

‘A WOMAN’S HOME IS HER CASTLE?’ – POOR WOMEN AND HOUSING INADEQUACY IN SOUTH AFRICA

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ABSTRACT

Housing legislation and policies in South Africa attempt to incorporate gender concerns and ensure women’s participation in housing delivery. Despite this, a number of inadequacies and gaps in the implementation of legislation and policies exist. Moreover, the legal and social framework through which housing delivery takes place results in inequities in access to housing. A gendered, or feminist, perspective on women and access to housing considers the practical reality of poor women and women-headed households, as well as the ways in which law, policy and social practices perpetuate the disadvantage which many poor women face. This article adopts a gendered perspective to provide a critique of the systemic constraints which poor women face and which undermine their full enjoyment of the right to access adequate housing: namely, their greater vulnerability, when inadequately housed, to gender-based violence; their particular vulnerability to forced eviction; and the disproportionate burden they bear to provide childcare. Using the framework developed by Sandra Fredman of a capabilities and substantive equality approach to socio-economic rights, the article concludes by examining the means through which the housing sector may be gendered, by considering women’s disadvantage, accommodating women’s difference and encouraging greater participation of women in decision-making.

I INTRODUCTION

A gendered, or feminist, perspective on women and housing focuses on the lived reality of poor women and women-headed households, and the survival strategies employed by these women. It also provides a critique of the ways in which existing laws, policies and social practices perpetuate their situation. This article explores ways in which these insights both explain housing inadequacy (from the perspective of women) and contribute solutions to resolving it.

The work of Caroline Moser and Caren Levy¹ has been influential in housing studies by providing a theoretical framework for a gendered analysis of housing policy and women’s experience of poverty. One of their central contributions is the notion that women have multiple social roles within the household: productive, reproductive and community management.² Moreover, women are

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1 CON Moser & C Levy ‘A Theory and Methodology of Gender Planning: Meeting Women’s Practical and Strategic Needs’ in C Moser & C Levy *DPU Gender and Planning Working Paper No 11* (1986).

2 Ibid 3.

the ones generally responsible for 'allocating limited basic resources to ensure the survival of their households'.³ Another important feminist writer, in the context of gendered approaches to development theory, is Maxine Molyneux, who distinguishes between practical and strategic gender needs, pointing out that meeting the former does not challenge the status quo in gender roles, whereas meeting the latter (such as through giving women access to credit, or professional training) would.⁴

The Constitution of the Republic of South Africa 1996 guarantees the right of access to adequate housing to everyone, and a number of laws and policies have been adopted to give effect to this right. An attempt has also been made in this regard to incorporate gender concerns and ensure women's participation in housing delivery. Yet, as argued below, the legal and social framework within which housing delivery takes place results in inequities in access to housing. Much of South Africa's housing policy focuses on providing basic minima,⁵ thus denying the systemic constraints experienced by women within the social structure, which necessarily affect their enjoyment of housing rights and their rights to equality and dignity. These constraints include women's greater vulnerability, when inadequately housed, to gender-based violence; their particular vulnerability to forced eviction; and the disproportionate burden they bear to provide childcare.⁶ Housing policy should, therefore, be amended to take these constraints into account. This can be accomplished by, for example, ensuring that women's livelihood strategies are not disrupted when the state undertakes to improve housing through upgrading programmes or relocating communities, so that they have opportunities to work from home when they have young children, and that they have access to formal credit to facilitate better housing.⁷

This article begins with a brief discussion of the theoretical inter-dependency of rights, in both international and domestic law, with particular emphasis on the right to adequate housing as read with the right to equality. The extent and ways in which the inter-dependency of rights is recognised in the legal framework which gives effect to the right to adequate housing is then explored. This framework is subsequently contrasted with several case studies considering the lived reality of poor women without adequate housing, focusing, in particular, on the ways in which they are more vulnerable to having their other rights infringed – both socio-economic, and civil and political. The final section considers ways to address these difficulties through a 'gendering of the housing sector' which, rather than focusing

3 S Volbeda 'Housing and Survival Strategies of Women in Metropolitan Slum Areas in Brazil' (1989) 13 *Habitat International* 157, 159.

4 M Molyneux 'Mobilisation Without Emancipation? Women's Interests, the State and Revolution in Nicaragua' (1985) 11 *Feminist Studies* 227.

5 The concept of 'basic minima' is discussed in S Fredman 'Engendering Socio-Economic Rights' (2009) 25 *SAJHR* 410, 424.

6 These constraints are discussed in detail in part III(d) of this article.

7 See J Beall 'The Gender Dimensions of Urbanisation and Urban Poverty' Paper prepared for the Division for the Advancement of Women, United Nations, Vienna (1993) 3–4.

solely on formal equality,⁸ places positive obligations on the state to promote changes that encourage gender equality.⁹ This approach uses the theoretical framework developed by Sandra Fredman in this collection of articles, using the capabilities theories of Martha Nussbaum¹⁰ and Amartya Sen,¹¹ and the jurisprudence of substantive equality.¹² Following Fredman, it is suggested that a gendering of the housing sector should include: first, a recognition of the disadvantage which women suffer; second, the adoption of an approach to housing policy which enhances women's dignity through a recognition of their survival strategies; third, the promotion of policies and practices that accommodate difference; and fourth, the creation of processes to ensure women's participation in decision-making. It should be noted that although an attempt is made to deal with all the key issues as we have identified them, the scope of this article does not allow for an exhaustive review of all issues concerning housing and gender.

II POOR WOMEN'S RIGHT TO HOUSING

This section considers the legal framework giving effect to the right of poor women to adequate housing. It begins with a theoretical discussion of the interdependency of all rights, and the importance of this principle for the full realisation of women's socio-economic rights. It then discusses South Africa's international law obligations, the relevant rights contained in the South African Constitution, and concludes with a discussion of the country's legislative and policy framework to realise the right to adequate housing for poor women and the weaknesses in this policy in realising its goals.

(a) The interdependency of rights

The principle of interdependency of rights means that economic, social and cultural rights, on the one hand, and civil and political rights, on the other, are interrelated and equally important. In other words, 'the enjoyment of one right (or group of rights) requires enjoyment of others – which may or may not form part of the same category'.¹³ This principle is embodied in international human rights instruments as a general principle,¹⁴ and also finds particular

8 The concept of formal equality is discussed in Fredman (note 5 above) 418–22.

9 Ibid.

10 MC Nussbaum *Women and Human Development The Capabilities Approach* (2000).

11 AK Sen *Development as Freedom* (1999).

12 See Fredman (note 5 above) 418–22 where she examines relevant jurisprudence in order to determine the extent to which substantive equality has infused socio-economic rights jurisprudence.

13 DJ Whelan 'Untangling the Indivisibility, Interdependency, and Interrelatedness of Human Rights' *Economic Rights Working Paper Series Working Paper 7* (2008) 2 <<http://ideas.repec.org/p/uct/ecriwp/7.html>>.

14 See, for example, art 3 of the Proclamation of Teheran GA res 32/128 (1968) A/RES/32/128; United Nations res 32/130 (1977); United Nations Vienna Declaration A/CONF.157/23 (1993) para 3. For further reading on the interdependence of human rights, see generally, C Scott 'The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights' (1989) 27 *Osgoode Hall LJ* 769, 778–90.

expression in the international law right to adequate housing, illustrated by the United Nations in the following statement:

[T]he full enjoyment of such rights as the right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community-based groups), the right to security of person (in the case of forced or arbitrary evictions or other forms of harassment) and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence is indispensable for the right to adequate housing to be realized, possessed and maintained by all groups in society.

At the same time, having access to adequate, safe and secure housing substantially strengthens the likelihood of people being able to enjoy certain additional rights. Housing is a foundation from which other legal entitlements can be achieved.¹⁵

The Constitutional Court has similarly affirmed the indivisibility and interdependency of rights in South African jurisprudence, most notably in the *Grootboom* decision:

Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential.¹⁶

Hence, recognition of the interdependency of rights is essential for the protection of women's housing rights. As the Centre on Housing Rights and Evictions (COHRE) has put it: 'to adequately protect women's housing rights and the right to be free from forced eviction, a real understanding and meaningful implementation of the indivisibility of all human rights is necessary'.¹⁷

(b) South Africa's international law obligations

Before examining the relevant national legislation and policy framework, and questioning the extent to which this meets the requirement of substantive equality read with housing rights, it is important first to consider the relevant international law documents, since South Africa has a range of obligations in terms of international human rights treaties and documents that guarantee the right to adequate housing and gender equality.

The South African government has itself identified the primary international law documents which inform South Africa's approach to the rights to

15 United Nations *Fact Sheet 21 The Human Right to Adequate Housing* <<http://www.ohchr.org/Documents/Publications/FactSheet21en.pdf>>.

16 *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 23. See also paras 70–9. This case concerned the right to have access to adequate housing for those subject to evictions, including children's rights to adequate shelter.

17 See generally, COHRE *Violence The Impact of Forced Evictions on Women in Palestine, India and Nigeria* (2002) 77. <<http://www.cohre.org/store/attachments/COHRE%20Women%20Forced%20Evictions%202002.pdf>>.

housing and shelter.¹⁸ They are, art 25 of the Universal Declaration of Human Rights (UDHR),¹⁹ which provides for a right to an adequate standard of living, including housing; art 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁰ which similarly provides for a right to an adequate standard of living; and the United Nations' Habitat's Global Urban Observatory Programme and the Habitat Agenda 'Goals and Principles, Commitments and the Global Plan for Action'.²¹ Under the Habitat Agenda, South Africa reaffirmed its 'commitment to the full and progressive realization of the right to adequate housing'.²² It also committed itself to, among other things, gender equality in human settlements,²³ and has undertaken to 'give women full and equal access to economic resources, including the right to inheritance and ownership of land and other property'.²⁴ Of particular importance is the Habitat Agenda 'Istanbul Declaration on Human Settlements' in which South Africa 'reaffirm[ed] ... [its] commitment to the full and progressive realization of the right to adequate housing' and to the promotion of 'gender equality in policies, programmes and projects for shelter and sustainable human settlements development'.²⁵ While this emphasis on formal equality is important, it fails to pay sufficient attention to women's systemic disadvantage and to provide sufficient means to correct it. In other words, this approach suffers the same deficiencies of all formal equality programmes, in that it fails to acknowledge that an attempt to treat men and women the same

18 *National Action Plan for the Protection and Promotion of Human Rights*, submitted to the UN in 1998 <http://www2.ohchr.org/english/issues/plan_actions/safrica_1.htm>.

19 (1948) UN doc A/810 at 71.

20 (1966) 993 UNTS 3, UN doc A/6316 (signed by South Africa on 3 October 1994, but not yet ratified). The central international instruments for the interpretation of the ICESCR are the 'General Comments of the Committee on Economic, Social and Cultural Rights' (CESCR), in particular: General Comment 3 on the Nature of State Parties' Obligations (1990) contained in UN doc E/1991/23; General Comment 4 on the Right to Adequate Housing (1991) contained in UN doc E/1992/23; and General Comment 7 on the Right to Adequate Housing: Forced Evictions (1997) contained in UN doc E/1998/22 annex IV. General Comment 16 on the Equal Rights of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights is also of relevance, contained in UN doc E/C.12/2005/3.

21 Hereinafter 'Habitat Agenda' <<http://ww2.unhabitat.org/programmes/guo>> and <http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf>. In addition to these documents, there are a number of international and regional treaties which are relevant to the international right to housing: The International Convention Relating to the Status of Refugees (1951) 189 UNTS 150 (accessed to by South Africa on 12 January 1996); The International Convention on the Elimination of All Forms of Racial Discrimination (1965) UN doc A/6014, 660 UNTS 195 ratified by South Africa on 10 December 1998); The Convention on the Elimination of All Forms of Discrimination Against Women (1979) UN doc A/34/46 (ratified by South Africa on 15 December 1995) (CEDAW); The African Charter on Human and People's Rights (1981) (ratified by South Africa on 9 July 1996) (which has been read as containing an implied right to housing); The Convention on the Rights of the Child (1989) UN doc A/44/49 (ratified by South Africa on 16 June 1995); and The African Charter on the Rights and Welfare of the Child (1990) (ratified by South Africa on 7 January 2000).

22 *Ibid* 39.

23 *Ibid* 46.

24 *Ibid* 40.

25 Hereinafter 'Istanbul Declaration' <http://www.unhabitat.org/downloads/docs/2072_61331_ist-dec.pdf>. See also Agenda 21 (1992), adopted by the UN Conference on Environment and Development <<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>>.

may result in an entrenchment of inequality. What is needed, instead, is the recognition of women's difference.²⁶

Other international instruments are more nuanced, and specifically emphasise the importance of adequate housing in the achievement of gender equality in the context of gender violence. The Committee tasked with implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁷ and the Beijing Platform for Action, for instance, have maintained that measures taken by states parties to the Convention to overcome domestic violence should include services to ensure the safety and security of victims.

(c) South Africa's Constitution

The South African Constitution guarantees to everyone the right to have access to adequate housing, subject to a carefully crafted obligation on the state that it is obliged only to take 'reasonable measures' to realise this right. The Constitution also provides a more strongly-worded prohibition on arbitrary eviction. Specifically, s 26 of the Constitution provides that:

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

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

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

The principle of the interdependency of rights means that the right to adequate housing must be read together with other constitutional rights, which impact, support and reinforce women's access to adequate housing. The rights to equality and dignity are particularly important in this regard. Sections 9 and 10 of the Constitution, respectively, read as follows:

9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

....

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

The *Grootboom* decision was the first Constitutional Court decision to flesh out the meaning of s 26 of the Constitution. As already noted, the Court was at pains to highlight the interdependency of socio-economic and civil and political rights. The judgment is also important as it establishes a number of criteria by which the discharge of the duties imposed by ss 26(1) and (2) on the state will be assessed. In particular, the state is obliged to adopt a coherent, coordinated programme which must be capable of bringing about the realisa-

26 See Fredman (note 5 above) 418–22 on the limitations of formal equality.

27 CEDAW (note 21 above).

tion of the right.²⁸ While the state is given discretion to determine the details of the policy, the policy itself must be reasonable. In deciding this question, the Constitutional Court laid down five criteria, namely: it must be adopted through both legislative and policy means; it must be reasonably implemented; it must be flexible and balanced; it must not exclude a significant segment of society; and finally, there must be a clear and efficient assignment of functions to the three spheres of government.²⁹

Focusing specifically on the fourth point, the Court in *Grootboom* stipulated that a reasonable policy cannot exclude 'a significant segment of society'³⁰ and that:

[t]o be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right.³¹

In *Grootboom*, the Constitutional Court found that the National Housing Policy was unconstitutional to the extent that it did not establish policy measures 'to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations'.³² *Grootboom* focused largely on the recognition of the poor as a 'vulnerable group'.³³ The general class of persons which might qualify as poor is, however, comprised of any number of different sub-classes of persons. Each of these sub-classes – for example, those with physical disabilities, those with HIV/AIDS, those incarcerated by the state, women, and children – have distinct needs. In this sense, the Court, in *Grootboom*, focused on the basic minima of socio-economic rights, and did not consider how such an approach is inadequate to meet the needs of vulnerable groups, such as poor women, in truly promoting equal participation in society, and meeting women's needs.³⁴ Of course, the question of the particular needs of poor women was not squarely before the Court, and the judgment can hardly be criticised for not dealing with this specific point. Nevertheless, the Court did fail to consider whether there were particular vulnerable groups within the *Grootboom* community, such as children, for whom their order would be inadequate. We suggest that further work is needed by litigants and courts in delineating the specific needs

28 *Grootboom* (note 16 above) para 41.

29 More recent case law has established a sixth requirement: there must be meaningful engagement by a municipality before it is constitutionally permitted to institute eviction proceedings against a large group of people in accordance with its housing strategy. See *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg & Others* 2008 (3) SA 208 (CC), and *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes (Centre on Housing Rights and Evictions, Amici Curiae)* 2010 (3) SA 454 (CC).

30 *Grootboom* (note 16 above) para 43.

31 *Ibid* 44.

32 *Ibid* 99.

33 *Ibid* 36.

34 See Fredman (note 5 above) 423–4 and the critique of socio-economic rights as providing only the basic minima. This point is discussed in greater detail in part IV(a) below.

of women (and other vulnerable groups) and addressing the disadvantage faced by women in society.

(d) Legislative and policy frameworks

In order to give effect to s 26(2) of the Constitution, as well as the prohibition of arbitrary evictions in s 26(3), the state has adopted a range of legislation and policies. The relevant legislation includes the Housing Act,³⁵ Rental Housing Act (RHA),³⁶ the Home Loan and Mortgage Disclosure Act (HLMDA),³⁷ the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act),³⁸ and the Extension of Security of Tenure Act (ESTA).³⁹ The more important policy measures include the ‘Social Housing Policy for South Africa’,⁴⁰ the ‘Comprehensive Plan on Sustainable Human Settlements’ (also referred to as ‘Breaking New Ground in Housing Delivery’ (BNG)),⁴¹ the ‘Upgrading of Informal Settlements Programme’ (UISP),⁴² the ‘Emergency Housing Programme’,⁴³ and the ‘Housing Subsidy Scheme’. We now discuss these documents in more detail.

The Housing Act is the key piece of legislation setting out the framework for housing delivery. It outlines a number of principles to guide the realisation of housing rights. Of particular relevance to the realisation of poor women’s housing rights is the obligation on national, provincial and local spheres of government to: (1) ‘give priority to the needs of the poor in respect of housing development’; (2) ensure that housing development is ‘economically, fiscally, socially and financially affordable and sustainable’ and is administered in an equitable manner; (3) promote ‘measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination by all actors in the housing development process’; and (4) promote the housing needs of marginalised women and other groups disadvantaged by unfair discrimination.⁴⁴ The three spheres of government are also required to respect, protect, promote and fulfil the rights in the Constitution in the administration of any matter relating to housing development.

The Housing Act is, therefore, sensitive to vulnerable groups, including women, and highlights the importance of protecting the right to equality as

35 Act 107 of 1997.

36 Act 50 of 1999.

37 Act 63 of 2000.

38 Act 19 of 1998.

39 Act 62 of 1997.

40 National Department of Housing *A Social Housing Policy for South Africa Towards an Enabling Environment for Social Housing Development* (2003) <http://www.housing.gov.za/Content/legislation_policies/Social%20Housing%20Policy.pdf>.

41 National Department of Housing *Breaking New Ground A Comprehensive Plan for the Development of Sustainable Human Settlements* (2004) <<http://www.capegateway.gov.za/Text/2007/10/bng.pdf>>.

42 National Department of Housing *National Housing Programme Upgrading of Informal Settlements* (2004) Chapter 13, National Housing Code <<http://www.housing.gov.za>>.

43 Ibid Chapter 12, National Housing Code.

44 Housing Act s 2(1)(a), (c)(ii) & (iv), e(vi) & (x).

well as other rights in the Bill of Rights, in the process of realising the right of access to adequate housing. The Housing Act thus contributes to a recognition of the importance of a substantive equality approach to the realisation of women's rights to adequate housing in South Africa, and the obligation on the state to respect and accommodate difference within its housing policy.⁴⁵

The Housing Act requires the Minister of Housing to publish a National Housing Code containing guidelines in respect of housing policy.⁴⁶ The Code reinforces equal and equitable access to housing opportunities, goods and services. The need to support the role of women in the housing delivery process is identified by government as an approach that is essential to the success of any housing programme. These principles are also recognised in the White Paper on Housing, which is aimed at guiding government's housing policy.⁴⁷ The White Paper also recognises the right of people to live in dignity, in habitable circumstances, thereby necessitating the government to promote an effective right to housing for all, within its available resources. This could be understood as an acknowledgement that a basic minima approach to housing is inadequate and that a fuller understanding of the importance of housing for men and women to realise their full capabilities is needed.

Other important legislation is the RHA, which defines the role of government in rental housing, and creates structures to ensure the proper functioning of the rental housing market. In particular, the RHA recognises a tenant's right to privacy – especially important to women who often have to rent given their low economic status.⁴⁸ The HLMDA is also relevant as it is concerned with ensuring equitable access to credit and fair lending practices, one of the key constraints that women face in accessing housing.

The PIE Act provides a framework within which unlawful occupation is prohibited, while at the same time ensuring that unlawful occupiers are treated with dignity, with special consideration for the most vulnerable, where eviction orders are granted. One of the relevant circumstances that a court must consider in determining whether it is just and equitable to evict an unlawful occupier is the rights and needs of households headed by women.⁴⁹ In this way, the legislature affords special protection for women-headed households. Similarly, the ESTA,⁵⁰ which provides security of tenure and protection from arbitrary evictions for people in rural areas and peri-urban land, recognises

45 See Fredman (note 5 above) 411, 417, 422–5 & 439 and the discussion around the first aim of a capabilities and substantive equality approach to understand and address women's disadvantage.

46 Section 4. Adopted in 2000. A new Housing Code (2009) was recently approved.

47 National Department of Housing *White Paper A New Housing Policy and Strategy for South Africa* (1994) <<http://www.housing.gov.za/Content/planned/Docs/Housing%20White%20Paper.pdf>>.

48 K Pillay, R Manjoo & E Paulus *Rights, Roles and Resources An Analysis of Women's Housing Rights – Implications of the Grootboom Case* (2002) 18. Research paper written for the Women's Budget Initiative, Cape Town. For further discussion of the right to privacy in the housing rights context, see I Westendorp 'Haven or Hell? The Effect of Domestic Violence on Women's Housing Rights' (2003) *Africa Legal Aid Quarterly* 8.

49 PIE Act s 4(6) & (7).

50 ESTA (note 39 above).

the rights of occupiers to family life;⁵¹ endorsing the importance of these rights to the enjoyment of housing rights. A notable weakness of the ESTA, however, is its failure to make reference to the continued right of occupation of the spouse or dependents of the occupier.⁵² This is a particular difficulty once it is acknowledged that the right of occupation (on farms) of women is mainly acquired through their relationship with the male labourer.⁵³ In this regard, a recognition of women's disadvantage and status in those communities is missing from the ESTA.

The government has also adopted a number of other policies and programmes that are of relevance to the interdependency of rights discourse in the context of housing rights. The Social Housing Policy for South Africa,⁵⁴ for instance, reiterates the key policies guiding housing development and strategy, including 'restoring and furthering human dignity'.⁵⁵ Though the policy reinforces the importance of dignity and equality in housing, the extent to which women would benefit from it is limited because it is not a housing option for the very poor, since it is aimed primarily at low to medium income households, and excludes individual ownership.

The most important recent policy shift is contained in the BNG,⁵⁶ which articulates a commitment to housing development that is socially inclusive and integrated. It specifically aims to ensure that housing delivery alleviates poverty,⁵⁷ a problem that disproportionately affects women.⁵⁸ Nonetheless, BNG makes no explicit mention of women or their housing needs. In response, the government adopted the UISP⁵⁹ which seeks to, among other objectives, restore dignity to the urban poor.⁶⁰ Despite the fact that women generally make up an increasing proportion of urban slum dwellers,⁶¹ this programme is also silent on women. Yet the principles of the programme include steps ensuring that the needs of vulnerable groups are considered, and ensuring their on-going involvement.⁶²

The Emergency Housing Programme⁶³ was adopted in response to the *Grootboom* case and the requirement that, in order to be reasonable within the meaning of s 26(2) of the Constitution, state policy must include relief

51 ESTA s 6(2)(d).

52 Pillay, Manjoo & Paulus (note 48 above) 17.

53 See part III(b) below.

54 *Social Housing Policy* (note 40 above).

55 Preamble to the *Social Housing Policy* (note 40 above).

56 *BNG* (note 41 above).

57 *Ibid* 1.

58 It should be noted that women's poverty has been described both multidimensional and multisectoral, as it is experienced in different ways at different times and in different spheres (see S Bradshaw *Gendered Poverties and Power Relations: Looking Inside Communities and Households* (2002) 11 <http://www.cisas.org.ni/prsp/PDF/wpov_en.pdf>).

59 *UISP* (note 42 above).

60 *Ibid* 5, 8, 15 & 46.

61 COHRE 'Women and Housing Rights in Africa' (2009) 3. See also COHRE 'Women, Slums and Urbanisation' *Issue Brief 5* (2009) <<http://www.cohre.org/women>>.

62 *Ibid* 8 & 9.

63 *Emergency Housing Programme* (note 43 above).

for vulnerable groups or those in crisis situations.⁶⁴ The Emergency Housing Programme, however, provides assistance only in emergency situations of exceptional housing need such as homelessness resulting from floods, and devastating fires or evictions. It is therefore under-responsive to the obligations identified by the Constitutional Court.⁶⁵ It is also silent on gender concerns and, because of the nature of the programme, it cannot meet the housing needs for certain groups of women such as those rendered homeless as a result of domestic violence.⁶⁶

The final programme we consider is the Housing Subsidy Scheme (HSS) – which is arguably the most important programme in terms of its breadth of application. The HSS was introduced in 1995 as the principal means of implementing the constitutional right to adequate housing and operates largely as a once-off capital grant through which developers build housing for allocation to qualifying beneficiaries. For the poorest households, the housing subsidy is currently (April 2009-March 2010) R55,706 per household.⁶⁷ To qualify for a housing subsidy, the beneficiary must (1) be married or ‘constantly living with another person’, or, if single, must have ‘proven financial dependents’; (2) be a South African citizen or a permanent resident; (3) be competent to contract and of sound mind; (4) have a (combined) monthly household income that does not exceed R3,500; (5) not already have received a housing subsidy, either personally or through another member of his or her household; and (6) not previously have owned a house (with certain exceptions).⁶⁸

The scheme has been hailed an important measure through which women can access housing.⁶⁹ Practically, however, though a proportion of female-headed households have benefited from the subsidy scheme,⁷⁰ this is often not

64 *Grootboom* (note 16 above) para 99.

65 See K McLean ‘Housing’ in S Woolman et al *Constitutional Law of South Africa* 2 ed 55-20 – 55-21.

66 E Emdon *Expanding Abused Women's Access to Housing Handbook for Shelter Workers and Domestic Violence Organisations* (2007) 7. Prepared for the Centre for the Study of Violence and Reconciliation <<http://www.csvr.org.za/docs/gender/handbook.pdf>>.

67 The subsidy is available to households earning under R1,500 per month. Limited financial assistance in obtaining bank loans is available to those earning between R3,500 and R7,000 per month.

68 Immediately noticeable is the restrictive scope of the beneficiary group. By comparison, the text of the Constitution extends the right to ‘everyone’. For example, persons who are not in a relationship or with dependants are excluded – this would include many young and elderly people. This restrictive provision of housing benefits may be subject to challenge in the future, where, on the basis of the holding in *Xhosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 (6) SA 505 (CC), the state would have to demonstrate that this restriction was reasonable or did not constitute unfair discrimination.

69 Pillay, Mangoo & Paulus (note 48 above) 16.

70 A Venter & L Marais ‘Gender and Housing Policy in South Africa: Policy and Practice in Bloemfontein’ (2006) 34 *J of Family Ecology and Consumer Sciences* 69, 74, refer to 2003 statistics from the National Department of Housing indicating that 39 per cent of all housing subsidies that were allocated up to December 2002 went to female-headed households. With regard to Turflaagte, in the Mangaung Local Municipality (Bloemfontein), they note that between 2000 and 2004, more female- than male-headed (55,4 per cent vs 44,6 per cent) households in Turflaagte were subsidy beneficiaries. Due to the unavailability of gender-disaggregated data on subsidy beneficiaries, obtaining recent statistics becomes difficult. See C Ndinda & UO Uzodike ‘Accessing Housing Finance in South Africa: The Role of Women Activism’ (2008) 6 *Wagadu* 75, 77 <<http://appweb.cortland.edu/ojs/index.php/Wagadu/article/viewArticle/356/67>>.

the case as some of the requirements for access to the scheme do not take into consideration the interests and needs of women.

Ideally (and according to the original intention of the policy), beneficiaries should also obtain credit to supplement the subsidy. In practice, however, very few beneficiaries have managed to access formal credit: in 1994 only six per cent of beneficiaries obtained credit, and by 2002, this figure had fallen to below two per cent.⁷¹ Women's poor economic status makes it particularly difficult for them to afford the financial contribution.⁷²

Another requirement under the housing subsidy scheme ignoring the interest of women is the criterion that an applicant must be legally competent to contract. In practice, this is interpreted restrictively to mean that the applicant must be 21 or older. Thus, young people may be forced to remain in households where they are subject to abuse, or face homelessness. Child-headed households are also excluded. Moreover, many young women have children before 21, and may be left homeless, being unable to access the housing subsidy.⁷³ Clearly, this criterion disproportionately affects young women because women under 21 constitute more than half of pregnant women in South Africa.⁷⁴ The focus, in the HSS, on equality of formal access to housing subsidies, thus fails to recognise that women have specific needs that are not being met through existing policy.

A capabilities and substantive equality approach to housing policy would heed these differences, and seek to tailor policies to recognise these differences and correct these inequalities. In this regard, the UN CESCR has stated that the right to housing ought not to be framed solely as a 'family' or household right, and a strong argument could be made that s 26 read with s 9 of the Constitution requires the state to make provision for the rights of individuals to adequate housing, rather than conferring the benefit on households.⁷⁵

In summary, the legal framework in South Africa is generally favourable to the realisation of housing rights. Courts have delivered several progressive

71 See K Rust 'No Shortcuts: South Africa's Progress in Implementing its Housing Policy, 1994–2002'. Unpublished paper prepared for the Institute for Housing of South Africa (2003) 10 <<http://web.wits.ac.za/Academic/EBE/ArchPlan/Housing/Publications.htm>>. Access to formal credit is not solely a problem of financial institutions refusing to grant credit. Rather, there is a range of complex reasons for beneficiaries not wanting or not being able to afford formal credit, which arise independently of the subsidies. See I Melzer 'How Low Can You Go?: Charting the Housing Finance Access Frontier: A Review of Recent Demand and Supply Data'. Unpublished paper prepared for the FinMark Trust (2006) 31–49 <http://www.finmarktrust.org.za/documents/2006/MAY/AccessHF_report.pdf>.

72 See Ndinda & Uzodike (note 70 above) 80 where low income is cited as a key constraint in women accessing finance for housing consolidation or qualifying for credit from financial institutions. See also C Ndinda 'Housing Delivery in Nthutukoville, South Africa: Successes and Problems for Women (2003) 5(1) *J of Int Women's Studies* 29, 35.

73 South Africa's National Policy Framework for Women's Empowerment and Gender Equality, adopted by Cabinet in December 2000 <<http://www.doh.gov.za/docs/policy/gender.pdf>>.

74 C Marx 'Supporting Informal Settlements' in F Khan & P Thring (eds) *Housing Policy and Practice in Post-apartheid South Africa* (2003) 299, 306–7.

75 See MCR Craven *The International Covenant on Economic, Social and Cultural Rights A Perspective on Its Development* (1995) 334.

judgments concerning the realisation of housing rights in general⁷⁶ as well as women's property and inheritance rights.⁷⁷ Efforts have also been made to incorporate gender into housing policy, and to ensure that women participate in housing delivery.⁷⁸ Despite these good intentions, the legal and social framework within which housing delivery takes place still results in inequities in access to housing and the National Department of Housing has acknowledged that 'gender inequalities still remain a challenge for the department'.⁷⁹ The following section considers these inadequacies in more detail by examining the practical experiences of poor women in attempting to meet their housing needs.

III THE LIVED REALITY OF POOR WOMEN

This section considers four facets of the lived reality of poor women in South Africa. It does so by beginning with an introductory discussion of the disproportionate impact that poverty has on women. It then moves on to a discussion of security of tenure and title and the ways in which women are affected when these are lacking. Third is an analysis of women-headed households, and the fourth facet is a consideration of the impact of inadequate housing on women.

(a) The disproportionate impact of poverty

Poverty⁸⁰ oppresses millions of South Africans, and is attested to in the vast numbers of shacks in urban areas, as well as widespread homelessness,

76 See, for instance, *Grootboom* (note 16 above), in which the Constitutional Court interpreted the constitutional duty of the state in relation to the right of access to adequate housing. Other decisions which develop the law of housing and evictions, include: *Modder East Squatters v Modderklip Boerdery (Pty) Ltd*; *President of the RSA v Modderklip Boerdery (Pty) Ltd* 2004 (8) BCLR 821 (SCA); *City of Johannesburg v Rand Properties (Pty) Ltd* 2007 (6) SA 417 (SCA); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); *President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd* 2005 (5) SA 3 (CC); *Lingwood v The Unlawful Occupiers of R/E of Erf 9 Highlands* 2008 (3) BCLR 325 (W); *Sailing Queen Investments v The Occupants La Colleen Court* 2008 (6) BCLR 666 (W); *Blue Moonlight Properties 39 (Pty) Ltd v The Occupiers of Saratoga Avenue* 2009 (3) BCLR 329 (W); *Olivia Road* (note 29 above); *Joe Slovo* (note 29 above); and *Abahlali BaseMjondolo Movement SA v Premier of the Province of KwaZulu-Natal* 2010 (2) BCLR 99 (CC).

77 See, for instance, *Bhe v Magistrate, Khayelitsha*; *Shibi v Sithole*; *South African Human Rights Commission v President of the Republic of South Africa* 2005 (1) SA 580 (CC), in which the Constitutional Court found the African customary law principle of male primogeniture to be unconstitutional as it constituted impermissible discrimination against women and girls. See also *Gumede v President of the Republic of South Africa* 2009 (3) SA 152 (CC), on women's property ownership rights.

78 See for instance, National Department of Housing *Mainstreaming Gender in the Housing and Human Settlement Sector* (2006) 5 <http://www.housing.gov.za/Content/Gender%20Guidelines/Gender_2006_p1-25.pdf>.

79 *BNG* (note 41 above) 5.

80 Poverty should not be understood as a static condition because while some individuals, households or communities are permanently poor, others move into and out of poverty due to lifecycle and other changes.

unemployment and lack of access to basic services.⁸¹ By the end of 2007, over 43 per cent of South Africans were living below a poverty line of R250 per month (R3,000 per year) and unemployment was at least 25 per cent.⁸² The government itself has recently acknowledged that ‘abject poverty is still too widespread in our society; and the level of inequality is too high’.⁸³

Sylvia Chant notes that prior to the feminist contributions to poverty analysis, the poor were seen as comprising only men; alternatively, ‘women’s needs and interests were assumed to be identical to, and hence subsumable under, those of male household heads’.⁸⁴ Today, however, it is acknowledged that poverty has racial, gender, spatial and age dimensions. Jean Triegaardt observes that ‘the concentration of poverty lies predominantly with black Africans, women, [people living in] rural areas and black youth’.⁸⁵ Moreover, female-headed households are generally described in the secondary literature as ‘the poorest of the poor’.⁸⁶ Women are clearly more affected by poverty than men, illustrated in the higher unemployment rate for women.⁸⁷ Women – particularly black women, rural women and women on farms – typically have lower incomes and less job security than men; and are often engaged in poorly paid domestic work and micro-enterprises without job security and benefits.⁸⁸ Moreover, poor women’s limited access to economic, social and family resources, and basic services, as well as unequal rights in family structures, restricts their opportunities to escape poverty and results in continued hardship.⁸⁹

81 South Africa has a Human Poverty Index (HPI) of 22,6 per cent. See UNDP *Human Development Indices A Statistical Update 2008* <http://hdr.undp.org/en/media/HDI_2008_EN_Content.pdf>.

82 Amnesty International *Amnesty International Report* (2008) <<http://archive.amnesty.org/air2008/eng/regions/africa/south-africa.html>>

83 State of the Nation Address of the President of South Africa, Kgalema Motlanthe, to the joint sitting of Parliament, Cape Town, delivered on 6 February 2009 <<http://www.pmg.org.za/briefing/20090206-state-nation-address>>.

84 S Chant *New Contributions to the Analysis of Poverty Methodological and Conceptual Challenges to Understanding Poverty from a Gender Perspective* (2003) 10 <<http://www.eclac.cl/publicaciones/xml/6/13156/lcl1955i.pdf>>.

85 JD Triegaardt ‘Reflections on Poverty and Inequality in South Africa: Policy Considerations in an Emerging Democracy’ (2006) 3–4. Paper presented at the annual Association of South African Social Work education Institutions conference, organised by the Department of Social Work, University of Venda.

86 See, for instance, S Chant *Female Household Headship and the Feminisation of Poverty Facts, Fictions and Forward Strategies* (2003) Issue 9 London School of Economics Gender Institute Working Paper Series 5–6.

87 See Ndinda & Uzodike (note 70 above) 78 where 2006 statistics are cited showing 22,6 per cent unemployment rate among men compared to 31,7 per cent among women, illustrative of the vulnerability of women to poverty. See also D Budlender *Women and Men in South Africa Five Years On* (2002) 36–7.

88 US Department of State *2007 Country Reports on Human Rights Practices South Africa* (2008) <<http://www.state.gov/g/drl/rls/hrrpt/2007/100505.htm>>. See also Ndinda & Uzodike (note 70 above) 79 where a 2004 study in Ezilweleni (Durban) is cited which revealed that while women earned on average between R0 and R500, most men in the same settlement earned incomes in the range of R900 to R1,500 per month.

89 See generally, J Kehler ‘Women and Poverty: The South African Experience’ (2001) *J of Int Women’s Studies* <<http://www.bridgew.us/SoAS/JIWS/fall01/kehler.pdf>>.

Poverty is *the* major obstacle to the full realisation of women's housing and property rights.⁹⁰ A case study, conducted by Anita Venter and Lochner Marais, on gender and housing policy in South Africa in the Mangaung Local Municipality (Bloemfontein), revealed that there is a higher level of poverty among female-headed households, who also have less income, than among male-headed households. Of households earning less than R750 per month, 67.5 per cent were female-headed.⁹¹ Amnesty International also recently conducted a study on rural women living with HIV/AIDS in South Africa, which revealed that rural women are disproportionately affected by poverty and unemployment.⁹² The lived reality of poor women in South Africa is succinctly captured in the report's title: 'I Am at the Lowest End of All'.

Access to housing is integral to government's commitment to reducing poverty and improving the quality of lives of people. The White Paper on Housing, described in the previous section, recognises housing interventions as part of an integrated approach by government to resolve the problem of poverty.⁹³ Moreover, the Constitution and housing legislation provide the framework for equality in access to housing. The reality, however, is that state-assisted housing provision, on the whole, does not offer the poor an asset which promotes their socio-economic development. Internationally, women living in extreme poverty, far more so than men, face the risk of becoming homeless or living in inadequate housing, and bear the brunt of forced evictions and accompanying violence.⁹⁴ South Africa shares this problem.

(b) Security of tenure and access to title

While South African housing policy is not expressly discriminatory, it focuses on formal equality and in providing women with equal access to housing. This does little to overcome the deep-seated inequalities between women and men and, as a previous housing minister acknowledged, some women find it considerably more difficult than men to access housing or secure tenure.⁹⁵ In rural communities, these difficulties are compounded for many single women and widows living on farms, who are frequently denied security of tenure owing to gender discrimination.⁹⁶ A further difficulty is that the link between

90 The impact of poverty on women's housing, land and property rights has been recognised in United Nations Commission on Human Rights resolution 2005/25 on women's equal ownership, access to, and control over, land and the equal rights to own property and to adequate housing, 15 April 2005, contained in UN doc E/CN.4/2005/L.10/Add.10.

91 Venter & Marais (note 70 above) 73.

92 Amnesty International *I Am at the Lowest End of All' – Rural Women Living With HIV Face Human Rights Abuses in South Africa* (2008).

93 *White Paper on Housing* (note 47 above).

94 Statement by Miloon Kothari, Special Rapporteur on Adequate Housing on International Women's Day (2004) <<http://www.peacewomen.org/resources/Displacement/SpecRappHousing04.html>>.

95 See Minister of Housing, Minister Mabandla 'Promoting Access for Women in Housing' (2003) <<http://www.housing.gov.za/content/Media%20Desk/Speeches/2003/080803.htm>>.

96 *Mission to South Africa*. Report of the UN Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, Miloon Kothari, UN doc A/HRC/7/16/Add.3 (2008) para 87. Nonetheless, there are positive developments in this regard in certain areas: see the discussion in A Claassens & S Mnisi 'Rural Women Redefining Land Rights in the Context of Living Customary Law' (2009) 25 *SAJHR* 491, 506–9.

subsidy and family structure may not be sufficiently flexible to deal with fluid household formation or to counter systemic gender power imbalances within households. It may compel many women to remain in relationships that they would otherwise leave, say, for reasons of domestic violence. Such compulsion could occur even where the title deed is registered in the name of both parties.

Access to title is one of the forms of secure tenure⁹⁷ and is vital in ensuring secure rights to land and housing; as well as access to credit and municipal and government services.⁹⁸ A significant impediment to women's ability to realise their housing rights has been a lack of access to title as well as inheritance rights (succession of title). While there are mechanisms in place that allow for women to be registered as title deed co-owners, in practice, houses and plots are usually allocated to male partners, who are regarded as the legal 'titleholders'.⁹⁹ Consequently, women become dependent on men for housing. Moreover, case studies concerning women on farms in 2007, found that access to housing for female workers frequently depended on their relationship to male farm workers, and they often experienced discrimination.¹⁰⁰ Other writers note that where only the male partner is listed as the legal titleholder, there have been instances where women are not eligible for state housing subsidy and cannot access housing since they are recorded in the housing database as having benefitted from the state housing subsidy, because they identify themselves as the spouse of a primary beneficiary. After divorce, the woman may have neither a legal right to the house nor recourse to a further subsidy.¹⁰¹

Furthermore, many social practices marginalise women with respect to housing rights. Customary succession laws, for instance, may result in women losing their ownership or tenure rights when their male partner dies.¹⁰² In this

97 Other forms of tenure include rental, cooperative housing, lease, emergency housing and informal settlements (see CESCR General Comment 4 (1991) para 8(a)).

98 These are some of the reasons that were advanced by the Ekuthuleni community with regard to why they want access to title. See Association of Rural Advancement (South Africa) 'Securing Tenure at Ekuthuleni' <http://www.landcoalition.org/cd_ILC/cd_commons/doc_case/CPR07_Case13_South_Africa_AFRA.pdf>.

99 The Women's Legal Centre, for instance, reports that it has been dealing with a number of cases relating to women's names being on the subsidy but not the title deed of the house. S Charlton *An Overview of the Housing Policy and Debates, Particularly in Relation to Women (or Vulnerable Groupings)*. Research report written for the Centre for the Study of Violence and Reconciliation (2004) 21 <<http://www.csvr.org.za/docs/gender/overviewofhousing.pdf>>.

100 US Department of State (note 88 above). Also, Women on Farms Project conducted a study in 2005 on wine farms in the Western Cape, which revealed that housing contracts were in the name of male partners. At the time of the study, there was not a single case of a housing contract being in the name of a woman worker. F Shabodien 'Livelihoods Struggles of Women farm Workers in South Africa' (2006) 2 <http://www.wfp.org.za/pdf/livelihood_struggles_of_sa_women_farm_workers_2006.pdf>. A subsequent study on wine and deciduous fruit farms confirmed that women were continuously discriminated against with regard to tenure rights. The study notes that though, in theory, women should have access to housing in their own name as they have employment contracts in their own names, in practice, they are not granted independent rights to housing. See SANPERI 'The Position of Women Workers in Wine and Deciduous Fruit Value Chains' (2008) <http://www.wfp.org.za/pdf/women_in_the_global_value_chain_final_28apr08.pdf>.

101 Charlton (note 99 above) 18.

102 See generally C Walker 'Elusive Equality: Women, Property Rights and Land Reform in South Africa' (2009) 25 SAJHR 467; and Claassens & Mnisi (note 96 above).

regard, courts have an important role to play in developing a rights-based approach to housing policy, and a number of judgments reveal a willingness to interpret legislation so as to prevent women losing their homes as a consequence of customary law succession rules.¹⁰³ One of the most important of these judgments is *Gumede*, which concerned issues of women's ownership, including access to and control of family property upon dissolution of a customary marriage.¹⁰⁴ Certain provisions of the following laws were at issue: s 7(1) of the Recognition of Customary Marriages Act,¹⁰⁵ which provides that a customary marriage concluded prior to the commencement of the Act, continues to be governed by customary law (a customary marriage concluded after its commencement on 15 November 2000, on the other hand, is automatically in community of property¹⁰⁶); s 20 of the KwaZulu Act on the Code of Zulu Law,¹⁰⁷ and s 20 of the Natal Code of Zulu Law,¹⁰⁸ that give the family head the ownership of and control over all family property in the family home. The Constitutional Court found the respective provisions to be 'self-evidently discriminatory on at least one listed ground: gender'.¹⁰⁹ It held further that 'the KwaZulu Act and the Natal Code strikes at the very heart of the protection of equality and dignity our Constitution affords to all, and to women in particular'. The marital property system, as the Court noted, 'renders women extremely vulnerable by not only denuding them of their dignity but also rendering them poor and dependent'.¹¹⁰ The Constitutional Court considered these laws in the light of the equality provision in the Constitution and the importance the Constitution places on gender equality. The Court also made reference to its previous decision in *Bhe v Magistrate, Khayelitsha*, in which it found that the customary law rule that women are not fit or competent to own and administer property violated their rights to dignity and equality.¹¹¹

(c) Women-headed households

In addition to the flaws discussed in part II with regard to the implementation of the HSS, current state housing policy generally favours couples over single, female-headed households. Government has indicated its commitment to ensuring that the percentage of housing subsidies allocated to women is representative of the percentage of female-headed households in provinces,¹¹² and has set a goal to deliver 30 per cent of housing to women-headed households.¹¹³ Despite some success in reaching female-headed households as beneficiaries

103 See, for instance, *Nzimande v Nzimande* 2005 (1) SA 83 (W).

104 *Gumede* (note 77 above).

105 Act 120 of 1998.

106 Section 7(2).

107 16 of 1985.

108 Published in Proclamation R151 of 1987, Government Gazette No 10966 (Natal Code).

109 *Gumede* (note 77 above) para 34.

110 *Ibid* 36.

111 *Ibid* 35. See also *Bhe* (note 77 above) para 114.

112 Mabandla (note 95 above).

113 Kothari (note 96 above) para 85.

of the housing subsidy programme,¹¹⁴ most evaluations of the housing subsidy scheme show that housing policy directives that focus on gender equality are largely neglected in provinces.¹¹⁵ Such practices perpetuate gender inequality and poverty.¹¹⁶

A study by Venter and Marais demonstrates that government's 'incremental housing' process has a negative impact on female-headed households owing to their low income and poverty levels. This is because, where the government provides housing (often referred to as a 'starter-house'), the household is normally required incrementally to upgrade the housing structure over time. This is referred to as 'incremental housing'. Yet, female, low-income earners do not have the same economic means, building skills, or free time as men, in order to be able to participate equally in the incremental housing process. The study revealed that a significantly larger percentage of male-headed households had made more improvements to their houses than female-headed households, and concluded that male-headed households had more finances and technical skills to make the improvements envisioned in terms of the incremental housing process.¹¹⁷ It was further concluded from the study that women's needs are not sufficiently taken into consideration in terms of the incremental nature of the housing policy.¹¹⁸

The consequence is therefore that many women continue to live in inadequate and substandard housing. Moreover, women are disproportionately affected by inadequate housing as they tend to spend more time at home than men. In addition, housing policy should be examined with regard to the poor location of many women-headed households. As Pillay, Manjoo and Paulus point out, where women have been able to find housing, they have been relegated to the outskirts of economic centres and have been disadvantaged by the poor quality of housing.¹¹⁹

(d) The impact of a lack of adequate housing on women

Based on this discussion, it is clear that women are particularly vulnerable to inadequate housing. The categories of women affected are mostly single women, women with children, women with disabilities, women with HIV/

114 Charlton (note 99 above) 18; State of the Nation Address (note 83 above).

115 Venter & Marais (note 70 above) 72.

116 The Western Cape Department of Local Government and Housing, for instance, has a draft gender strategy that aims to shift the housing programme from a gender-neutral to a gender-specific programme, but the extent of its implementation is unclear. Western Cape Department of Housing *Final Draft of a Gender Strategy* <http://www.capegateway.gov.za/Text/2003/gender_strategy_final_draft.pdf>.

117 Venter & Marais (note 70 above) 74. See also Ndinda & Uzodika (note 70 above) where statistics in KwaZulu-Natal show that 80 per cent of female-headed households pointed to low income as the main constraint to improving their housing conditions; and Ndinda (note 72 above) 35 citing unemployment, low wages and lack of access to housing as constraints to women's access and participation in incremental housing.

118 Venter & Marais (note 70 above) 77.

119 Pillay, Mangoo & Paulus (note 48 above) 5. This is also the situation in Soweto, see S Muthwa 'Female Household Headship and Household Survival in Soweto' (1994) 3 *J of Gender Studies* 165, 168.

AIDS, migrant women and women from minority communities.¹²⁰ Their vulnerability is compounded by the fact that housing laws are generally gender-neutral – proceeding from the premise that men's and women's housing needs and the strategies to address them are identical. As a result, the laws do not always recognise the special circumstances of women and fail to acknowledge the pre-existing situation of inequality between men and women, both in terms of access to housing and their respective housing needs.

Consequently, women continue to live in inadequate housing, or to depend on male partners for access to housing, rendering them vulnerable to homelessness, gender-based violence, HIV/AIDS, and forced evictions, which in turn results in the violation of other rights such as rights to dignity, equality, health (mental and physical) and life. Lack of adequate housing also limits women's ability to care for children. The challenges posed by violence, forced evictions and childcare are now discussed in further detail.

(i) *Domestic violence and gender-based violence*

South Africa faces high levels of domestic abuse and violence, often forcing women to leave their homes. In 2007, an estimated 25 per cent of women were in abusive relationships.¹²¹

With regard to international standards on housing and gender-based violence, the UN CESCR makes no specific mention of domestic violence when interpreting the various aspects of the right to adequate housing.¹²² The link between lack of adequate housing and women's vulnerability to gender-based violence has, however, been established by many other international actors.¹²³ The then Commission on Human Rights (now the Human Rights Council) observed that 'lack of adequate housing can make women more vulnerable to various forms of violence, including domestic violence, and in particular that lack of housing alternatives may limit many women's ability to leave violent relationships'.¹²⁴ And the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities has, on several occasions, stated its concern that 'insecure and inadequate housing and living conditions ...

120 Kothari (note 96 above) para 84.

121 US Department of State (note 88 above).

122 The Committee has interpreted the right to adequate housing in two of its general comments: General Comments 4 & 7. It is important to note that, though the Committee refers only in one instance to women, particularly women-headed households in General Comment 4, the General Comment is gender-neutral overall. Notwithstanding, the importance of general comments for women has been highlighted by Otto, who notes that they provide an important means of promoting gender-inclusive interpretations of treaty norms, gender-sensitive implementation practices and gender-responsive remedies (see D Otto "'Gender Comment": Why does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?' (2002) 14 *Canadian J of Women and the L* 1, 3).

123 For further reading on the connections between domestic violence and the right to housing, see G Paglione 'Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing' (2006) 28 *Human Rights Quarterly* 120.

124 Commission on Human Rights res 2005/25 (note 90 above).

give rise to serious mental and physical health problems for women and contribute to, cause and are often the result of violence against women'.¹²⁵

Similarly, the former UN Special Rapporteur on adequate housing observed that the violation of women's rights to adequate housing, including degrading housing and living conditions such as lack of access to sanitation, water, electricity, health and lack of space and privacy, contributes to their vulnerability to gender violence.¹²⁶ Following his visit to South Africa in 2007, Miloon Kothari observed that, particularly in rural areas, women are forced either to remain in, or return to, situations of domestic violence because of lack of affordable housing, and that there is a lack of timely access to housing and inadequate government provision for long-term housing.¹²⁷ In addition, where women (and others) are forced to live in inadequate and insecure housing and living conditions, this is itself a form of violence.¹²⁸

Domestic violence greatly increases women's vulnerability to homelessness.¹²⁹ Domestic violence can result in the loss of housing through separation or divorce, or force women to stay in abusive relationships because of their need for secure housing. Since housing is commonly owned or allocated to male partners as breadwinners, women are often trapped in violent relationships because they have nowhere else to go – they are dependent for accommodation and other resources on their abusive partners. They are, therefore, faced with the dreadful choice between possible homelessness and staying in an abusive relationship.¹³⁰ Similarly, Fatima Shabodien notes that women on farms are systematically discriminated against in relation to tenure security (where housing contracts are held in the name of male partners), thereby compromising their ability to leave abusive relationships, undermining their safety and that of their children.¹³¹ The UN Special Rapporteur on violence against women has also found that women's poverty and lack of alternative housing options make it difficult for them to leave violent family situations.¹³²

The South African experience shows that even where choices exist – for instance accommodation in a shelter – there are constraints in exercising those choices. The Community Law Centre, in partnership with the Saartjie Baartman Centre for Women and Children, undertook a study on women's

125 Sub-Commission res 1999/15 on women and the right to development, 25 August 1999; see also Sub-Commission res 1998/15 on women and the right to land, property and adequate housing, 21 August 1998; and Sub-Commission res 1997/19 on women and the right to adequate housing and land and property, 27 August 1997.

126 Such violence occurs at various levels – in the family, the community, by the state and globally. See statement by Kothari (note 94 above).

127 Kothari (note 96 above) para 84.

128 *Women and Adequate Housing*: Report of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN doc E/CN.4/2006/118 (2006) para 32.

129 Ibid para 33.

130 Pillay, Mangoo & Paulus (note 48 above) 9.

131 Shabodien (note 100 above) 2.

132 See generally, *Integration of the Human Rights of Women and the Gender Perspective Violence against Women*. Report of the UN Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, UN doc E/CN.4/2000/68/Add.5 (2000).

access to housing, focusing particularly on women experiencing gender-based violence and HIV/AIDS, in three communities in the Western Cape (Langa, Manenberg and Mfuleni).¹³³ The study showed that in most cases of domestic abuse or violence, shelters provide the victims with temporary protection only. Without alternative accommodation, many have to return home to their abusive environment, thereby increasing their risk of HIV infection.¹³⁴ This is because, while women are dependent on their male partners for housing, they cannot negotiate safer sex for fear of being thrown out of the house. This increases HIV prevalence among women. UNAIDS estimates that in 2008 5.7 million people in South Africa had HIV/AIDS, 3.2 million of them women and 280,000 children (ages 0 to 14).¹³⁵ Hence, an increased risk of HIV infection is a lived reality for poor women who lack adequate housing.¹³⁶

(ii) *Forced evictions*

In interpreting the right to adequate housing in the context of forced evictions, the UN CESCR noted that women suffer disproportionately from the practice of forced evictions. The Committee observed further that:

[w]omen in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.¹³⁷

COHRE has also carried out a study on women and forced evictions. Although this study does not focus on South Africa, it is instructive in understanding the interdependency of human rights in the context of the forced evictions of women. It shows that when women are evicted, not only are their rights to housing affected, but also their rights to health, education, an adequate standard of living, privacy and security of the person.¹³⁸

133 H Combrinck & L Chenwi *The Role of Informal Community Structures in Ensuring Women's Right to Have Access to Adequate Housing in Langa, Manenberg and Mfuleni* (2007) <http://zope3.org.co.za/communitylawcentre.org.za/joint-projects/housing-project/publications/publication-archive/womens-property-rights.pdf/preview_popup/file>.

134 For further reading on the link between gender-based violence and HIV/AIDS, see generally, *Intersections of Violence against Women and HIV/AIDS*. Report of the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, UN doc E/CN.4/2005/72 (2005).

135 UNAIDS, South Africa: Country situation (2008) <http://data.unaids.org/pub/FactSheet/2008/sa08_soa_en.pdf>; UNAIDS, *Report on the Global AIDS Epidemic* (2008) 40 and Annex 1: HIV/AIDS Estimates and Data 2007 <<http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/2008>>.

136 For further reading on women's housing rights in the context of HIV/AIDS, see COHRE *Shelter from the Storm Women's Housing Rights and the Struggle against HIV/AIDS in Sub-Saharan Africa* (2009) <http://www.cohre.org/store/attachments/090731%20Shelter%20from%20the%20Storm%20FINAL.pdf>.

137 General Comment 7 para 10.

138 See generally, COHRE (note 136 above).

The vulnerability of women-headed households, once evicted,¹³⁹ is illustrated by the recent forced removal of Siyanda residents in KwaZulu-Natal to transit camps. At least half of the families are headed by women and most are too large to fit into the units in the transit camps, which are two thirds of the minimum size (30m²) of government houses.¹⁴⁰ The transit camps consist of small, closely-packed prefabricated or zinc structures, similar to shacks, often located in areas lacking social infrastructure and amenities or economic opportunities.¹⁴¹ These, more often than not, become permanent housing.¹⁴²

Women's vulnerability to eviction and to disproportionately adverse consequences of eviction are, to some extent, recognised in South African legislation: the PIE Act requires special consideration to be given to the rights and needs of women-headed households in eviction proceedings.¹⁴³ The South African Constitutional Court has also recognised the vulnerability of poor women to eviction, recognising them as amongst the most vulnerable groups in society.¹⁴⁴ Nevertheless, such measures fail to alleviate the suffering of women once evicted and offer little protection to prevent eviction.

(iii) *Childcare*

In *Grootboom*, the Constitutional Court held that the primary obligation to provide shelter for children lies with the children's parents, and on the state only when such children are removed from the care of parents.¹⁴⁵ Generally, women bear the primary responsibility for the care of children, and for sustaining and

139 South African Human Rights Commission *Report on the Public Hearing on Housing, Evictions and Repossession* (2008) 6 <<http://66.102.9132/search?q=cache:dpkmpBmw7MJ:www.sahrc.org.za/sahrc/cms/downloads/Housing%2520Inquiry%2520Report2008.pdf+site:sahrc.org.za+Human+Rights+Commission+Report+on+the+Public+Hearing+on+Housing,+Evictions+and+Repossession&cd=2&hl=en&ct=clnk&gl=za>>. See also, Integrated Regional Information Networks (IRIN) *South Africa Law is no Protection from Eviction* (2008) <<http://www.unhcr.org/refworld/docid/48e085e1c.html>>.

140 Abahlali baseMjondolo answering affidavit, 22 January 2009, paras 34 & 96 (in the case of *MEC for Transport, KZN v Dlamini, Abahlali baseMjondolo Movement SA and eThekweni Municipality*, Case No 16732, Durban High Court) <http://abahlali.org/files/Siyanda%20answering_.pdf>.

141 CALS 'Forced Removal of Siyanda Residents to Transit Camps' (23 January 2009) <<http://www.ngopulse.org/press-release/forced-removal-siyanda-residents-transit-camps>>. See also Abahlali baseMjondolo (note 140 above) para 39.

142 The transit camps have also been seen as breeding grounds for domestic violence, HIV transmission and assaults, and are highly unsuitable for permanent habitation. See Abahlali baseMjondolo (note 140 above) para 138.

143 Note 38 above. Preamble and s 4(6) & (7).

144 *Joe Slovo* (note 29 above) para 147.

145 *Grootboom* (note 16 above) para 77. This position has been somewhat ameliorated in the Constitutional Court's subsequent decision in the case of *Minister of Health & Others v Treatment Action Campaign 2002* (5) SA 721 (CC) para 39 (*TAC*) which held that the protection of children's socio-economic rights is not only triggered when children are physically separated from their parents, as some children are born to indigent parents who, in the context of the *TAC* case, are unable to gain access to private medical treatment.

maintaining homes.¹⁴⁶ Adequate housing is crucial to this. Considering the difficulties women face in accessing housing, this aspect of the judgment has been criticised as having a disproportionate impact on women, as 'it offers no assistance to women who, in addition to other challenges they face, bear the added responsibility of child care'.¹⁴⁷

The National Gender Policy Framework notes that housing offers women a sense of security, comfort and 'space to bring up families'.¹⁴⁸ Accordingly, women with children in inadequate housing find it extraordinarily difficult to provide adequate shelter or care for their children, and also risk their safety and health. Hence, inadequate housing and poor living conditions have a negative impact on children and the ability of mothers to care for their children. Even where women are rendered homeless owing to, for instance, domestic abuse and they seek housing in a shelter, shelters for abused women do not always permit women to bring boys over the age of 12.¹⁴⁹ The consequence is the separation of families. Similarly, in some female hostels, such as the Helen Joseph Women's Hostel in Alexandra, the policy states that boys over the age of seven cannot stay there. In addition to separating families, there is financial strain on the poor women living in such hostels since they are forced to rent accommodation for their sons in houses nearby.¹⁵⁰

IV GENDERING THE HOUSING SECTOR

The final section of this article considers how the housing sector may be gendered through a consideration of the four aims of a capabilities and substantive equality approach to housing policy, based on the work of Fredman.¹⁵¹ The four aims are: that greater attention should be paid to the disadvantage of women, and that ways to address this are developed; the promotion of dignity and the equal worth of all; that women's difference is accommodated and respected; and finally, that women's voices are heard, as well as recognition of the multiplicity of women's voices.

146 See, for example, COHRE *N2 Gateway Project Housing Rights Violations as Development in South Africa* (2009) 27 <<http://abahlali.org/files/090911%20N2%20Gateway%20Project%20Report.pdf>> where it is observed that women are often tasked with the primary responsibility for taking care of children as well as the elderly.

147 Pillay, Mangoo & Paulus (note 48 above) 7.

148 South Africa's National Policy Framework for Women's Empowerment and Gender Equality, adopted by Cabinet (2000) <<http://www.doh.gov.za/docs/policy/gender.pdf>>.

149 Emdon (note 66 above) 11.

150 See B Masango 'Fed-Up Hostel Women want Decent Housing' (2 February 2009) <http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20090202004140413C730407>. The situation at the Helen Joseph Women's Hostel in Alexandra is also illustrative of women's housing inadequacies. Women living in the hostel are faced with stench from leaking sewerage pipes; overcrowding with each of the rooms accommodating four families; water leaks from the roof; walls, doors and windows in a dilapidated state; and inadequate facilities (about 800 people sharing four toilets and bathrooms, and an old kitchen with gas stoves).

151 Fredman (note 5 above) 411, 417, 422-5 & 439.

(a) Recognising disadvantage

It is clear from the preceding discussion that the practical needs of women are not adequately addressed in housing policies. Accordingly, following his mission to South Africa, the former UN Special Rapporteur on adequate housing made a number of recommendations relating to women's access to housing. He urged government to strengthen national legal and policy frameworks for protecting women's rights to adequate housing and to provide avenues for redress where violations occur.¹⁵² He said that laws and policies need to be developed and implemented to recognise the specific constraints and vulnerabilities of women in relation to the right to adequate housing.¹⁵³

The Council for Scientific and Industrial Research (CSIR) conducted a study for the National Department of Housing that looked at providing a framework to bring a gender equality perspective into housing and human settlement policy. The study examined the extent to which gender is mainstreamed into housing laws and policies, and concluded that, overall, housing policy responds broadly to issues of inequality and seeks to be gender-neutral, equally applicable to men and women both in access and in need; and that the housing subsidy programme 'overlooks difference and diversity, sometimes to the detriment of beneficiaries involved'. The study also found that while there is some sensitivity towards gender issues, 'the critical issue of gender in housing and human settlements is not addressed by policy'. In particular, the policy fails to consider the practical needs that delivery of housing might address and that 'there is no policy mechanism to measure expected changing gender relations as a result of housing allocation, nor is there a mechanism to respond to such an awareness were it developed'.¹⁵⁴ Hence, the study recognises the point that has been made repeatedly in this article: that by adopting a gender-neutral approach to housing policy, the state may, in fact, be fostering and perpetuating gender inequality, and that in order to truly enhance women's feasible options, greater sensitivity to women's disadvantage and difference is needed. Further research is needed to highlight the lived-experiences of women in order to facilitate a better understanding of these concerns by courts, the executive and the legislature when crafting or interpreting housing policies.

(b) Enhancing dignity

Fredman's second aim of infusing the capabilities approach with substantive equality is to promote the dignity and worth of women. It is here that greater attention needs to be paid to how access to adequate housing enhances the capabilities of women and how to enhance feasible options for women. This would include concerns such as ensuring that housing is located close to work

152 Kothari (note 96 above) para 85.

153 *Women and Adequate Housing*. Report of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN doc E/CN.4/2003/55 (2003) para 21.

154 National Department of Housing (note 78 above) 9.

opportunities and childcare, and that it is safe and there is adequate tenure security.

Feminist research often emphasises the survival strategies of poor women in the protection of women's dignity, and the importance of maintaining these strategies in housing development. Sibongile Muthwa defines household survival strategies as 'those efforts, haphazard or well worked-out, in which households engage in order to adapt to adverse changes internal or external to the household, but which have a bearing on the daily existence of the household'.¹⁵⁵ A number of survival strategies have been identified in the secondary literature that promotes the dignity of women and the ability of women to meet their own needs. Muthwa, for instance, emphasises the importance of social networks for non-market, inter-household exchanges, and notes that social networks are not just limited to family networks but include wider community networks.¹⁵⁶

Other survival strategies include self-help housing. In a study on sustainable self-help housing in South Africa, Alfred Omenya notes that women, especially middle-aged, single parent, household heads, are more involved in self-help housing than any other single gender grouping. Yet, the ability of women to participate fully in the schemes is strained by the multiplicity of roles they play including productive, reproductive and management roles. He concludes that 'for self-help housing to be effective, it must give space for women participation, in recognition of their multiple roles at home and in the community'.¹⁵⁷

Sarah Bradshaw highlights additional strategies such as extension of households and employment and livelihood strategies in addition to social networks.¹⁵⁸ The support that extended households provide, as observed by Lakshmi Lingam, include the sharing of domestic work and childcare.¹⁵⁹ A negative side to the extension of households could, arguably, be the development of backyard shacks to accommodate the whole (extended) family, which leads to overcrowding.

Catherine Ndinda and Okeke Uzodike refer to other ways in which women have sought to mobilise housing finance for their housing development needs, such as savings and credit schemes.¹⁶⁰ As noted previously, women's low income has negatively affected their ability to access credit. The savings and credit schemes in South Africa include *stokvels* (cooperative savings groups), rotating savings and credit associations, commercial lending operations and

155 Muthwa (note 119 above) 168.

156 Ibid 170–2.

157 A Omenya 'Sustainable Self-Help Housing in South Africa?' Paper presented at the Conference of Housing and Urban Development in Sub Saharan Africa, Accra, Ghana (2002) 11 <<http://www.ecobuild-africa.com/pdf%20files/Sustainable%20Self-help%20Housing%20in%20South%20Africa.pdf>>.

158 S Bradshaw *Gendered Poverties and Power Relations Looking Inside Communities and Households* (2002) 21–3 <http://www.cisas.org.ni/prsp/PDF/wpov_en.pdf>.

159 L Lingam *Structural Adjustment, Gender and Household Survival Strategies Review of Evidences and Concerns* (2005) 13 <<http://www.cew.umich.edu/PDFs/pubs/lingamrept.pdf>>.

160 Ndinda & Uzodike (note 70 above) 83–7.

accumulating savings and lending groups. They cite two schemes that have facilitated women's access to housing finance – Utshani fund¹⁶¹ and Kuyusa fund,¹⁶² as well as other organisations such as South African Women in Construction, Women for Housing and South African Women Entrepreneurs Network¹⁶³ that have assisted women in gaining better access to housing finance. Ndinda and Uzodike, however, note that 'women cannot be left to their own devices in the pursuit of access to proper housing'; hence the need for government to educate financial sector managers about the importance of broad-based access to housing and to introduce state-driven targets for women's economic empowerment. They also highlight the importance of setting clear and specific targets in policies on access to capital and finance, including unpacking terms such as 'black' and 'women'.¹⁶⁴

Studies on survival strategies of poor women in South Africa in relation to accessing housing are limited. Further research is urgently required on the survival strategies of poor women and ways in which these should be retained and reinforced in any housing development or upgrading scheme, particularly where a relocation of communities is required.

(c) Accommodating difference

Once the disadvantages experienced by women are understood and the focus on respect and dignity is applied, the most important goal becomes determining how to restructure the policies to take these factors into consideration. Substantive equality and the capabilities approach expect that it may be necessary to treat women and men differently in order to achieve equality of outcome.¹⁶⁵ There is therefore a need for housing departments to have, and to implement, a gender strategy in relation to housing. The former UN Special Rapporteur on adequate housing has recommended that states ensure the development of gender-sensitive housing policies and legislation that takes into account the situation of specific groups of women who are particularly vulnerable to homelessness and other housing rights' violations.¹⁶⁶ The particular impact of a lack of adequate housing on women necessitates a needs-oriented approach to housing that would consider both the short- and long-term housing needs of women. Recognising the specific housing needs of vulnerable groups is a principle that has been emphasised internationally and nationally. The UN CESCR has stated that disadvantaged groups should be given some priority consideration in the housing sphere and that housing

161 Established in 1995, it lends to any housing savings scheme where the members have secure tenure and building plans have been approved by the municipality, among other requirements. See Ndinda & Uzodike (note 70 above) 84.

162 Established in 1999, it lends to housing subsidy beneficiaries with title deeds but no funds for housing consolidation that are members of savings groups. See Ndinda & Uzodike (note 70 above) 85.

163 Ndinda & Uzodike (note 70 above) 85.

164 Ibid 87–8.

165 Fredman (note 5 above) 422–7.

166 Kothari (note 128 above) para 83.

law and policy should fully take into account their special housing needs.¹⁶⁷ A needs-based approach is, to some extent, prefigured in *Grootboom*, where the Constitutional Court found that any measure instituted by the government must take into account the housing needs of those in desperate circumstances or crisis situations, and those whose ability to enjoy all rights are therefore most in peril.¹⁶⁸

This approach is elaborated in a report by the Urban Sector Network to the Department of Housing, which concludes that while some vulnerable groups may require specific delivery programmes such as emergency housing, others, like women, may require policy sensitivity and possibly priority allocation rather than specific delivery programmes.¹⁶⁹ More flexibility is required in the housing subsidy eligibility criteria to allow for a variety of household types. Shelters, for instance, are funded by means of institutional subsidy, which is designed to accommodate 'households' rather than individuals. The provinces of KwaZulu-Natal and Gauteng have been able to be flexible in applying qualifying criteria when administering housing subsidies,¹⁷⁰ but the lack of a national framework on special needs housing has resulted in a general reluctance to support special-needs housing by other provinces. Special-needs housing would also improve housing options for women who find themselves in abusive relationships, so as to prevent homelessness when they leave their abusive partners.¹⁷¹

(d) Participation in decision-making

The fourth and final aim of the capabilities approach and substantive equality is the participation of women. It is essential that women participate in the development of housing policies and that the voices of differently-situated women are articulated and heard. As Fredman points out, the fact that there are powerful women in government (notably, South Africa has had a number of women housing ministers), does not mean that they speak for the poor.¹⁷²

167 General Comment 4 para 8(e). The Committee did not specifically refer to women but it referred to 'other groups' in addition to the listed groups. Women are generally regarded as a vulnerable group.

168 *Grootboom* (note 16 above) para 44.

169 Urban Sector Network *Expanding Socio-Economic Rights and Access to Housing* (2003) 43 <http://pdf.usaid.gov/pdf_docs/PNADD242.pdf>.

170 See eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal *Framework for the Provision of Housing Subsidies for Special Needs Housing (Including HIV/AIDS Relief)* (2005) A submission to the National Department of Housing <http://ftp.shf.org.za/tsn_framework_housing_subsidies.pdf>; C Lund, R Ramogayane, L Poulsen & D Brand *Exploring Transitional and Communal Housing as a Form of Social Housing in South Africa* (2004); Emdon (note 66 above) 19–20; Charlton (note 99 above) 29.

171 The City of Cape Town as well as the Department of Local Government and Housing (Western Cape) are currently developing a special needs housing policy. For further reading on special needs housing, see L Chenwi 'Taking Those with Special Housing Needs from the Doldrums of Neglect: A Call for a Comprehensive and Coherent Policy on Special Needs Housing' (2007) 11(2) *Law, Democracy and Development* 1.

172 Fredman (note 5 above) 435.

Allied to ensuring that women's voices are heard is the need to improve monitoring of the goals of substantive equality, and in particular, of women's access to housing and housing-allocation practices. The advantage of monitoring is that it would assist in, among other things, identifying the impact of housing laws, policies and practices on women; exposing issues that had been previously neglected; and giving early warning of potential violations.

For effective participation and monitoring, access to information is vital. This is because, looking at the low-cost housing sector in general, 'lack of access to information has contributed to unethical behaviour, corrupt practices and irregularities in housing development in South Africa, undermining the livelihoods of millions of people'.¹⁷³ Based on experiences gained during a study on women and housing as well as regional consultations and testimonies, the former UN Special Rapporteur on adequate housing developed a questionnaire that is useful in monitoring women's access to housing. As the Special Rapporteur explained, using the indivisibility (and interdependency) of rights approach, the questionnaire shows the connection between economic, social and cultural rights and civil and political rights in relation to women's right to adequate housing, land and inheritance, including the link between violence against women and the right to adequate housing.¹⁷⁴ This questionnaire would be instructive in monitoring women's access to housing within the South African context so as to ensure equality for women in housing.

V CONCLUSION

In 2000, the South African Constitutional Court handed down the seminal judgment of *Grootboom*, mapping out the terrain for subsequent socio-economic rights adjudication, and the beginnings of a jurisprudence on the meaning of the right to adequate housing set out in s 26 of the Constitution. In finding state policy unreasonable, the Court noted the importance of the realisation of socio-economic rights to the achievement of substantive equality: 'The realisation of [socio-economic] rights is ... key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential'.¹⁷⁵

This article has examined the extent to which and the ways in which this inter-dependency of rights is given recognition in legislative and policy frameworks which give effect to the right to adequate housing. The lived reality of poor women, however, demonstrates the inadequacies and gaps in implementation of these policies. These challenges may, in part, be addressed through a 'gendering of the housing sector'. Based on the theoretical framework developed by Fredman, this article has explored the ways in which housing

173 L Chenwi 'Housing Rights' in S Khoza *Socio-Economic Rights in South Africa* (2007) 229, 261.

174 The questionnaire is contained in *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled Human Rights Council* Report of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN doc A/HRC/4/18 (2007) Annex III; see also paras 16–20 of the Report.

175 *Grootboom* (note 16 above) para 23.

policy can be gendered through consideration of women's disadvantage; the promotion of the equality, dignity and worth of all; accommodation of and respect for women's difference; and through greater participation of women in decision-making. It is hoped that the development of a gendered perspective on the right to adequate housing will help to facilitate the full realisation of women's rights to dignity, the achievement of equality and the advancement of their rights and freedoms.