of institutional, technical and logistical housing support mechanisms to enable communities to, on a continuous basis, improve their housing circumstances (i.e. supporting the PHP);
3. Mobilising private savings (whether by individuals or collectively) and housing credit at scale, on a sustainable basis and simultaneously ensuring adequate protection for consumers;
4. Providing subsidy assistance to disadvantaged individuals to assist them to gain access to housing (i.e. Through the NHSS and National Housing Programmes);
5. Rationalising institutional capacities in the housing sector within a sustainable long-term institutional framework;
6. Facilitating the speedy release and servicing of land (i.e. utilising the Development Facilitation Act. This subsequently became the mandate of the Housing Development Agency (HDA - established in 2008);
7. Coordinating and integrating public sector investment and intervention on a multifunctional basis.

The policy was aimed at getting individuals to access the subsidy and even introduced a compulsory minimum individual contribution (scaled according to household income) that households would derive from savings or from credit. The key assumption this policy rested on was the ability of individuals to access housing finance (credit) in the financial services market to enable them to improve their starter homes. In reality this was not the case.

In the late 1990's government set a minimum standard of 30m² as the size of the house to be delivered. In order to rapidly roll out housing at scale this approach led to major trade-offs being made on the quality of services and top-structures provided. Also, the cost of land and services meant that most of this new housing was located in peripheral urban areas far from job opportunities and social infrastructure and without access to affordable public transportation.

1998 - The Peoples Housing Process

In 1998 the Minister of Housing adopted the Peoples Housing Process. This was an attempt to involve housing beneficiaries in both savings and construction for their homes. This move was made in response to pressure from lobbying groups such as the South African Homeless People's Federation and the UN Habitat who argued that beneficiary participation could greatly improve the effectiveness of what was being rolled out.

Households were involved in building their homes themselves and could use that labour contribution in lieu of the mandatory savings/loan contribution that was meant to be coupled with their subsidy. Their participation was limited to construction of the top-structure and they were not as communities involved in the spatial location of the development nor in the identification and planning of infrastructure projects for their settlements.

Whilst there was some initial successes in these processes the number of houses built in this way dwindled towards the mid 2000's. At this point, the NDoH began an extensive process to review the housing situation in the country.

Whilst their efforts since 1994 had yielded some new housing (less than anticipated) there were a range of negative externalities that came about from the decisions that had been made.

Some of the problems encountered by cities at this stage in the housing timeline were:

- New housing developments located in peripheral areas further exacerbated the spatial inequalities of apartheid.
- A lack of effective and meaningful community participation.
- Housing delivery had slowed down.
- Housing budgets were not being fully spent.
- Rapid growth of informal settlements.
- Poor condition of newly built homes and settlements.
- An overall increase in the housing backlog, spurred on also by an influx of rural regional and cross-border migrants.

These problems were the impetus for the development of Breaking New Ground Policy in 2004.

2000 - National Housing Code

Section 4 of the Housing Act requires that government develop a Housing Code that sets out not only the housing policy but also clear guidance on programmes and implementation.

The first housing code included a host of housing programmes and fiscal instruments and guided practice in housing until 2009 when a revised National Housing Code was published.

2004 – Breaking New Ground: From Housing to Human Settlements:

The Breaking New Ground Programme which led with a new focus for housing emphasised that it was important to see housing policy within a broader context of sustainable human settlements. This was in

keeping with growing international focus on sustainability and livability in cities. BNG has at its core four key objectives:

- Creating sustainable human settlements
- Improving spatial integration
- Housing asset creation
- Upgrading and eradicating informal settlements (Rust, 2006)

This policy gave municipalities greater responsibilities for housing and raised the bar for what types of housing environments the state should be providing. The large metros re-wrote their housing policies to align with BNG (Rust, 2006: 10).

BNG made an important contribution to housing policy and thinking by capturing the difference between providing housing versus sustainable human settlements.

In reality though municipalities are still required to report performance on housing delivery in terms of the number of units handed over to beneficiaries and on whether they were able to spend the budget allocated to them for the roll-out of freehold tenure housing units.

Even just a reflection on numbers yields the fact that the scale of the roll-out of housing units in the lowest subsidy brackets is low and slow.

To date, BNG has also not resulted in a significant (at scale) extension of the choices for typologies, location, forms of tenure and affordability levels, as it had originally intended.

BNG has a few significant consequences for municipalities:

- Its shift of focus from housing to sustainable human settlements means that housing departments in municipalities have been forced to look at housing in terms of the overall spatial development of cities and in collaboration with other key city-shaping functions such as public transportation and strategic spatial area-based planning.
- Significant to municipalities also, is that very little is proposed in BNG to effectively engage and ameliorate the problems of accessibility and affordability of well-located developable land and state-intervention in the land market of cities.
- BNG calls for a much greater role for local government in human settlements delivery. While the first national housing policies discussed above placed emphasis on the role of the private sector in choosing appropriate land and location, all of those functions and much more have been shifted to municipalities. BNG argues for the devolution of authority and funds to municipal level and proposes an accreditation process that will give qualifying municipalities' levels of authority to administer their housing programmes and funding without having to be dependent on provinces for this.
- Municipalities are also emphasised in BNG as the managers of the process to eradicate and upgrade informal settlements in an integrative and cooperative way to ensure their households become a part of the urban fabric. Most municipalities have dedicated much focus and resources to their informal settlement formalisation, regularisation and eradication processes. The UISP was thus introduced on the basis of BNG.
- The BNG policy is the first post-apartheid housing policy to devote specific attention to the types of urban shelter solutions that may be suitable and desirable in inner city environments. Here the provision of rental housing through the social housing programme (2000) and social housing institutions is encouraged but there is not yet enough direct financial support to municipalities to bolster their delivery of rental accommodation.

BNG assumes that the demand for affordable housing in inner cities, made accessible by subsidies and housing finance, will accelerate inner city urban regeneration. This has not materialised. In the main, social housing provided in the city is still not affordable to the majority of poor urban shelter seekers. Social Housing Institutions say that even with cross-subsidisation within their developments the number of people they can

accommodate from the lowest income brackets with the most pent-up demand is negligible. Social Housing has not therefore been able to rapidly accelerate inner city regeneration at a significant scale.

2007 - Inclusionary Housing Policy (IHP)

In 2005 the Minister of Housing entered into a Social Contract for Rapid Housing Delivery with other housing industry stakeholders. The contract stated that “every commercial development including housing developments that are not directed at those earning R1500 or less, spend a minimum of 20 % on the construction of homes within human settlements for those who qualify for government subsidies.”

This was an attempt to get the private sector to contribute to the backlog in housing for low-income households and to provide opportunities for them to live in areas where land prices are prohibitively high.

Later, the contract was amended to state that housing developments that are targeted to those who earn R3500 to R7000 per month and those who earn R1500 or less would be exempt from making this 20 % contribution because the earlier version was found to be unaffordable.

Out of this process came the 2007 IHP. The policy provides for two ways in which inclusionary housing can be implemented through municipality-private-sector partnership. One approach is that the municipality formulated an inclusionary housing policy, identifies its location and assembles the land for private developers to then develop the housing stock as their 20% contribution.

The second approach uses government’s land use management tools to create a quid-pro-quo with developers who want to pursue their own planned developments. It grants them rights, density bonuses or discounted infrastructure service contributions in exchange for them making a 30% contribution toward low-income development.

In reality, municipalities have battled to implement this policy and while some notable achievements have been made in Cape Town (N2 Gateway) and in Johannesburg (Cosmo City and Brickfields), this has not drastically improved housing delivery for the poor and is not expected to do so in a large way.

2009 – Revised National Housing Code

In response to BNG and its proposed shift in thinking the national housing code of 2000 was revised and published in 2009. It introduces a few new programmes for human settlements delivery. It is comprehensive but not prescriptive and gives clear guidance.

2009 – The Enhanced People’s Housing Process

In reaction to concerns about the original PHP the programme was broadened to include the involvement of organised communities rather than just individuals.

The ePhP allows for 2 different processes of community-managed self-build urban shelter projects:

- The first option is by an organised community who wants to be involved in the construction of their own housing;
- The second is where municipalities identify land, packages it and then mobilises and facilitates the community to be involved as per the provisions of the policy.

For municipalities, they would need to:

- Fund or donate the land to the communities.
- Fund and facilitate EIAs, Rezoning and all town planning approvals.
- Fund and provide additional facilities and social amenities.

It is unclear to what extent the implementation of ePhP’s are happening in municipalities to date.

2010 Outcome 8

Outcome 8 introduced an expanded and more holistic approach that reinforced the principles set out in BNG and subsequent policy and strategy developments. Emphasis was placed on the spatial transformation of cities and expanding the response beyond just housing to building communities with access to social and economic opportunities. In order to do this the focus would be on the following:

- Accelerated delivery of housing opportunities
- Improved access to basic services
- Mobilization of well-located public land for low income and affordable housing
- Improved property market

Discussion

Housing policy reiterates time and again, the importance of delivering housing for the poor. Yet there is an apparent gap between policy directives and implementation.

While waiting for state subsidised housing, the urban poor develop alternative means to house themselves. This happens in many ways but some of the most prevalent are:

- Subdivisions of space within a single dwelling unit to improve affordability.
- Illegal occupation of a dwelling unit without landlord approval – often without paying market-related rent.
- Illegal occupation of vacant buildings.
- Illegal erection of shelter on vacant land.
- Illegal erection of shelters in backyards of houses (both formally and informally built).

Municipalities have had to balance the demands for shelter and services with effective urban management that prevent these types of infringements without penalising the urban poor who are in search of shelter and income opportunities in a context where the state has been unable to provide. However, as will be illustrated this has potential negative implications for not only the state but also for those living in these precarious conditions. The strategies and tactics of urban shelter seekers have of necessity led to a litany of legal proceedings. In the face of a private sector housing market that is unaffordable to many of the urban poor, a municipality and province whose delivery of new housing (for both ownership and rental) is grossly inadequate and slow, the battles fought by the urban poor with both of these role-players has fundamentally been a battle of socio-economic rights and responsibilities. The matter of socio-economic rights in the context of urban shelter is most thoroughly researched and covered by the publications of the Socio-Economic Rights Institute (SERI) and others.

Hence, the evolution of urban shelter rights through the Court compels municipalities to address court rulings in a more urgent manner than housing policy could. The decisions made in court have both highlighted policy gaps and have called upon the state to develop policy in a proactive way. Details of the negotiation of urban shelter rights through the courts are discussed further in this document.

Wilson (2011) refers to the court's requirement of municipalities to develop a "reasonable housing policy" to deal with providing shelter to those vulnerable to homelessness. They engage with what this means and quote the Grootboom judgment to illustrate the Court's definition of a reasonable housing policy.

The Court held that, to qualify as "reasonable", state housing policy must:

"be comprehensive, coherent and effective (para. 40);

have sufficient regard for the social economic and historical context of widespread deprivation (para. 43);

have sufficient regard for the availability of the state's resources (para. 46);

make short, medium and long term provision for housing needs (para. 43);

give special attention to the needs of the poorest and most vulnerable (para. 42);

be aimed at lowering administrative, operational and financial barriers over time (para. 45);

allocate responsibilities and tasks clearly to all three spheres of government (para. 39);

be implemented reasonably, adequately resourced and free of bureaucratic inefficiency or onerous regulations (para. 42);

respond with care and concern to the needs of the most desperate (para. 44); and

achieve more than a mere statistical advance in the numbers of people accessing housing, by demonstrating that the needs of the most vulnerable are catered for (para. 44). “

Source: (Wilson: 2011)

Unfortunately there has been little further direction developed either by the Courts or by any sphere of government to detail what this would really mean for cities and how it should be unpacked in their housing and human settlements plans. While it could be argued that there is a significant amount of capacity at the local level the interpretation of shelter and housing within a broader sustainable human settlements context may be lacking as well as the instruments required to give effect to this. For the most part our institutional arrangements have been designed for a particular housing response.

Role of Local Government

The Constitution sets out housing as a concurrent function across the spheres of government. In reality, over the past two decades, provincial governments held the authority for allocating funding and approving housing projects. The continued dependence on provincial human settlement departments and the cumbersome bureaucratic procedures involved in accessing funds and shared planning from provinces has not worked for cities and arguably has hampered the progressive realisation of urban shelter rights.

The reality is that municipalities have been left with considerable responsibility for providing the urban poor with shelter and relief from homelessness without receiving the sufficient decision-making and budgeting authority to meet its responsibilities. The accreditation of municipalities to take on housing functions was introduced in the Constitution and received some coverage in recent housing policy. It has however taken 13 years to materialise and is still only envisaged to fully take effect in the 2015/16 financial year for municipalities who have successfully been accredited.

Accreditation happens in three levels. Cities are required to prove that they have sufficient capacity to qualify for each successive level of accreditation. Tissington (2011) provides a useful summary of the three levels of accreditation:

“Level One accredited municipalities will identify and plan for local housing programmes and projects and allocate housing subsidy funds from their annual housing subsidy funding allocation. In this regard, Level One accreditation delegates the authority and responsibility to respond to national housing policy directly. They will determine their housing plans which identify the specific programmes and projects to be undertaken within the fiscal year in their municipal area, and will develop specific individual housing project plans for submission to the provincial department for approval. Following this approval, they proceed with implementation on the basis of funding disbursements from the provincial government on a cash flow basis.

Level Two accredited municipalities will have the added delegated responsibility for evaluating and approving specific housing projects against pre-determined project criteria and undertaking the housing subsidy registration function for all national and provincial housing programmes. This requires that municipalities put in place municipal housing subsidy systems that will be the extension of the NHSDB. They will also need to establish their own governance arrangements to allow for the necessary checks and approvals.

Level Three accredited municipalities will have the authority for all Level One and Two functions, and the authority and responsibility for the financial administration of housing development in their jurisdiction. The municipal fund allocation will be disbursed on a cash flow basis to the accredited municipality directly from the DHS. The municipality will report directly to the DHS in respect of housing draw-downs and financial reconciliation, and will provide a regular financial reconciliation report to the provincial department on their progress in respect of delivery.” (Tissington, 2011: 77)

Accreditation has been delayed and frustrated by provincial housing departments who have the authority to approve or reject accreditation applications of municipalities. Provinces have fought to retain more authority in housing and have been reluctant to relinquish that power to municipalities. Relationships between municipalities and Provinces have grown increasingly fractious around this issue in some provinces, including Gauteng.

Until full accreditation is received by metropolitan municipalities it will be an ongoing challenge to respond timeously to urban shelter crises and the requirements of court rulings to take appropriate action.

LEGAL FRAMEWORK FOR URBAN SHELTER PROVISION

The legal framework that defines state housing delivery represents a complex set of obligations, objectives and institutions. The Constitution of South Africa is the basis for all other legislation and guides state housing delivery. Over and above the Constitution is a range of additional legislation and this section briefly outlines some of the most important legislation in the discussion on urban shelter rights. The legislation presented includes that which speaks directly to housing delivery and policy but also legislation which outlines the responsibilities of additional agencies involved in housing and human settlements. There is also mention made of legislation specific to local government.

Key Legislation

The Constitution

The Constitution of South Africa (1996) is fundamental to the urban shelter rights discussion with the ‘Right to Housing’ clearly stated in the Constitution as follows:

‘WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right’

Chenwi and Tissington’s (2010) outline very clearly the significant protection for socio-economic rights provided for in the South African Constitution and particularly the right to adequate housing. Understanding the meaning of the ‘right to housing’ is important because as they explain it:

‘The right to housing does not mean that the state must provide a house immediately to everyone free of charge on demand. Instead, it means that the state must have and implement a reasonable programme to provide everyone with access to adequate housing. This is its positive obligation. Positive obligations depend on the state’s resources. The negative obligations contained in the right to housing are to do with, for example, evictions. The state and other parties must not interfere with people’s right of access to adequate housing. They should not undertake unlawful evictions. There are safeguards that protect people from being arbitrarily evicted and becoming homeless. One of the most important safeguards is meaningful engagement’ (2010:7).

It is necessary to develop a clear view of the legal framework that influence housing and urban shelter rights in South Africa because it is fundamental to understanding the evolution of housing policy to date as well as the ongoing housing requirements for national, provincial and local government housing departments.

A number of key pieces of legislation influence how shelter rights and housing provision are defined and realised and these are discussed below:

Housing Act 107 of 1997

The National Housing Act 107 of 1997 outlines the policy roles of national, provincial and local government in terms of housing development. The Housing Act replaced all existing housing legislation and aligned post-apartheid housing policy to the Constitution.

Some of the key points listed in the Housing Act include:

- A focus on the poor in housing delivery.
- An adequate consultation process.
- Ensuring there is a wide range of housing available.
- Encouraging community based organisations to play a role in their own housing development.

The Housing Act also mentions the importance of densification in housing delivery, promoting integration and protecting rights outlined in the Constitution in the provision of housing (1997: 6, 7, 8).

It directs each sphere's housing delivery obligation in the following ways:

- National government is required to set housing policy, broad housing policy delivery goals, manage performance, assist provinces in their housing delivery capacity, allocate funds for housing delivery and provide an enabling environment for provincial and local government. Furthermore, national government was required to create a National Housing Code.
- Provincial governments are required to establish a provincial housing policy, coordinate housing development in the province and work closely with municipalities.
- Local government is expected to ensure that it works towards the realisation of progressive housing rights. Municipalities must further ensure that there is adequate provision of basic services; that land is available for housing; that an enabling public environment is available and bulk infrastructure services are in place.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act)

One of the most significant pieces of legislation pertaining to urban shelter rights is the PIE Act. The Constitution of South Africa makes clear the following: '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' Section 26 (3).

The PIE Act specifically protects 'unlawful occupiers' from arbitrary eviction. 'Unlawful occupiers' are considered to be those who occupy land without permission. The PIE Act requires a number of steps to be taken before any person can be evicted. This is an important departure from previous eviction processes where the rights of the property owner was considered more important than the occupier.

The steps that are now required to effect an eviction include stipulations such as giving the unlawful occupier and the municipality written notice of the eviction at least 14 days before the court hearing. The following information must be provided in the written notice: notification that proceedings have been instituted; the date of the hearing, the grounds for the proceedings and the information and inform the unlawful occupier of their right to appear before court (Chenwi and Tissington, 2010: 13). In addition, the PIE Act always necessitates that the Court studies who the unlawful occupiers are, how long they have been in occupation of a property and whether there is land available on which they can be resettled (Ibid, 14). Equally important is the stipulation that the Court shall not evict those 'unlawful occupiers' who shall be left homeless as a result of the evictions.

Housing Consumers Protection Measures Act 95 of 1998

The Housing Consumers Protection Measures Act 95 of 1998 outlines the protection available to housing consumers and also introduces the establishment and functions of the National Home Builders Registration

Council. The functions of the Council include protecting home owners and regulating the home building industry (Government Gazette, 1998).

Rental Housing Act 50 of 1999 (Rental Housing Act)

The Rental Housing Act regulates the relationship between landlord and tenant. It also outlines a number of obligations for government namely that:

- Government should promote rental housing.
- Government should take measures to increase the provision of rental housing.
- The act regulates the relationship between landlord and tenants.
- It outlines the provisions pertaining to leases.
- The Act introduced the notion of a Rental Tribunal.
- It also provides guidelines as to the power and functions of the Tribunal.
- The Act repealed the Rent Control Act of 1976 (Government Gazette, 1999).

The Rental Housing Amendment Act 43 of 2007 made a number of amendments to the Rental Housing Act, 1999. In particular, it sought to: 'substitute a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; and to extend the period allowed for the filling of vacancies in Rental Housing Tribunals; and to provide for matters connected therewith' (Government Gazette, 2007). There was also a further amendment bill referred to as the Rental Housing Amendment Bill which served to ensure, amongst other things, that all provinces set up Rental Tribunals.

The Rental Housing Act is also very significant in the urban shelter rights debate because it provides a framework governing the relationship between landowners and tenants and emphasises rental housing as one of the components of government policy.

Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act)

The Municipal Systems Act is a critical piece of legislation outlining the rights and responsibilities of municipalities. It indicates how municipalities should pursue a number of different functions such as:

- a) The legal nature, rights and duties of municipalities
- b) Municipal functions and powers
- c) Community participation
- d) Integrated development planning
- e) Performance management
- f) Local administration and human resources
- g) Municipal services
- h) Municipal entities
- i) Credit control and debt collection

The Municipal Systems Act stipulates in some detail how municipalities run their internal and external affairs. These processes play a vital role in determining the allocations of budgets and municipal priorities.

Social Housing Act 16 of 2008 (Social Housing Act)

The Social Housing Act provides a legislative framework for the critical issue of social housing. Social Housing is defined as follows: "social housing" means a rental or co-operative housing option for low to medium income households at a level of scale and built form which requires institutionalized management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in this Act"

The Act provides very clear guidelines pertaining to the roles and responsibilities of national, provincial and local government. With respect to local government responsibilities, it requires municipalities to:

- a) facilitate social housing delivery in its area of jurisdiction.
- b) encourage the development of new housing stock and the upgrading of existing stock or the conversion of existing non-residential stock.
- c) provide access-
 - (i) to land and buildings for social housing development in designated restructuring zones;
 - (ii) for social housing institutions to acquire municipal rental stock;
 - (iii) to municipal infrastructure and services for approved projects in designated restructuring zones;and
- (d) To the extent permitted under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), to—
 - (i) Initiate and motivate the identification of restructuring zones; and
 - (ii) Enter into performance agreements with social housing institutions.’ (2008: 14).

Housing Development Agency Act 23 of 2008

The purpose of the Housing Development Agency Act is as follows:

(a) Establishment of the Agency which will facilitate the acquisition of land and landed property, in a way that complements the capacities of Government across all spheres; (b) objects, roles, powers and duties of the Agency; and (c) fast-tracking of land acquisition and housing development services for the purpose of creating sustainable human settlements. (Government Gazette: 2008: 8)

The objectives of the HDA as stated in the Act are to:

(a) identify, acquire, hold, develop and release state, communal and privately owned land for residential and community purposes and for the creation of sustainable human settlements; (b) project manage housing development services for the purposes of the creation of sustainable human settlements; (c) ensure and monitor that there is centrally coordinated planning and budgeting of all infrastructure required for housing development; and (d) monitor the provision of all infrastructure required for housing development (2008: 9).

A recently established institution, the HDA has a critical role in shaping the urban form through its access to public land and its authority to prepare land for release for development. In the broader discussion of the ‘right to housing’, the access to well-located land is fundamental to shifting existing settlement patterns.

Challenging the right to housing through the courts

Housing policy in post-apartheid South Africa has evolved over two decades as a consequence of lessons learnt and policy evolution. A unique feature of South Africa’s housing policy is the powerful impact of the judicial system on the evolution of urban shelter rights. This success is interesting because some academic writing on that matter in the early 2000s (Emdon, 2003 and Huchzermeyer, 2003) did not have an optimistic reading of the likelihood of success. Huchzermeyer stated the following of the judiciary’s involvement in housing rights in 2003: ‘However, when called upon by the poor, the judiciary is seemingly reluctant to interfere in the affairs of the executive arm of government. It is equally reluctant to rule in favour of the poor when the economy or investor confidence is at stake (2003: 80).

Yet in just ten years there has been a staggering turnaround in the rulings of the court on these matters. This has effectively jolted municipalities into a position where they are required to be proactive about generating housing for the urban poor, over and above the RDP housing process.

The Evolution of Urban Shelter Rights and Responsibilities through the Court

This evolution is eloquently presented in a recent publication by SERI entitled: 'Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government' (SERI, 2013b). The document presents a detailed overview of the evolution of urban shelter rights through the courts by reflecting in great depth on the development of housing and eviction jurisprudence from 2000-2013.

The document is written from a civil society perspective and in one section confronts the arguments given by municipalities for their inability to provide alternative accommodation for the urban poor. This report will look to generating a more detailed analysis of the municipal responses to date as well as the reasons for their inability to provide sufficient alternative accommodation. While these court rulings have caused frustration within government circles, they serve as constructive protection for the urban poor.

From Grootboom to Blue Moonlight

It is important to review some of the most important judicial rulings to date. SERI has documented each of the cases as well as their implications for municipalities and evictees. The following cases are considered to have had a significant impact on cities:

- Grootboom
- Modderklip
- PE Municipality
- Olivia Road
- Blue Moonlight
- Abahlali
- Skurweplaats and Mooiplaats
- Mchunu and Hlophe
- Dladla

These cases will be integrated into the work done on the three case study cities where relevant and discussed further. While this report will not discuss each court case in detail, it is important to highlight the precedent set by the first high profile court case as it had an enormous impact on housing obligations.

Case: Government of the Republic of South Africa vs Grootboom	Implications
900 individuals evicted from private land in Wallacedene, Cape Town	Policy and practice when dealing with shack dwellers (Barry, et al. 2007: 178)
18 May 1999 the eviction was carried out. The evictees were unable to secure adequate temporary shelter.	Appropriate responses in dealing with land invasions (Barry, et al. 2007: 178)
Mrs Grootboom appealed to the High Court on the basis of the lack of access to adequate	

housing and basic shelter for their children.	
The Court granted one parent of each child to receive free shelter in the Wallacedene Community Centre.	
The Court ordered that the authorities were required to provide tents, portable latrines and water.	
The Grootboom community took the matter to the Constitutional Court.	The Constitutional Court ruled that it was not sufficient for government to only address the medium-long term housing needs. Government was required to assist people living in crisis situations. (Huchzermeyer, 2003)

The Grootboom community took the matter to the Constitutional Court which ruled that it was not sufficient for government to only address medium to long term housing needs But that it was also required to assist people living in crisis situations (Huchzermeyer, 2003).

SERI argues of the case 'Although arguably self-consciously limited in scope and ambition, Grootboom laid a stable foundation for a new order in eviction cases by requiring that "at the very least" evictions had to be conducted "humanely", and by establishing that the state had an obligation to plan for those who would otherwise be rendered homeless by an eviction' (SERI, 2013b: 11). However what was further important was that this was the first ruling to enact Section 26 of the Constitution which set a precedent for further cases.

Subsequent to this historic ruling, socio-economic rights have been fought for through the judicial system with great success. The Blue Moonlight ruling in particular was critical. In 2011 the Constitutional court ruled that the state had to find alternative accommodation for those people whom it evicted as well as for people evicted from privately owned property. In summary, the implications of these court cases specifically for municipalities as captured by SERI are as follows:

- Municipalities are required to meaningfully engage with the parties involved in an eviction.
- A joinder can be enforced requiring municipalities to be joined to proceedings in instances where the evictees are facing potential homelessness as a result of the eviction.
- The courts have required municipalities to formulate and implement a reasonable housing policy which must include the provision of adequate alternative accommodation for evictees facing homelessness.
- The courts have further made it mandatory for the municipalities to provide full information before the court in respect of funds available and its housing policy and all other information that the court needs in order to make a fair decision.
- The judiciary has given further emphasis to the responsibility of the municipality to give effect to the urban shelter rights enshrined in the Constitution by providing access to alternative accommodation to evictees who would be rendered homeless due to the eviction. This now includes the sheltering of evictees removed from privately-owned land.
- Municipalities are also required to budget for all categories of persons in need of emergency housing.
- This is a significant volume and weight of responsibility placed at municipal level and whilst municipalities could be more proactive in planning for emergency housing situations the sobering reality of their limitations as discussed throughout this document must be viewed in tandem with the views of the courts and of legal activist organisations such as SERI and Lawyers for Human Rights.

The responsibilities of municipalities can thus be summarized as follows: the provision of alternative accommodation (to all, not only those evicted by the state but also those rendered homeless because of evictions by private landlords) and emergency housing. The courts also ordered that municipalities have to ensure the development of a reasonable housing policy that addresses the shelter needs of those living within their jurisdiction.

So what is the response required from municipalities within the current delivery paradigm? State delivery of housing has since 1994 focussed on the delivery of freehold permanent housing through its subsidy programme. While this has undergone policy review and while the mode of delivery has been addressed, it remains the dominant form of housing delivery. The in-situ formalisation and regularisation of informal settlements has also become a focus since the introduction of the upgrade of informal settlements programme (UISP). Designed as an incremental response to shelter the long term intention is for the provision of tenure through permanent housing for ownership.

Over the past two decades this delivery model has however been supplemented with the delivery of rental housing through the social housing and community residential unit programmes. Cities themselves are also the biggest landlords as they manage the existing rental stock that was inherited from the pre-1994 period. However, the provision of rental has not reached the scale of the subsidized housing programme with the numbers of rental stock insufficient to address the rental needs. The issue of rental has also been complicated by the host of management challenges (experienced by local governments managing the inherited rental stock as well as social housing institutions responsible for managing the rental units built through the social housing programme). Local government and metro municipalities in particular have had to play a significant role in housing programmes that provide ownership as well as rental opportunities.

Where their role has become most emphasized in court judgments is around the provision of emergency and temporary accommodation. Municipalities are often required to provide decant and emergency housing for communities that would otherwise be rendered homeless, either by natural disaster or by evictions. Since this requires the rapid reprioritising and reallocation of funds and capacity, it remains a difficult form of urban shelter for municipalities.

MUNICIPAL EXPERIENCES

Semi-structured interviews were conducted with three different metros. They were asked to unpack the key shelter concerns in their municipalities, their interpretations of the court cases and the likely impacts on their work and encouraged to propose some options for how best to facilitate shelter rights in their cities.

City of Johannesburg

The City of Johannesburg has been an important site of urban shelter rights struggles over the past ten years. There are many reasons why it has become an epicentre of these struggles and where volume and frequency have been more pronounced than in other areas.

Johannesburg is a major labour receiving destination in South Africa. Whilst all of South Africa's major cities are increasing in population due to both natural growth rates and rapid urbanisation, Johannesburg is considered the economic hub of the Gauteng City Region and attracts thousands of migrants daily. This is not new, in fact a historical shortage of adequate housing also means that not only new entrants to the city but also people who have lived in the city for a long time still battle to find accommodation located in reasonable proximity to work or income opportunities. The City of Johannesburg Municipality's Human Settlements Department has struggled for a number of years to keep up with demand and to address housing backlogs.

Not only has the state battled to meet the demand for well-located housing for low-income citizens but the private sector has not delivered to this market either. Private-sector housing, both rental and permanent titled housing, has been unaffordable to those households earning less than R3500 per month. Attempts to either incentivise or compel (through legislation) the private sector to supply housing to the lowest income earners in the City have largely been ineffective. The private housing sector contends that the low rentals and low sales price of housing to this market makes it financially unviable for them to supply such housing.

As a result illegal building and land invasions have been used by the poor and homeless to access shelter. Sometimes this happens through highly organised crime syndicates who invade (hijack) land or buildings and create a predatory market where space is sub-let to those most desperate for housing. Other times spaces are incrementally invaded or simply not vacated despite non-payment.

There are a few spatial contexts within which urban shelter rights struggles have occurred in Johannesburg. The first most obvious and publicised one is the Inner City of Johannesburg and the second is peripheral and vacant land on the fringes of densely built land. These are further discussed below:

Inner City

The inner city of Johannesburg experienced a period of severe decline and disinvestment for a number of years resulting in the abandonment or degradation of its high-density high rise buildings. The inability of the apartheid government to enforce spatial segregation in the 1980's led to many people moving to the inner city in search of opportunities to live and work. Vacant buildings that had been abandoned or neglected by their landlords became attractive spaces for illegal occupation and overcrowding. The inner city spiral of decline and degradation spurred government to implement over the last 15 years a range of policies aimed at regeneration and reinvestment in the area. These interventions have managed to arrest the spiral of decay and improve land and property prices in some, but not all, parts of the inner city. This investment has in some instances also had the unintended consequence (though there have also been intentional attempts to 'rid' the city of informal activity) of alienating poorer city residents. Illegal invasion of abandoned or vacant buildings by shelter seekers have thus persisted (as one of the few means of gaining access to shelter) leading to ongoing urban shelter rights struggles in this municipality. The City of Johannesburg contends that the remedies and instruments designed at national government level and contained in the Housing Code do not provide guidance on how to deal with scenarios such as these.

Buffer Zones, Vacant Land and Dolomitic or Undermined Land

The location of the urban poor on the periphery is a challenge experienced in all South African cities and towns. As more people attempt to access improved livelihood opportunities in the city so has the needs for shelter increased. In the absence of sufficient options, especially for the very poor, people continue to occupy land and erect informal dwellings on vacant land parcels within buffer strips or on land deemed undevelopable because of environmental conditions or geophysical constraints. This has led to a rise in the number and spatial distribution of informal settlements across the city. These informal settlements present their own set of challenges to the municipality.

Backyard accommodation

Backyard accommodation has become an important mechanism through which the urban poor have sought to meet their shelter needs. This form of shelter has grown exponentially in RDP settlements as well as in the form established black and coloured apartheid townships. While often illegal (ie. Erected without the correct building approvals being sought) they are not all informal or undesirable and provide a real alternative for many. Yet this has not received sufficient engagement and responses that would see people making use of this type of shelter (both tenants and landlords) not being penalized through evictions. More needs to be done by the government (at all three spheres) to investigate the opportunities in this market and potential strategies for supporting, incentivizing but also providing effective urban management to ensure effective working of the backyard rental market.

City strategies to date

The City's efforts have been locked into the provision of subsidised housing to address the housing demand backlog and this means that most funding received by cities has to be spent on subsidised (RDP-type) housing and not as much on rental or emergency housing. The City's Human Settlements Department has limited capacity. It has experienced frequent changes in leadership and long periods of having staff acting (temporarily) in management positions.

Implementation has not been at the required pace. The fact that housing implementation is inextricably linked to spatial planning policy, infrastructure development policies, land development policies and social development policies means that housing delivery occurs within a fraught and much contested institutional terrain where roles and responsibilities are often blurred and successful housing projects are dependent on other municipal competencies for whom cooperation is not mandatory.

The City of Johannesburg has by far been the one city in South Africa that has had to face the most legal contestation and pressure in terms of urban shelter rights. This however is a predictable consequence of its position in the national and regional economy. The City has been placed under much scrutiny and pressure from the judiciary through the various legal cases brought against it. Its biggest challenge in giving effect to the court rulings remains the difficulty of providing temporary and emergency accommodation in an inner city context. Land prices in the Inner City of Johannesburg have arisen after years of inner city regeneration programmes. The requirement of the courts that the city provide alternative housing in the same spatial proximity of the housing from where people are evicted means that the City is forced to provide alternative shelter in the face of high land prices, high development costs and high cost of services. It is cheaper to provide freestanding RDP housing than it is to provide an inner city apartment of exactly the same floor area. The cost of services is also higher. This is a disincentive to locate higher density housing on well-located land especially in the face of increasing resource constraints. The RDP-house typology is resorted to as the dominant type of supply. This is not to suggest that municipalities cannot creatively overcome such cost-deterrents. They should indeed be encouraged to do so.

Furthermore the city has to date not received any form of official support from national government to roll out rental housing at scale. The added maintenance and control burden of city-owned rental housing stock is also a longer term financial commitment that the city has been hesitant to make. In the absence of formal housing and an adequate supply of rental housing opportunities, shelter seekers have thus resorted to accessing land and housing in ways that are illegal or that subvert state-sanctioned processes.

Today, the municipality, like others in the country, is forced to look beyond formal permanent tenure housing supply but also at emergency housing, informal settlements and state-provided rental housing as channels through which people must be housed or re-housed.

Municipal delivery in the City of Johannesburg thus comprises three programmes:

1. Informal settlements regularisation, formalisation and relocation.
2. The roll out of the RDP housing to address those on what the city calls its 1997 applicants list.
3. And inner city housing including the provision of temporary and emergency housing.

Some in the City suggest that the courts do not have sufficient understanding of municipal systems, processes, resources and management. They contend that both legal aid organisations and the judiciary assume a radical reallocation of resources within the City to cater for emergency and transitional housing at short notice when an eviction happens.

The result of recent court cases in the City of Johannesburg has been a decidedly antagonistic relationship between the CoJ and Legal Aid Organisations and equally between the CoJ and the Judiciary – especially in the South Gauteng High Court

In an interview, Margot Rubin⁹ contends that the City's lack of proactive planning for evictions means that the City is always on the back-foot when needing to respond to the demands of the courts and of transitional housing at short notice.

⁹ Interview with Margot Rubin held 17 February 2014 for the purposes of this study

Private sector engagements – the land market, the capital market and the developer market.

In the context of inner city type evictions, there is the view that the private sector is indeed in a privileged position because they are absolved of any responsibility to contribute to the housing of displaced peoples after the Blue Moonlight Case detailed above. If a less responsible property owner allows his/her property to deteriorate and does not pay any attention to the monitoring and management of the property, the property becomes vulnerable to invasion by virtue of owner-neglect and in view of the absence of legal shelter access for the urban poor. If that owner then later recognises a change in the potential yield of that property and decides to sell or upgrade it, this would likely lead to an eviction of those living there with detrimental impacts to the city, which has to bear the cost of eviction. However following the legal outcomes, the issue of alternative shelter for affected tenants becomes the responsibility of the state.

The lack of responsible urban shelter provision for the poor and vulnerable by the state is not in any circumstance considered to be the property owner's responsibility. In reality, the private sector is not completely unburdened as property acquisition and development is encumbered by the inability of the city to move people out of buildings timeously. The City has not to date received claims from private land owners for compensation of loss incurred due to delay in evicting people off their property but this is legally provided for and could add to the time and fiscal pressures municipalities face in providing emergency housing.

The City has also not managed to enter into any successful private sector partnerships to accelerate housing provision of the deep-down market. The private-sector voices increasing frustration at the City's lack of incentives for this type of delivery and at the City's failure to meaningfully engage with them about its longer term plans. Another challenge leveled at the state has been the poor provision of temporary shelters and the quality thereof. The city's response has been that temporary shelters run the risk of becoming permanent, a situation which needs to be disincentivised but this issues is merely a response to slow and inadequate shelter delivery.

City of Cape Town

The City of Cape Town has also been the site of significant urban shelter rights struggles. As is the case in the City of Johannesburg, the City of Cape Town attracts many job-seekers to its economic hubs and like other South African Cities it too is beset by a long history of housing demands.

The City of Cape Town does not experience overcrowding and illegal occupation of its inner city buildings to the extent that Durban and Johannesburg do. Its inner city is highly regulated and has not experienced the same cycles of decline and disinvestment as Johannesburg. It has not taken on the role of a reception area for local or regional migrants and these groupings thus locate in peripheral areas where land is cheap and where backyard shacks and informal settlements can absorb them.

The City of Cape Town does however experience challenges with informal settlements and with the loss of homes due to severe flooding and fires. Its amelioration strategies are focussed on the supply of Temporary Relocation Areas (TRA) that can be converted to longer term housing. In addition, there is a focus on supplying rental accommodation and permanent freehold tenured housing to address historic backlogs as per the national housing programme. To ensure the provision of emergency housing, the city makes provision in its budget and the response is captured in the 5 year human settlement plan. In the case of evictions, the city makes provision under its emergency housing programme.

According to human settlement officials, evictions from illegally occupied land or buildings happen on a small scale only and are infrequent. Evictions were necessary for the development of the N2 Gateway project and these have had some press coverage for the problematic socio-economic consequences of the relocation on communities. In the main however the City does not encounter significant problems with getting people to move out of TRA's in the same way as the City of Johannesburg does in its temporary inner city shelter facilities. Most people in Cape Town's TRA's move out voluntarily or when they are offered a state rental or ownership opportunity.

The City of Cape Town has identified rental stock or newly built housing for ownership allocation. So people in TRA's are called upon as per their waiting list to be offered either a rental opportunity or their RDP home. If they decline the rental opportunity, they are kept on the list for permanent housing. In turn if they select the rental opportunity they are moved down the waiting list for permanent housing.

The City plans to move away from creating TRA's toward creating Incremental Development Areas. This is a departure from providing short term accommodation with communal ablution towards designing basic units with electricity and water connections that can be incrementally upgraded to long term sustainable homes and permanent sustainable human settlements. A further intention of the City is to provide a small portion of emergency housing within each new formal housing development undertaken in the future. This begins to deal with the criticism of legal and housing activists that emergency housing in the City of Cape Town is created in the most desolate places far removed from opportunity and social networks.

Like Johannesburg, the City of Cape Town's efforts to relocate evicted persons in close proximity to their original place of residence as required by the courts is made very difficult because of the prohibitively high cost of land and services. Generally, property in most of the core of Cape Town is more expensive than similarly located land in Johannesburg.

In the City administration the human settlements department has its own land acquisition unit. This is in contrast to the city of Johannesburg where land transactions and negotiations are handled by the Johannesburg Property Company, a corporatized entity of the Municipality – on behalf of the Human Settlements department. In addition, this unit is in the process of implementing a transfer of all provincially owned land and rental stock to the municipality for improved management and strategic use.

The City has a programme for the upgrading of existing rental housing stock and to a limited extent has undertaken the development of new rental housing stock. They express the concern that dedicating funds to upgrading rental housing stock is not an easy decision to make given the opportunity costs of spending the same funds on permanent freehold housing unit to address the long waiting lists of people who have applied for permanent housing.

What does the City need to be able to more effectively realise urban shelter rights?

The City has in the past been in a position where it was required to provide basic water and sanitation to illegal occupants awaiting eviction on private land. It could not do so because municipalities cannot in terms of the MFMA (Municipal Finance Management Act 56 of 2003) spend capital funds on property that is not state-owned. The City acknowledges that providing services on privately owned land for illegal occupants is not a sustainable solution but says that this restriction hampers their ability to create humane conditions for such persons/communities.

The City also called for less tardy and bureaucratic processes for accessing national and provincial funding for urban shelter provision especially in the case of emergencies. The issue of municipal capacity to deal with urban shelter rights battles and evictions is a big concern even though the City of Cape Town has one of the largest (i.t.o. headcount) Human Settlement Departments in the country. When such events occur and the City is required to act promptly in line with court decisions, it means that a great proportion of their capacity is reallocated to dealing with these requirements and is thus taken away from other important project commitments that could lead to unspent budgets and project delays.

What policy reforms are needed?

Like other municipalities the City of Cape Town has grave concerns about the Individual Subsidy Programme and who it is benefitting. They believe that more and more Capetonians find themselves unable to access the government ISP assistance because they earn more than R3500 per month. The view is that the FLISP subsidy is still not a sufficient remedy as applicants are not successful in securing finance.

Although affordable rental housing is a very important and desirable offering on the ladder of housing options for shelter seekers, there is some concern in Cape Town that households earning R3500 to R9000 have few options other than to remain in rental housing without being able to progress up a ladder of housing options

into permanent ownership. Nevertheless, the City cites some successful examples in getting private-sector support for the GAP market but not for the deep-down rental market.

The City has managed to enter into agreements with Standard Bank and with Nedbank to provide affordable housing to the gap market. In these cases the City provides the land at reduced price to banks for the development of housing for those who qualify for FLISP (The Finance-Linked Individual Subsidy Programme). The banks agree to provide the top-up finance. The City then first looks through its waiting list of people who qualify for FLISP and offer them this housing first. If any housing units remain as surplus, these are offered on the open market.

As in other cities, Social Housing institutions are still battling to make their housing offering more affordable to the deep-down market.

eThekwini Metropolitan Municipality

The Ethekewini Metro municipality has presented a view of urban shelter struggles that differs somewhat from that of the City of Johannesburg. Ethekewini too has experienced a rapid increase in the demand for housing over the past two decades and has struggled to manage the proliferation of informal settlements. Unlike Johannesburg, its pressures are not particularly felt in an inner city context. While there have been incidences of building invasion and private evictions many of these have gone unchallenged in the courts from a socio-economic rights perspective and have largely been left to private property owners to handle.

The most severe pressure for the realisation of urban shelter rights in Ethekeweni comes from communities who have illegally occupied land for informal settlements and from those resisting relocation.

Of particular concern to the municipality is the fact that over 10 000 households are currently residing in the city-provided transit camps without any prospect or programme of access to urban shelter opportunities. These households it would seem remain stuck in transit camps because no programme and therefore no budget exists to either absorb them into planned housing projects or to create new projects specifically to cater for them. It is unclear why there has been no planning or programming to absorb these households into the City's current delivery programmes. Many of these households were moved into transit camps when the city needed to prepare for the hosting of the FIFA 2010 Soccer World Cup.

In eThekwini, as in the City of Cape Town, the prevention of land invasion has been an area of focus in recent years. Unlike Cape Town however the security and enforcement capacity within the Municipality that was assigned to the prevention of illegal land invasions has over recent years been eroded through redeployment into other forms of law enforcement and the city has lost the ability to keep a close watch on vacant land and property vulnerable to invasion.

Apart from law enforcement concerns, the City has a major challenge in preventing the densification of informal settlements. This, according to the City, makes it very difficult to plan ahead for the relocation or upgrading of informal settlements as the number of households to be catered for escalates on a weekly basis.

The city's view of national housing policy and budget instruments is that they are not flexible enough to cater for the unique challenges that face eThekwini. The city faces many geo-physical challenges such as unstable slopes, nature conservation areas and poor soil conditions for construction. The cost of providing top structures therefore is often higher in this city than it is in other cities that have relatively flat and stable land. These challenges have caused delays in construction thereby reducing the rate of delivery. The city wants these factors considered in the design of national government subsidy schemes and the setting and evaluation of delivery targets. The city also cites geo-physical conditions as a limiting factor in the delivery of new and creative housing typologies.

In general the city has adopted a principle of upgrading informal settlement in-situ. Relocations of settlements have only happened where land has been earmarked for development and is considered economically important. This was the case in the Durban Point Development where private developers approached the city with their intentions to develop a massive mixed income development that was to significantly increase the city's revenue base, stimulate investment and enhance tourism offerings in the city. The developers

approached the city asking for assistance to remove illegal occupiers of land and buildings in order to speed up development. The city agreed and those shelter seekers were removed from the area to enable the development to proceed. This type of decision makes the city's social responsibility to urban shelter seekers secondary to its investment facilitation and revenue generating goals.

This is not an isolated example of the power of the private sector to remove occupiers in order to enable regeneration projects and property development to proceed. These matters have not resulted in frequent or prolonged court battles as has often been the case in Johannesburg.

The Ethekwini Metro has focussed much of its human settlements resources on the upgrading of informal settlements and has not deemed it urgent to develop emergency or temporary housing policy or implementation responses.

FUNDING MECHANISMS FOR THE PROVISION OF SHELTER

National Housing Policy has influenced how housing has been funded by the state. City housing departments have a few avenues to pursue in order to secure funding for urban shelter provision:

Equitable share

The Division of Revenue Act 2 of 2013 provides for the transfer of a portion of national funds to provinces and subsequently the transfer of part of those funds from provinces to their municipalities. This requires municipalities to proactively budget and plan for their human settlement expenditure for 3-year periods and to report in detail on their annual usage of these funds.

Unspent DORA funding has to be returned to National Government and impacts on future funding requests. Funding for housing programmes from National Treasury has been informed by housing programmes as defined by the Housing Code. The first generation of grant funding provided to municipalities (1998 to 2008) funded the roll out of free-standing freehold homes for those qualifying for subsidies. Due to the high cost of well-located land, these were provided on the peripheries of towns and cities. Recent national policy has acknowledged this and the more recent funding instruments are aimed at correcting this challenge and focussing on more integrated human settlement development.

Urban Settlements Development Grant (USDG)

The USDG combines the infrastructure component of the individual housing subsidy together with the former MIG funding stream. It is intended to fund land acquisition, bulk infrastructure provision, informal settlement upgrades and reticulation services for integrated housing developments as well as project packaging costs. This grant facilitates more integrated human settlements development planning and coordination across the City. It serves to:

- Allocate funds to projects based on project costs and not on a set amount.
- Firmly establish the City's key roles and responsibilities
- Give more flexibility in the funding of infrastructure programmes comprising all infrastructure needs
- Improve bulk infrastructure funding programmes and implementation

Human Settlements Development Grant (HSDG)

The HSDG has been amended from the original design but continues to be for the funding of the construction of top-structure in municipal housing development

Overall it must be said that current funding models have not been designed to dramatically shift the type and quantum of housing being delivered and still, some would argue, locks the state into the same spatial patterns of delivery with very little room for innovation in terms of creating a varied taxonomy of housing typologies and forms of tenure.

Discussion

Municipal human settlement departments still battle to access enough funding to make any real impact on the growing housing backlog. One of the biggest challenges is the re-prioritising of committed funds to respond to urban shelter emergencies such as evictions. There is no way of fully predicting how much is needed to cater for such events. It would however be naïve to assume that accreditation and assignment will result in cities being able to rapidly respond to emergency housing needs that arise from evictions. Most cities still claim that they are unable to plan for emergency housing as these demands are unpredictable and they cannot hold money aside indefinitely without knowing when and if those funds would be needed for emergency housing. What cities have not yet pursued is a committed and proactive approach to multi-year budgeting for the creation of temporary housing stock that would be able to absorb some measure of predicted future demand in emergency situations.

This would not mean having to hold unspent funds for emergency housing indefinitely but would mean that cities could commit those funds to the preparation of temporary housing accommodation in key locations (such as the Inner City in the case of Johannesburg) in a proactive way to make way for at least some of the inevitable incidences of eviction cases they will face. This kind of capital expenditure would need to be accompanied by a long term plan for how these facilities would be occupied and managed.

The City of Johannesburg has indicated that despite numerous attempts to access funding through the provincially administered Emergency Housing Programme Fund this has been unsuccessful because the Gauteng Provincial Government has not been able to retain money in this fund as it has had to respond to other priorities. Interviews with officials from the City of Johannesburg indicated that applications for this funding have thus been rejected by province on the basis that there are no available funds. A key request echoed by the interviewees for this project has been for the development of range of fiscal instruments to address urban shelter provision at municipal level. Both the City of Cape Town and the City of Johannesburg called for a fiscal instrument to support the rollout and management of rental housing stock at scale in dense urban environments. A contrary view to this was expressed by another interviewee, a housing expert, that there was in fact no need for the development of additional fiscal instruments such as that proposed by city officials. Instead, the argument was made that the policy and the fiscal instruments created thus far remain adequate and relevant and that the challenges and appropriate responses for more effective housing and settlements delivery lay elsewhere.

What was a unanimous view amongst all interviewees was the urgency of accreditation so that municipalities have the flexibility and fiscal authority they need to optimise human settlement funding. This in theory would greatly aid local government urban shelter provision for the deep-down market. Whether it will do so in reality, will largely depend on the capacity and training of human settlements departments at local level to manage and optimise their budgets.

WHO ARE THE ROLEPLAYERS?

Key actors

Given the overview of the status quo and existing legislation, this section will provide a brief overview of the impact of housing policy changes on South African landowners, tenants, landlords and cities themselves. A thorough reflection on urban shelter rights and the changing spatial landscape of South African Cities requires a deep understanding of how the role that each participant in the pipeline of realisation of urban shelter rights has changed and should change.

The ability of cities to interpret and operationalize housing policy in their specific local contexts is fundamentally dependent on a nuanced and realistic view of the past present and future roles of each role-player. Some of the key participants in the sustainable realisation of urban shelter rights include the following:

- Owners and Developers
- Tenants and Evictees
- Foreign Migrants

-
- Local Government
 - National and Provincial Government
 - The Judiciary
 - Social Housing Institutions
 - Legal Aid Organisations
 - The Role of Local Politics

The legislative framework, as listed above, gives a number of detailed frameworks as to the role of each of the above subject to the housing type.

Owners and Developers

The private and public sector both play a number of different roles in the housing chain to which urban shelter rights would apply namely as: a) developer b) landlord and c) financier. For the purposes of this section, ownership will focus on the private sector as the role of the City will be discussed in point C.

There are two main ways in which the judicial rulings have impacted on private property owners.

- Firstly, there is a move away from considering private property rights to be more important than those of occupiers; and
- Secondly, the ruling of Blue Moonlight which requires local government to provide alternative accommodation for evictees of private and public properties.

Wilson notes the conflict between the rights of the property owner and the rights of occupants. He suggests that the courts have begun to provide a challenge to the assumptions governing ownership rights and the protection of occupation. He further notes that 'the obligations of the state in giving effect to the right of access to adequate housing were to prove wide-ranging for the enforcement of the right to protection from arbitrary evictions entrenched in s 26(3) of the Constitution and the PIE Act.' (Wilson, year unknown)

These judicial rulings however cannot be viewed in isolation but coexist with a complex set of additional factors. The ebbs and flows of urban property markets, for example, present a powerful determinant in the right to housing debate. Supply and demand underpin all of these interactions. The private sector is profit driven and real estate development is a high risk proposition. The state of the real estate, asset and debt markets all have an impact on private sector developers and their profit margins.

To date the private sector have been reluctant to embrace policy changes which might prejudice their profits such as inclusionary housing which would begin to accommodate the urban poor in well located areas. In other parts of the world, planning gain is non-negotiable and it is incumbent on developers to budget for state provisions in their budgeting process. The State of the Cities Report (2011) highlights the fact that the middle-high income private sector developers are able to access the best located land given that they are able to pay more for land than low-income housing developers (2011: 72).

An additional factor in the unpredictability of urban shelter for the poorest city residents is the property market. Sudden private sector interests in a specific neighbourhoods or buildings have led to many of the court cases mentioned above. The City of Johannesburg's Better Buildings programme actively sought investors in inner city neighbourhoods in order to kick start a process of regenerating neighbourhoods in decline. In the early years of the programme, this led to buildings being sold on to the private sector and existing residents of the buildings being evicted.

The tension between City attempts to regenerate parts of the Inner City and the urban poor have to date been at odds with each other. This phenomenon is treated as if it is an intractable problem. In reality, it is a financial and political question. One in which the public sector needs to actively participate. The private sector argues that participating in the low income rental market is not viable from a financial perspective. Work done in both eThekweni and Johannesburg inner city, suggest that there are a large number of people looking for accommodation for under R1500 per month yet the private sector has been unwilling to develop low-cost housing in that price range and the delivery of social housing has been slow.

Referring back to Klug et al (2013) article on Inclusionary Housing, the private sector has been very reluctant to embrace inclusionary housing principles. Further, in the case of redevelopment of Inner City buildings, the private sector is increasingly reluctant to become involved in already-occupied buildings given the rulings on evictions. The leverage that municipalities have with developers in risky neighbourhoods amounts to commitments to good urban management or else facilitating the access to well-located private or municipally-owned or (managed) urban land or buildings as an incentive to invest. However urban management in these instances are often interpreted as a removal of the poor and the informal activities that they are involved in, resulting in evictions from both informal shelter and informal activities.

This housing crisis underpins the necessity for a consolidated plan for all forms of low-income rental housing and temporary accommodation. For many city governments struggling with inner cities in decline, encouraging the active participation of the private sector in inner city neighbourhoods should be a key objective. In order to generate good quality, low cost housing, the private sector needs to be a partner with government and invest their capital in redeveloping existing buildings. City-generated strategy documents speak directly of the need to partner with the private sector. Treasury's Urban Development Zone tax incentive is in place to encourage private sector investment. To date however, the private sector is wary of investing in inner city neighbourhoods with poor urban management while municipalities are not doing enough to facilitate and drive a stronger public sector response. In addition, accessing building stock is the crucial factor which inhibits the redevelopment of inner city buildings.

The private sector is also a player in urban shelter rights in terms of the accommodation they offer as well as potentially exploitative relationships with tenants. In both the inner city of Johannesburg and eThekweni, unscrupulous owners and landlords have exploited those in desperate need of accommodation. This is not to suggest that all relationships are exploitative as there are low cost housing companies who provide good quality, affordable housing for low-income households. More engagement should be encouraged between the state, private sector and civil society around suitable responses and finding a balance between the need for investment, shelter needs and future urban and settlement development. Given that the private and public sectors have largely been at odds in terms of developmental outlook and approach, the likelihood of a coordinated approach to low income housing and rental housing is questionable. Yet the legislative changes compel the public and private sector to work together more closely. Municipalities are now required to provide shelter to those evicted by both private sector and public sector landlords. It is incumbent upon both parties to establish a way in which to manage housing rights of those likely to be affected by attempts to invest in and upgrade our urban areas. Municipalities have within their power the ability to incentivise the private sector to play a more partnership oriented role. However, in order to provide viable recommendations on how best to achieve a more symbiotic relationship in future, it is important that dialogue and engagement is also extended to include the private sector.

Tenants and evictees

In this section we will briefly analyse existing work on the locational choices and expectations of vulnerable urban dwellers and will also reflect on future implications of the role of this constituency in terms of the realisation of rights in cities. This is informed by secondary research and key informant interviews across the selected case study cities under investigation.

The right to housing resonates most powerfully with vulnerable segments of city residents. This includes residents of informal settlements, backyard dwellings and the urban poor living in inner city neighbourhoods. As SERI's report on Johannesburg 'Minding the Gap' states:

'According to Census 2011, 51.8 of households in Johannesburg earn less than R3 200 per month. In the inner city 33 861 households – approximately 121 899 people - earn below R3 200 per month. This means that over 49 of households in the inner city earn less than R3 200 per month. According to the Affordable Housing Company (AFHCO), accommodation for those earning less than R3 750 per month has not been available and "the only options for such earners remain RDP housing units which are outside the city, shacks in townships and hijacked buildings in the inner city, where they are often exploited by slumlords." (SERI, 2013a: 14)

Work done in the Inner City in eThekweni suggests that there are similar trends with a severe shortage of housing for residents who cannot afford more than R600 per person per month. The report further explains that there is a huge demand for rental housing between R1200 and R1700. The typologies of inner city housing in eThekweni are mixed as are the income levels but include:

- *Formal residential accommodation*
- *Tourist accommodation*
- *Social housing*
- *Low-budget short term accommodation*
- *Student accommodation*
- *Workhouses*
- *Welfare shelters*
- *Thokoza hostel*
- *Rough sleepers (Charlton and Lees, 2005: 9-10).*

The combination of policy changes and judicial rulings in theory have gone a long way to protecting the rights of the urban poor. Yet the lack of affordable housing remains and the urban poor continue to live on the periphery of the city or in hazardous inner city buildings. Research done on inner city living conditions confirms that rooms are sub-divided and many tenants are living in exploitative conditions either through legitimate landlords or by self-appointed building committees.

What has emerged strongly through engagements with both SERI and with the municipalities is that not all evictees or shelter seekers facing homelessness from evictions are the same. To date, in the absence of accurate and up-to-date statistical information and record keeping about evictees and illegal occupiers of land and buildings, a set of assumptions about who evictees are has been rather crudely forged and popularised.

In engagements with the City of Johannesburg, the municipality questions the view presented in media and the courts of evictees of inner city buildings being uniformly poverty-stricken, helpless and vulnerable persons who can find no other means of access to shelter. There is a view that while the majority of evictees are indeed as described above, some evictees strategically locate in occupied buildings as they prefer the less visible and underground forms of shelter-seeking over the processes of formal market housing. In some instances this can be attributed to cost-saving strategies, while in a number of other instances it can also be a way of concealing criminal activity and preserving relative anonymity in the eyes of the state. This view is not only held by municipalities and in engagement with SERI they confirmed that that not all evictees are of the same desperate economic status. However, it is important to engage a nuanced approach that recognises that even in instances where people may have formal employment this may not be sufficient to access formal rental or social housing or there may not be adequate stock available for them to access. SERI contends that the City often assumes that evictees are largely recent migrants to the city when in fact many people they represent have been in the City for decades and have deep-rooted attachment through social networks etc. They also take the view that evictees are often pathologised by the state as a group of people with which there is some form of inherent lack or inability. Again this is not true of many of the evictees that they have represented in eviction battles.

The City of Cape Town says that it has not to date had to deal with an evictee who is an undocumented foreign national and so the perception that the urban shelter seekers who place a burden on Municipalities are largely recent migrants from other countries is simply not true in that City. SERI holds that same true for Johannesburg.

Overall both municipalities and representatives of evictees seem to agree on one point; that urban tenants are not a homogenous group and that there is a need for concrete evidence to debunk myths and create a more nuanced understanding of people who may face eviction from illegally occupied land and buildings. Ideally this would also translate into more tailored forms of urban shelter intervention.

Foreign Migrants

Foreign migrants in South African cities are perhaps the most vulnerable to evictions. Not only because in some situations they are targeted for evictions but also because they have limited formal access to housing rights.

Greenburg and Poltzer's (2008: 3) study suggests that for foreign migrants, private sector accommodation is the most important with little reliance on public housing. Further, NGO-run shelters mostly do not allow access to foreign migrants. In the case of evictions, foreign migrants have no right of access to temporary accommodation. In addition, they cannot access government housing subsidies, leaving them extremely vulnerable to exploitation. Challenges experience by migrants (though not limited to them) included overcrowding, poor treatment and the constant threat of eviction caused by a range of uncertainties. Other issues specific to foreign migrants were xenophobia by landlords and neighbours and challenges accessing documentation (Greenburg and Poltzer, 2008: 13), potentially worsening their ability to access services and resources.

Foreign migrants are most likely to settle in inner city areas where they have access to existing networks. These networks serve an important purpose in accessing housing. To date, housing policy has made little progress in securing greater rights for foreign migrants.

Local Government

The most significant role-player in the realisation of urban shelter rights is local government. Their approaches to urban shelter and their institutional systems for delivering on shelter rights needs to be fully understood in order to identify systemic barriers to sustainable and realistic future delivery. Key dependencies within local government and between spheres of government are a vital part of this analysis. The sustainable realisation of urban shelter rights in cities is not solely the responsibility of housing and human settlements departments and agencies. Human settlements relates to a range of additional factors that together provide the conditions for adequate livelihoods. The provision of urban infrastructure and amenities such as transportation, social services, and developable land amongst others, are all part of the enabling framework required for realizing the right to shelter.

Local government plays a key role in the planning and delivery of sustainable human settlements. In particular, local government is responsible for land use management, infrastructure development and town planning functions that create the environment and context within which the delivery of shelter opportunities can lead to settlements that enable access to livelihood opportunities. These functions are enormously important in determining where housing is delivered, at what scale and how long it takes. Delivery Agreement Outcome 8 developed by the Department of Human Settlements orientates local government's role in housing as follows:

- 'Initiate actions to increase densities in metros and large towns by 2014;
- Initiate actions to release public land for low income and affordable housing to support the delivery of 400 000 housing units on "well located land" with a 30 to 45 minute journey to work and services and using less than 8 of disposable income for transport by 2014;
- Support the expansion of the national upgrading support programme in 45 priority municipalities to facilitate the upgrading of informal settlements.
- Specifically support the grading and rezoning of informal settlements by the priority municipalities.'

This delivery outcome suggests a very clear set of objectives to both push the state towards the provision of well-located low-income housing as well as start constructively improving informal settlements.

To date the efficacy of housing policies in the different cities vary. This is contingent on scale of housing delivery but also on the demographic factors such as population growth and household size. As mentioned earlier in the document, Gauteng and the Western Cape have seen the greatest population growth percentages.

South Africa's metros are able to churn out RDP housing with a fair amount of success, but have largely failed to attend to other housing typologies. Most local governments however have no real ongoing strategies, plans or budgets for dealing with low-income housing beyond the RDP housing model. Each individual court ruling might temporarily result in a shift in focus to well-located low-cost housing but we have yet to see a systematic response to this issue. This may also be related to the fact that the cities remain dependent on grant funding from provincial and national government and that these funding mechanisms are for the most part designed for the provision of RDP-type housing and not well suited to more creative means of providing urban shelter options. Certainly cities are assessed in terms of the number of new housing units they create and this inevitably creates pressure to focus more on greenfields RDP-type housing than on other typologies.

Historically, municipalities have responded to the illegal occupation of buildings or land by the urban poor by sanctioning evictions. There seems to be a historical precedent to this and Berrisford and Kihato (2006) trace the history of evictions in Southern African arguing that much of this precedent around evictions come from the colonial past. Using Johannesburg as a local case study they demonstrate how the Building Regulations Act, for instance, was used to justify evictions.

'One of the consequences of this programme has been the eviction of occupants of 'bad buildings' in the inner city. Living conditions in these bad buildings are unhealthy and unsanitary, often with no water and electricity. They are also often structurally unsafe and a fire risk. Although it is not precisely known how many people live in these buildings, one report estimates that their number in early 2005 stood at 25,000. The legal basis for these evictions lies in the City of Johannesburg's Building Regulations, issued under the Building Regulations Act 103 of 1977 (COHRE, 2005b)' (Berrisford and Kihato, 2006: 25).

However, evictions as the knee jerk reaction to buildings or land unlawfully occupied is no longer legally permissible. Local government is now compelled to generate emergency accommodation, temporary accommodation and follow very specific steps before undertaking any form of eviction.

National Government and Provincial Government

The devolution process of rights realisation to the local government level is impacted by the influence and role of national and provincial government. Clarifying what these influences are is fundamental to both a clear understanding of the current urban shelter terrain and also to the formulation of a sustainable intervention in changing the spatial landscape of South African cities.

The role of national government is to set out housing, fiscal and urban development policy to guide other spheres of government on how to act locally. They also have an oversight and monitoring role to provinces and municipalities and have set performance targets for the delivery of housing. The provincial departments have had to translate the targets and policy set out in national government to their jurisdiction. As mentioned above Provinces have had much of the authority to budget and strategically plan housing development. Though the devolution of the housing and human settlements responsibility to the local level is considered the best option for ensuring the effectively planned human settlements, the policy roles of provincial and national government remain important. An effective local response depends on the existence of adequate policy and implementation tools and frameworks, especially from a financial perspective.

Role of the Judiciary

In light of the rulings of the court and their interactions with municipalities, the role of the judicial system in influencing housing policy can be considered to have been both positive and negative.

The municipal inputs have been about exploring opinions about the role the judiciary has played to date. Predictably, responses have been mixed. On the one hand, the judiciary has managed to protect the rights of many vulnerable and indigent shelter-seekers facing homelessness. On the other hand, some have been critical of the judiciary for making judgements that do not reflect consideration of limits to implementation experienced by local government. A further criticism has been that the judiciary has made various unverified assumptions about what municipalities are able to do both financially and in terms of their authority, mandate and power.

Irrespective of whether the judiciary has played a positive or negative role in the urban shelter rights and responsibilities debate, the overall consequence of the role they have played in ruling on urban shelter rights is that:

- The primacy of section 26(a) of the Constitution above other competing rights has been firmly established and emphasised.
- The final responsibility for providing urban shelter to those who cannot afford it on the open market has in the main been laid squarely at the doors of municipalities.
- The courts have created a greater sense of urgency within housing delivery and housing policy formulation. Whether or not this has necessarily resulted in accelerated delivery remains in question.
- The legal proceedings and final judgements have created a public and very visible platform for the expression of the vulnerability and plight of urban shelter seekers who earn below R3500 per month or who are unemployed or making a living through less-formal economies.

Other roleplayers

Legal Aid Organisations

These organisations have provided legal access and advice to vulnerable urban shelter seekers facing homelessness. Some argue that in representing the plight of evictees these organisations have given a voice to marginalised communities who live and interact in the interstitial realms of urban life. Others argue that these organisations can by virtue of their legal expertise render their clients relatively voiceless or unable to speak for themselves.

The criticism levelled is that the perceived disparity between level of access to information and level of formal education between legal aid organisation representatives and evictees can mean that evictees are often by virtue of their relative disempowerment, forced to uncritically accept the form and content of advice and representation they receive in court.

Despite these critiques they have played a critical role in:

- Pressurising the state to create humane housing interventions for the deep-down market.
- Raising public awareness of socio-economic rights in the housing of the poor.
- Shifting the focus of the judiciary away from the protection of private property rights towards a more explicitly social welfare agenda.
- Influencing engagements and negotiations between municipalities and communities (out of court).
- Contributing to the body of knowledge and the discourse on urban shelter rights struggles, housing policy provision and documenting the roles and policies of the state.

Local Politics:

Housing delivery and shelter-seeking behaviour of communities is an intensely political terrain. The complexities of party politics at the ward level in South Africa presents a minefield in which human settlements officials must conduct participatory processes and negotiations with communities. In particular, ward committees and ward councillors have a great deal of power to either facilitate or subvert negotiation and consensus-building efforts of municipal officials who are attempting to address community housing needs such as relocation, allocation of new housing stock or provision of municipal services. Many officials claim that the power of ward councillors is often abused and that it becomes unclear as to whether the ward councillors and their committees are accurately representing the needs expressed by the community or are unilaterally making decisions based on their own need for power, control and support. Interviews with municipal officials and others brought these local political dynamics to light and revealed that in some informal settlements or illegally occupied land, there is interference by ward councillors who fear that relocation of households to state-subsidised housing opportunities in another location will erode their support base. In these cases the ward committee's desire to retain their constituency in-situ would lead them to forcefully reject offers of state-proposed shelter solutions even if that means depriving households in their community of urban shelter.

A further dimension of the difficulties of local party politics in the context of urban shelter rights realisation is presented by the resistance of certain segments of the population to the location of low income housing in close proximity or inside their local wards. This is particularly problematic when the ward in which low income housing is proposed (or is proposed in proximity to) is led by an opposition party. Apart from the expected 'Not-in-my-Backyard' (NIMBY) opposition that is usually class-based, the added tension of party politics makes it difficult for municipalities to locate urban shelter for the urban poor in locations that they see an opportunity to.

The intensity and extent to which these political dynamics presents a significant constraint to effective delivery is yet undocumented but it certainly adds a layer of complexity in the realisation of urban shelter rights and raises important questions about the politics of representation of communities and of whose voices are being heard.

THE ROLE OF LAND IN REALISING SHELTER RIGHTS

The Question of Land and Land Markets

An important consideration in the delivery of adequate shelter in South African cities is the availability of land for development and the tools available for its development. It is well documented that access to affordable land by the state is one of the biggest obstacles to housing delivery.

There can be no talk of state-led housing delivery without a discussion of the role of the state in the urban land market. Without adequate well located greenfield sites and brownfield sites that can be more equitably redeveloped, the spatial configuration of South Africa's cities will not change. To date however despite attempts at spatial transformation, there has been limited progress made. The availability of tracts of affordable land for the delivery of RDP housing, which has been the form in which low cost housing has been delivered in South Africa, is mainly found on the periphery of cities thereby reinforcing existing spatial patterns and the need for individuals and households to find additional alternative accommodation in order to be closer to economic opportunities as well as social and educational services. A map produced by the GCRO on the proximity between new RDP housing developments and economic centres developed from Department of Human Settlements' data from 2008 shows that the following are the mean distances between RDP housing and economic centres:

Major Economic Centre	Mean Distance
Boksburg	14.6 km
Centurion	13.7 km
Johannesburg	20.3 km
Midrand	7.8 km
Pretoria	25.7 km
Sandton	17.3 km
Vereeniging	17.3 km

Gauteng	17.8 km
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Source; www.gcro.ac.za/maps-gis/map-of-the-month

The discussion document for the Integrated Urban Development Framework highlights further that there has been limited private and public resources specifically targeted at 'rental, social and inner city housing' which has resulted in growth in informal settlements and backyard dwellings in peripheral areas of the city (Harrison and Todes, 2013: 20).

A recent report by NASHO and HDA (2013: 31) suggests that one of the reasons for the lack of new social housing in well located areas is partly a consequence of the lack of availability of affordable land. In most instances, the land purchased is from private landowners as the state has been reluctant to release well located land to the market.

Brown-Luthango, et al (2013) argues that it is important for municipalities to be aware of land available for housing and other municipal interventions. To date however, many municipalities are largely unclear on what land parcels there are available in their jurisdiction, both in terms of the public and private sector. Furthermore, they are reluctant to sell off municipal land and have been sluggish in developing innovative land use management practices.

So what challenges are in place for acquiring and developing land parcels? Brown-Luthango et al (2013: 192). argue in the piece mentioned above that some of the key constraints to the development of vacant land include restrictive town planning regulations, institutional constraints, the availability of infrastructure on the land (or servicing of the land) and the physical condition of the land. In a context of growing urbanisation and existing housing backlogs, managing access to land is the first step in beginning to generate better located low cost housing.

Access to land serves numerous functions in the rights debate. McGaffin and (Kihato 2013: 22) contend that access to land is fundamental to improving the prospects of the urban poor. This work goes further to explain how difficult it is for the urban poor to access well located land as the valuation of this land in the formal property market makes affordability impossible.

But what is considered to be well located land? There are a number of general considerations including accessibility, location, topography and the availability of services. Accessibility refers to the proximity to transportation, roads and communication, especially for residential settlements. So a particular space such as the inner city is not necessarily 'well located' in all instances. The location of the land is also extremely important in the broader context. This determines both the value of the land as well as its long term economic potential. For instance, the prospect of a growing economic node is an important consideration. Through densification and better public transportation, there are shifts in desirable economic nodes. The topography of the land determines its suitability for different housing typologies. Finally, the availability of services or the prospect of provision of services is very important to the development of human settlements. Without the availability of services, development is severely hindered (Millington 2000: 102).

Access to well-located land is fundamental to the urban shelter rights question. For residents of inner city neighbourhoods, for instance, location and access are key factors that underpin their decisions to live in these high density, often dangerous, spaces. McGaffin and Kihato (2013: 41) attribute the overcrowding of inner city buildings in Johannesburg to the fact that these neighbourhoods are one of the few places where the urban poor can afford to live in a well-located space. In the inner city in Durban, there is also a huge demand for low-cost housing which has resulted in overcrowding and the ongoing deterioration of building stock (Charlton and Lees, 2005). In addition, to the environmental risks, there are risks for the very poor living in these neighbourhoods. Without security of tenure or legal documentation, they have historically run a high risk of exploitation and eviction. The recent Blue Moonlight ruling now compels municipalities to find well located alternative accommodation for evictees from both private and state-owned property. This highlights the

pressing need of the state to secure well-located land, both for long-term low-income housing as well as emergency, temporary and transitional housing.

Access to land in South Africa's urban centres cannot stand and fall on the availability of greenfield sites on the periphery on which to build new houses. The location of new low-cost housing units is at the heart of spatial transformation. It is also fundamental to urban shelter rights.

In South African metros the availability of suitable brownfield sites is important to the housing question in terms of broader spatial transformation considerations such as densification and defining the urban edge. The generation of appropriate emergency, transitional and social housing in high density areas often requires the redevelopment of existing buildings in well located sites. It is accessing these kinds of brownfield sites that underpins many of the constraints that the City of Johannesburg has experienced while attempting to meet the Constitutional Court rulings.

Access to land markets is also applicable to long term residents without secure tenure. Land is a commodity that can be used both as the means of production itself but also as an asset to buy, sell and trade. For those living without security of tenure, mostly in informal settlements, fear of evictions ensures a constant vulnerability. For those living on the periphery, there might be a better prospect for ownership of a piece of land but with it comes the reality of the locational disadvantage.

There are, however, methods for facilitating access to well-located land. Some of these include practices such as bulk land rezoning and municipal urban policies that favour densification. In addition, another option for providing well located housing for the urban poor is through the use of 'inclusionary' housing.

Klug, Rubin and Todes (2013) review the viability of inclusionary housing in South Africa, with a specific focus on Johannesburg. They contend 'Inclusionary housing policies were seen as enabling more socially integrated forms of affordable housing, but also responded to the inaccessibility of well-located affordable housing as property booms drove up housing costs in many cities within developed countries' (2013: 668). In their article they trace the response of various role-players to the concept of Inclusionary Housing demonstrating the difficulty in achieving consensus from all stakeholders in the process. This policy grew out of the National Department of Housing's 'Breaking New Ground' and elicited much discussion. It has not to date however been legislated. In Johannesburg, the Inclusionary Housing policy was approved as part of the Growth and Development Strategy but the approach has not been fully applied (2013: 672). They provide various examples of mixed income developments using inclusionary housing principles in Johannesburg including Fleurhof (between Florida and Soweto) and South Hills and Pennyville. All of these developments have generated new housing units focused on lower-income households using the principle of mixed-income housing. However, what is most significant about the housing developments is that they have been developed on well-located land, a departure from existing practice (Klug et al, 2013: 675).

Understanding Urban Land Markets

The urban land market in African cities has been described in the work of Urban Landmark (Urban Landmark, 2010) as a puzzle – one that can be arranged in many ways to form different pictures but whose individual puzzle pieces must be understood both individually but also in terms of how they contribute to the whole.

This work also sets out the four critical and intersecting segments of the urban land market. These are the:

- Space segment – this is the physical realm of the property market – it's the culmination of 100's of individual decisions by households and businesses about where to locate.
- Development segment – Actors in this segment carefully monitor demand and supply trends and property values and make decisions about where to develop new built stock and which segments of this market will do so.
- Capital segment – This is the part of the land market that provides the finance for the development of land and property. The suppliers of credit to housing developers and housing consumers are very influential in determining what gets built, how much of it gets built and importantly for cities, where it gets built. Banks decisions to red-line certain parts of the city considered to be too high-risk has certainly played a big part in the decline of certain parts of the South African cities, particularly in the inner cities of Ethekwini and

Johannesburg. Furthermore, the ability of individuals and households to access loans for housing is fundamental to realising their shelter rights by augmenting the low amounts of money granted through housing subsidies.

- Land segment – the component of the land market is the final realm where actions of the above three markets come together. There are predictable cyclical changes in a land market over the long term. Increased development activity increases the supply of built stock and results in decreased rental prices achievable. This in turn results in a decrease in land values and property and an ultimate slowdown in development activity which corrects the over-supply. This has not yet occurred to a significant extent in housing and continued high demand for well-located developable land for housing (and other land uses) has kept the price of well-located land very high (Urban Landmark, 2010)

Research on urban shelter rights and its relationships to land is extensive. There seems to be a few inescapable conclusions derived from the discourse and analysis:

- First, the free market economy is not able to create shelter options for the deep down market – the urban poor. The lowest rental and sales prices achievable by the private sector are still too high for a majority of the urban poor.
- Second, is that well-located developable land close to economic opportunities will almost always be the most expensive land to purchase and therefore out of (legal) reach of the poor and vulnerable.
- In light of the above, the third inalienable conclusion is that without state or quasi-state intervention in the land market, the poor will always be excluded from well-located land and will be relegated to the least desirable and peripheral parts of the city.

So, what should or could the nature of the state's intervention in the land market be?

State intervention in the Land Market

In some countries state intervention in the land market takes the most extreme form of influence through nationalisation of all land. While this allows the state more power to use land to achieve social and broader developmental outcomes in the public interest, it has also proven to have many drawbacks and unintended negative consequences on the economy, which in effect could exacerbate the burden of the poor.

On the other extreme, a *laissez-faire* approach to land markets by the state means that the free market economy is left to run its course and all land, including state land, is used for the “highest and best use” which calculates yield based only in terms of financial gains to be had from land parcels.

This is not going to resolve the ongoing battle of cities in South Africa to create urban shelter opportunities for the poor.

The work of Urban Landmark (2010) maps out what the role of the state in the land market should be:

- Legislative and Policy Role – Government is responsible for determining the rules and regulatory processes by which other actors in the land market must act. It is able to use this role to steer development in the right direction and to prevent negative externalities that would have detrimental effects on society and the economy.
- Land Administration Role – The state is also responsible for maintaining accurate records of land ownership, records of permission and usage rights attached to land and property, and information pertaining to the transfer of land and property. It also has to maintain the cadastre and land surveying information showing accurate demarcation of land parcels. For this it needs to maintain accurate geographic and cartographic information.
- Land Owner – The state is a major land owner in South Africa and elsewhere in the world. In South African Cities however there is often an argument that the state does not own the well-located developable land and much of the best located land is in private ownership. This is a colonial and apartheid legacy. In the post-apartheid period the state has in many cities sold off much of its portfolio to generate revenue for ailing municipalities. In the words of property market expert, Prof Francois Viruly cities have “sold all the furniture”. Yet the state as a land owner should have the ability to use its land to fulfil its broader developmental objectives that are not achievable through the free-market economy. In theory, by releasing land onto the market, it would increase the supply of land and thus bring down land

prices making them more affordable to the poor. But would happen *ceteris paribus* and does not occur as such in reality. If the cities hold on to well-located land in their portfolio they could trade the usage of this land in the development segment of the market in order to achieve its housing objectives.

- The state as a provider and taker of land and housing stock - The state as a player in the land market can choose to provide housing to the urban poor. But it also has the ability to remove people, though the Constitution guards against arbitrary eviction. It has to balance this responsibility and respond appropriately in order to give effect to urban shelter rights.

State intervention to create affordable housing for the deep down market and thus extend the progressive realisation of urban shelter rights needs to be very carefully managed and incentivised at the municipal level. National policy and provincial support is of course vital to ensuring that this happens at city-level.

Importantly, this also requires a reflection on the generation of city revenue through property sales which is often counter to the social and pro-poor mandate. City governments need to carefully think through and reflect on how to achieve longer term financial gains that are also supportive of and facilitate spatial and social transformation of South Africa's cities.

RECOMMENDATIONS:

So what is required to aid municipal efforts to realise and protect urban shelter rights? The expansive and ever-increasing body of knowledge and academic discourse on urban shelter in cities yields a vast number of recommendations for helping to address housing for the poor and vulnerable, the prevention of evictions and the progressive realization of urban shelter rights. It is almost impossible to think about recommendations in this document without repeating work already done. Some recommendations are contained in the above section on the case studies of the three cities. Others are interwoven in discussions about roles and responsibility and the development of housing policy.

Overall however the recommendations relate to how municipalities can better plan for typologies of housing that are not currently catered for but are crucial for realising urban shelter rights. The report does not however focus on the broader housing question, but instead begins to deal with those urban dwellers that are most vulnerable.

There remains a tension between the short term provision of emergency housing and alternative accommodation and more long term housing and human settlements planning agenda. Currently, municipalities are required to pursue a national human settlements agenda. They are also required to provide emergency housing and alternative accommodation where the need arises. These requirements both rely on provincial funding. But in the absence of the availability of provincial funding, municipalities are able to use their own revenue in order to provide emergency housing. To date they have been reluctant to do so.

In theory, cities can apply at any time to province for emergency housing funding but the provincial budget is typically set for a three-year MTEF period (although reviewed annually). The problem arises when provinces do not allocate funds to emergency/transitional housing which means that cities can apply but cannot be funded. Fundamental to this is the question of political will. With real political will and an accompanying budget, cities could begin to make inroads into the provision of emergency or alternative accommodation. To date however there is an absence of a robust programme for emergency housing in many cities. Without a programme or a substantial plan for dealing with the different typologies in a systematic way, there is little likelihood of success. Municipalities cannot use the shortage of provincial funding as an excuse for the lack of certainly emergency housing provision when they are adequately empowered to generate this housing out of their own revenue streams.

There is a trajectory of urban shelter rights in South African cities. We have identified that the following are the housing typologies that require greater focus by municipalities namely:

- Low-income social housing
- Low-income rental stock
- Emergency and transitional housing

Each of these arises in discussions of vulnerability and is part of the housing continuum. Over the years there has been little movement on developing these typologies. Both municipalities and provinces need to be more proactive in delivering these housing typologies as each is crucial for the short, medium and long term agenda of spatial transformation. Until such time as there is a move away from strictly RDP-housing, cities will struggle with homelessness and vulnerability as the existing housing delivery mechanisms are not meeting the demands of city residents.

Rental Housing

The up scaling of rental housing provision by cities facing urban shelter pressures is urgent and requires a fiscal instrument to support it that goes beyond the provisions of the Community Residential Units (hostel conversion) programme. Suggestions include the creation of a rental subsidy for funding low-cost rental housing developments. A collaboration between local, provincial and national government could ensure that more low-cost rental housing becomes available.

The incentivising of pro-poor housing using the land use management function of municipalities in a strategic way is one possibility. Land use management authorities need to be provided the training and the flexibility to negotiate with the private sector to trade property usage rights and other permissions against the achievement of housing outcomes.

Better legal and by-law enforcement by urban management personnel in cities would further go a long way toward preventing the long term deterioration of building stock. Good urban management is also an incentive for the private sector to make investments in cities. These incentives need to also enable small scale and informal entrepreneurs that provide rental options (including back yard rental). Furthermore as mentioned early in the report, planning gain and the obligatory provision of low-cost rental housing would assist both in serving the market but also in consolidating densification and inclusion.

Accreditation Process

As has been said in various parts of this document, accreditation of municipalities is necessary and urgent but must be coupled with sufficient capacitation and training to realise the intended benefits of devolving power to local authorities. However, in theory once the accreditation process is complete, municipalities will be in a better position to budget for different housing typologies.

The accreditation process however will not transform housing approaches on its own. In addition, there needs to be more flexibility and creativity in cities to realise new approaches to human settlements. But most important will be the planning and accompanying political will to redirect housing policy away from only focusing on RDP housing to a more diverse set of deliverables.

Engagement

A more productive relationship between cities, the judiciary and the NGOs would go a long way towards developing for more constructive solutions to housing issues.

This is equally the case with the different tiers of government. Given the integrated nature of human settlement development, it is crucial that there is horizontal and vertical alignment within the public sector to facilitate integrated and sustainable human settlements.

Research and Dialogues

Better information keeping, primary research and records are urgently required for cities to be able to proactively plan for displaced peoples and for the acquisition and development of land for emergency housing and transitional housing. Furthermore, collaboration between cities on best practice would assist in forging new approaches.

Emergency Housing Guidelines

The HDA has developed guidelines for emergency housing which covers evictions amongst other circumstances. Emergency housing is a significant part of urban shelter rights and the responsibility for the provision of emergency housing falls mainly to municipalities while budgeting for it is a provincial competency.

Emergency housing guidelines specifically make reference to those who are evicted under the Extension of Security of Tenure Act and Prevention of Illegal Eviction Act (Ibid: 20). As with urban shelter rights in general, judicial rulings such as Blue Moonlight and Olivia Street, have reconstituted emergency housing considerations and municipalities need to include this in their overall human settlements plans.

Budgeting

In the interview process, the current budgeting methods were articulated as major constraints by municipalities. The inability of municipalities to budget for their own housing needs has meant that the emphasis continues to fall to RDP-type housing. Given that this is a reality in large urban centres, municipalities need to budget for emergency and transitional housing as part of their internally generated budget allocations. This budgeting needs to be done and implemented until such time as the accreditation process is complete.

Municipalities seem to prefer not creating open-ended operating costs and therefore are much more likely to allocate a once off capital budget. Yet, given that this kind of urban shelter is a public responsibility and one that needs to be managed on an ongoing basis, it is most likely necessary for cities to generate an annual operating grant for the ongoing management of these facilities. Budgeting should include appropriate management mechanisms for these facilities as municipalities have been largely unsuccessful in terms of managing their own rental stock.

Municipalities have to date been criticized for their inability to be proactive in the provision of emergency housing despite having available national funding streams. What is significant is the funding available to develop emergency housing which is sometimes difficult for municipalities to access quickly and the issue of what the funding covers. Provincial government funds are stipulated for project components including land acquisition, settlement planning, relocation costs, temporary shelter materials etc. However, municipalities are required to fund elements such as the replacement of infrastructure, litigation and associated costs (ibid: 21).

Planning

Emergency housing process requires fairly extensive time periods to cover the acquisition of suitable land and obtaining relevant planning permission. These are direct municipal functions and can be proactively addressed through a more programmatic approach to emergency housing.

Ideally, municipalities should begin to think through a permanent solution from the beginning of an emergency housing process. The HDA recommendations are illustrative in this regard:

1. An ongoing assessment of informal settlements and areas of vulnerability: In order to be proactive in the provision of emergency housing, it is critical that municipalities are aware of the potential vulnerabilities in informal settlements. This can be ascertained through on-going research.
2. Proactive planning and land acquisition: Given that land acquisition is a lengthy process, it is recommended that municipalities proactively acquire land through techniques such as land banking and also do a land inventory of available land and start a land planning process.
3. Improved governmental relations at all levels. Both funding and other competencies required for the provision of emergency housing are distributed throughout provincial and municipal departments. Therefore building ongoing relationships is key to streamlining the process. Importantly, good communication builds institutional knowledge.
4. Preparing a coherent funding approach for emergency housing: Responses to emergency housing needs should be swift. It is important that the specifics of funding requirements are ascertained and

proactively planned for by developing Medium Term Expenditure Frameworks for emergency housing and securing an allocation from Provincial government in advance.

5. Building relationships with communities on an ongoing basis: Understanding community needs and profiles assist in the process of providing emergency housing. Good relationships between municipalities, NGOs and communities will ensure that the process happens more efficiently and with less tension.
6. Integrated long term planning: Long term planning is the best solution for addressing housing needs. Ensuring the long term provision of adequate housing and services would mean fewer emergency housing situations emerging in the long term (HDA, 2012: 61-64).

These recommendations suggest that it is possible for municipalities to proactively supply emergency housing. A functional partnership between provincial government and municipalities is key to realising this. In addition, municipalities need to take the initiative to proactively plan for emergency housing situations such as those that have been highlighted through the judicial process. As per the earlier discussions in the report, municipalities can identify and do the planning for the construction of emergency and transitional housing facilities that can become long term assets of the cities.

BIBLIOGRAPHY

- Attoh, K. (2011). 'What kind of right is the right to the city?' *Progress in Human Geography*. 2011, 35: 669.
- Barry, M.B, Dewar, D. Whittal, J. F and Muzondo, I.F. (2007). 'Land Conflicts in Informal Settlements: Wallacedene in Cape Town, South Africa'. *Urban Forum*. 18: 171-189.
- Behrens, R. and Wilkinson, P. (2003). 'Housing and Urban Passenger Transport Planning in South African Cities: A Problematic Relationship'. In Tomlinson, R., Beauregard, R., Bremner, L. and Mangcu, X. (2003) *Emerging Johannesburg. Perspectives on the Post-Apartheid City*. Landsdowne: Cape Town Press. 154-172.
- Berrisford, S. and Kihato, M. (2006). The role of planning law in evictions in sub-Saharan Africa. *South African Review of Sociology*. Vol. 37: 6
- Brown-Luthango, M., Makanga, P. and Smit, J. (2013). 'Towards Effective City Planning—The Case of Cape Town in Identifying Potential Housing Land', *Urban Forum*, 24:189–203.
- Brown-Luthango, M. (2011). 'Capturing Land Value Increment to Finance Infrastructure Investment—Possibilities for South Africa'. *Urban Forum* 22: 37-52.
- Charlton, S. (2010) 'Inclusion Through Housing: Limitations and Alternatives in Johannesburg'. *Urban Forum*. 21: 1-19
- Charlton, S. and Lees, J. (2005) *Ethekwini Inner City Spatial Development Framework: Housing Strategy for iTrump, eThekweni Municipality*.
- Chenwi, L. and Tissington, K. (2010). *Engaging meaningfully with government on socio-economic rights*. Socio-Economic Rights Institute (SERI).
- Clark (2013b) *Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government*. SERI
- Coggin, T. and Pieterse, M. (2012). 'Rights and the City: An Exploration of the Interaction Between Socio-economic Rights and the City'. *Urban Forum*, 23:257–278.
- Department of Housing (DoH). (1994). White Paper on Housing. DoH
- DoH (1999) The Rental Housing Act. DoH
- DHS (2008) The Housing Development Agency Act (2008). DHS
- Emdon, E. (2003). 'The Limits of Law. Social Rights and Urban Development' in Tomlinson, R., Beauregard, R., Bremner, L. and Mangcu, X. (2003) *Emerging Johannesburg. Perspectives on the Post Apartheid City*. Landsdowne: Cape Town Press. 154-172.
- Financial and Fiscal Commission (2012) *Building an Inclusionary Housing Market: Shifting the Paradigm for Housing Delivery in South Africa*. Presentation for Finmark Forum.
- Greenburg, J. and Polzer, T. (2008). *Migrant Access to Housing in South African Cities*. Forced Migration Studies Programme University of the Witwatersrand Johannesburg, South Africa. www.migration.org
- Harrison, P. and Todes, A. (2013) *Spatial considerations in the development of urban policy in South Africa*. A Research Paper As Input Into The Preparation Of The Integrated Urban Development Framework (IUDF).
- Housing Development Agency (2013) *Informal Settlements Status 2013*. www.thehda.co.za
- Housing Development Agency (2013). *Reviving our Inner Cities: Social Housing and Urban Regeneration in South Africa*. www.thehda.co.za

Huchzermeyer, M. (2013). *Humanism, creativity and rights: invoking Henri Lefebvre's right to the city in the tension presented by informal settlements in South Africa today*. Inaugural Lecture, School of Architecture and Planning, University of the Witwatersrand 12 November, 2013

Huchzermeyer, M. (2003). 'Housing Rights in South Africa: Invasions, Evictions, the Media, and the Courts in the Cases of Grootboom, Alexandra, and Bredell'. *Urban Forum*, Vol. 14, No. 1, January-March 2003

Klug, N., Rubin, M. and Todes, A. (2013). 'Inclusionary housing policy: a tool for re- shaping South Africa's spatial legacy?', *Journal of Housing and the Built Environment*. Volume 28, No. 4: 667-678

Liebenberg, S. (2005). 'Towards a right to alternative accommodation? South Africa's constitutional jurisprudence on evictions.' *Housing and ESC Rights Law Quarterly*. Vol.2 No. 3, November 2005

Millington. AF. (2000). *Property Development*. London: Routledge.

Napier, M., Berrisford, S., Kihato, C., McGaffin, R. and Royston, L. (2013). *Trading Places*. Somerset West: African Minds.

Rust, K. (2006) *An Analysis of South Africa's Housing Sector Performance*. FinMarkTrust

Social Housing Foundation (SHF) (2008). *The Supply and Demand of Rental Housing in South Africa*. SHF

South African Cities Network (SACN). (2011) *State of the Cities Report*. SACN

The Presidency of South Africa (2014) *Delivery Agreements: Outcome 8*. The Presidency

Tissington, K. (2011). *A Resource Guide to Housing in South Africa 1994-2010. Legislation, Policy, Programmes and Practice*. SERI

UN Habitat (2010) *Right to the City: Bridging the Urban Divide*. Background Document. www.unhabitat.org/wuf

Urban Landmark and UN Habitat, (2010) *Africa's Urban Land Markets: Piecing Together an Economic Puzzle*. Urban LandMark and UN Habitat

Wilson, S. (2009). Breaking the tie: evictions from private land, homelessness and a new normality. *South African Law Journal*, 126, 270.

Wilson, S. (2011, September). Planning for Inclusion in South Africa: The State's Duty to Prevent Homelessness and the Potential of "Meaningful Engagement". *Urban Forum*, Vol. 22, No. 3, pp. 265-282. Springer Netherlands.

Further reference

Centre on Housing Rights and Evictions (COHRE) (2005) *Any Room for the Poor? Forced Evictions in Johannesburg, South Africa*. COHRE

Du Plessis, J. (2005). 'The growing problem of forced evictions and the crucial importance of community-based, locally appropriate alternatives', *Environment and Urbanization*, 17: 123

Department of Cooperative Governance and Traditional Affairs (Cogta). (2013) *Towards an Integrated Urban Development Framework*. Discussion Document. Cogta

Shisaka (Shisaka Development Management Services). (2011) *Housing Subsidy Assets. Exploring the Performance of Government Subsidised Housing in South Africa*. Finmark Trust, Urban LandMark, National Department of Human Settlements, Western Cape Department of Human Settlements, South African Cities Network and the FB Heron Foundation.

Tissington, K. (2013). *Minding the Gap: An Analysis of the Supply of and Demand for Low-Income Rental Accommodation in Inner City Johannesburg*. SERI