

The right to have access to adequate housing

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The right of access to adequate housing is important for the enjoyment of all human rights. A house is fundamental for human dignity and for physical and mental health, which are crucial for socio-economic development. The importance of this right is underscored in the South African Constitution of 1996 (the Constitution), which requires the state to respect, protect, promote and fulfil section 7(2) as well as to take reasonable legislative and other measures to realise the right to adequate housing progressively as set out in sections 26(1) and 26(2).

However, providing adequate housing is one of the greatest challenges facing the South African government. The country's housing situation is characterised by severe shortages, huge backlogs, and serious overcrowding in existing dwellings.

About 2.5 million households in South Africa do not have access to adequate housing. In addition, thousands of people have no access to housing or shelter of any kind. About 2.4 million households live in informal settlements.

The rate of delivery of housing is below the rate of formation of low-income households. Those most affected by the housing crisis are the poor and other vulnerable social groups. This crisis undermines the strides made by the government to implement and realise the right to adequate housing.

Monitoring the government's progress in providing housing is crucial in order to ensure that this right does not become a right merely on paper. This article provides a review of the housing chapter in the

Sixth economic and social rights report 2003–2006 (the sixth report) of the South African Human Rights Commission (the Commission).

The sixth housing protocol

The sixth housing protocol appears to be comprehensive. It contains a number of features that were not included in previous housing protocols. For example, while the previous housing protocol is more general on the issue of budgetary allocations for programmes and projects, the current

housing protocol goes further and lists the key housing programmes that have to be reported on. These programmes include the housing subsidy scheme, the hostel redevelopment grant, the human settlement redevelopment grant, the discount benefit scheme, and the schemes for emergency housing, farm worker housing, and medium-density and rental housing. However, with the exception of the subsidy scheme, the chapter does not adequately assess the listed programmes in terms of their substance and the manner in which they have been implemented.

A second new feature is the section on communication strategies. Generally, the lack of communication between the government and affected communities has contributed to the housing crisis in South Africa. The Minister of Housing, Lindiwe Sisulu, has acknowledged that poor communication is the cause of protests against the slow pace of housing delivery (Sisulu, 2005a). Accordingly, the protocol requires government departments to report on how they disseminate information to the public about the programmes and policies that are available and how these measures can be accessed by the public. Again, the chapter neither contains feedback received from the departments on these nor provides any explanation on why this information is missing. Did the departments not respond to this aspect of the protocol?

Despite its comprehensiveness, the protocol leaves out two important issues, which should have been inves-

tigated. First, the protocol does not include a request for information on the progress made by government in the implementation of court orders relating to housing rights. During his recent visit to South Africa in April 2007, the UN Special Rapporteur on Adequate Housing, Miloon Kothari, recommended that court judgments concerning the right to housing should be implemented effectively and timeously by the government and that the implementation of these must itself be closely monitored (Kothari, 2007(b)).

Second, the Commission has been repeatedly criticised for not following up on its recommendations. Yet the housing protocol does not contain follow-up questions on the extent to which its previous recommendations have been implemented. Twelve recommendations

were made in the previous report on housing. The current chapter says nothing about them.

An evaluation of the housing chapter

This chapter provides an overview of the housing environment, the budget allocations for the 2002/2003-

2005/2006 financial years, and the policies and legislative measures at both national and provincial levels that have been adopted. It also makes a number of key recommendations. It starts by setting out the importance of the right to adequate housing. In defining the right, it uses the definition adopted in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) that housing

entails more than just 'bricks and mortar'. In fact, it involves access to land, the provision of appropriate services such as water and sewage removal, and the financing of all these, including the building of the house itself (para 35). The provision of such a shelter is dependent on the prevalent social and economic realities.

In addition, the chapter discusses a new policy, the Comprehensive Plan for Sustainable Human Settlement, introduced in 2004 in accordance with the *Grootboom* order. It requires the government to redirect and enhance existing mechanisms to move towards more responsive and effective housing delivery. If properly implemented, the policy will go a long way towards achieving the Millennium Development Goals (MDGs) on housing.

The chapter refers to the housing needs of people with disabilities, which is commendable in the light of the growing need for the government to develop a comprehensive policy on the special housing needs of vulnerable groups.

Although it reveals that the Commission has been monitoring the implementation of the *Grootboom* court order, the chapter is silent on other judgments that have also not been fully implemented. For example, by July 2005 the court order in *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd and Others* 2005 (8) BCLR 786 (CC) [*Modderklip* (CC)] had not been implemented. This could be attributed to the lack of a specific question in the housing protocol on the enforcement of court orders.

The chapter notes the progress made and the challenges faced in improving the lives of the community

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at Wallacedene, part of which constituted the litigants in *Grootboom*. It reveals that the government has started with the construction of houses for this community. At least 9 000 sites have been earmarked for development.

Unfortunately the chapter does not provide time frames, which would be useful in the Commission's subsequent assessment of the government's progress. Furthermore, despite the improvements noted in the report, the initial developments in Wallacedene still have inadequate basic services such as water, the settlement is still very dense, and some of the houses are in waterlogged areas.

Key legislation and policies

Unlike its predecessors, the chapter merely lists the key legislation and policies that have been adopted without analysing them. It should have examined in greater detail the implementation of the Housing Assistance in Emergency Circumstances Programme, especially since there have been concerns that the implementation of this programme has been rather slow (*City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2006 (6) BLCR 728 (W) [*Rand Properties*] paras 42-47). Furthermore, the Commission expressed concern about the sustainability of this programme in its previous report (p. 13).

Similarly, the chapter simply mentions the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2005 (PIE), without discussing it against the concerns it has raised. The Bill proposes to narrow the ambit of PIE by excluding some unlawful occupiers, for instance ex-tenants and ex-mortgagors, from protection despite

the fact that they are not currently protected by any other legislation.

Corruption

The chapter is silent on corruption in the housing sector. Corruption is widely regarded as one of the key challenges impeding the delivery of adequate and quality housing and related infrastructure (see Hlatshwayo, 2005; *Cape Times*, 2005; e.tv, 2005). This problem was noted in the previous report, which identified the reluctance of individuals to "blow the whistle" on corrupt activities – either for fear of retribution, or because they did not want to be labelled *impimpis* or traitors, or through lack of legal protection or support from the government

– as a major obstacle to the elimination of corruption. However, the current chapter does not state whether corruption still remains a major challenge.

The previous report commended the Protected Disclosures Act 26 of 2000, which encourages employees to report wrongdoing by employers or corrupt colleagues. To improve the Act's effectiveness, it recommended that the Department of Housing should confront and eliminate a culture that scorns whistle-blowers; that employers in housing should be trained to implement a viable whistle-blowing policy that allows employees to raise concerns without fear of reprisal; and that workers themselves should know and understand their rights under the law in order to be able to report misconduct

in a proper manner. However, the current report does not state whether these suggestions have been implemented or not.

Key challenges

The chapter identifies a number of challenges to realising the right of access to adequate housing. The fieldwork that was carried out reveals some of the challenges faced by many municipalities in their efforts to ensure housing rights. For instance, the Commission observed that the Madibeng Local Municipality in the North West Province, under its Integrated Development Plan, has approved 13 housing projects in areas that are close to economic opportunities in an effort to tackle the hous-

ing backlog. In spite of this, according to the Commission, the housing conditions of farm workers in this municipality are poor and in some cases they still lack access to sanitation facilities and accommodation with adequate ventilation.

The Namakwa District Municipality in the Northern Cape has provided houses in some areas that are of adequate size, partitioned into three rooms with a bath and toilet, and beneficiaries could choose between different roof types for their houses. The Commission links this achievement to the availability of land and the utilisation of local resources and inputs. However, it notes that the houses are of poor quality and are already falling apart. The Commission attributes this to the soil quality and the fact that geo-

The main difficulty for the courts is how to avoid prescribing to other arms of government how to execute their constitutional duties, while at the same time ensuring those duties are fulfilled.

technical and suitability studies were not properly carried out.

In KwaZulu-Natal, barriers to the provision of adequate housing in the Ilembe District Municipality include a lack not only of land but also of capacity and proper cooperation between municipal and government officials.

Another key challenge highlighted by the report is that people with disabilities still have difficulty accessing adequate housing and experience discrimination when applying for housing grants. Other problems they experience include inaccessible toilets in state-subsidised houses, lack of toilet facilities in informal settlements, inaccessible

public toilets, public buildings and public transport that do not cater for their needs, and access roads that are uneven, muddy and not user-friendly for those with disabilities. The chapter notes that the subsidies awarded to 292 people with disabilities during 2003/2004 was insignificant, given that 2 255 982 people live with various forms of disability.

Another challenge is ensuring access to the basic services that are necessary for the enjoyment of the right to adequate housing. In addition, the Commission observes that a number of factors impact on the state's ability to ensure adequate housing for all efficiently and successfully. These include globalisation; a high unemployment rate; the housing affordability ratio; rapid urbanisation; the rental housing option; inaccessibility of subsidy programmes by other groups; and the lack of ad-

equate inter-departmental and inter-governmental relations.

Recommendations by the Commission

Although the substance and length of the housing chapter is limited, the recommendations made are far-reaching and wide-ranging. It would nevertheless be useful if in subsequent reports the recommendations could be directed at specific departments, as is done in the land and water chapter for instance, so as to facilitate their effective implementation.

The recommendations made by the Commission include the following:

- The state should carry out a study to consider the strategy for the development of affordable houses, which should aim to reduce the price of land for housing purposes and ensure that housing developers allocate a certain percentage of houses to middle-income categories.
- Housing projects undertaken by the government should take into account the special needs of people with disabilities by ensuring adequate access roads, the provision of houses and toilets that cater for those who use wheelchairs and other aids, and assistance in processing applications by disabled people.
- The state should develop a policy response on the process of urbanisation, which should ensure that there are no illegal land invasions and, in addition, should iden-

tify rural areas with economic potential with a view to developing economic activity in such areas.

- The state's housing policies should be informed by the current social and economic trends, and officials of the national, provincial and local housing departments, as well as traditional leaders, developers and beneficiaries, should be capacitated in this regard.
- Efficient public participation should aim primarily to inform the public about the activities of the government and ensure that the public adds value to the activities of the government.
- The state should establish a Housing Development Task Team to ensure that policies are coherent and that the resources of different departments are channelled towards developing adequate and sustainable human settlements. It should comprise officials from the Departments of Housing, Provincial and Local Government, Land Affairs, Environment, Agriculture, Water Affairs and Forestry, Health, and Population Development.

Conclusion

It is important that the Commission, when monitoring the right to adequate housing, should address all the pertinent issues and challenges involved. This has evidently not been the case in the housing chapter of the sixth report.

Moreover, it is important for the Commission to create a link between its reports, as this will enable one to see whether the findings and recommendations in the previous reports were taken seriously. In this regard, the protocol must include questions on the implementation of the recommendations in the previous reports.

People with disabilities still have difficulty accessing adequate housing and experience discrimination when applying for housing grants.

The Commission should also consider relevant documents in its monitoring of the progress towards adequate housing. For example, the UN Special Rapporteur on Adequate Housing has identified indicators to monitor the implementation of the right to adequate housing and has developed a questionnaire on women and adequate housing, which is useful in collecting information from governments and civil society groups (Kothari 2007a, annexures II and III).

Finally, the Commission should creatively integrate the MDGs in its monitoring process. The MDG 7 is particularly relevant to housing, stat-

ing that by 2020 the lives of at least 100 million slum dwellers must have been significantly improved. Although the chapter makes reference to the policy aimed at upgrading informal settlements, this is not analysed with reference to MDG 7.

The indicators to monitor MDG 7 are the proportion of people with access to a) improved sanitation and b) secure tenure (Kothari 2007a, para 3). When reporting on the upgrading of informal settlements, the chapter should thus provide the proportion of people with access to improved sanitation and secure tenure in these settlements.

Obtaining information from the Department of Housing on the specific progress it is making to meet MDG 7 would not be burdensome as, normally, the government is supposed to report to the relevant UN agencies on its progress in meeting the MDGs (South Africa 2005). Moreover, the government itself often speaks of its commitment to achieving these goals.

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