

Giving effect to the right to adequate housing

The need for a coherent (national) policy on special needs housing

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According to the Centre for Housing Rights and Evictions (2006), the right to housing is one of the most widely violated human rights. Over a billion people worldwide have inadequate housing.

In South Africa, many people depend on the government for the realisation of their right of access to adequate housing. This right is guaranteed to “everyone” in section 26 of the 1996 Constitution of South Africa, which obliges the government to take “reasonable legislative and other measures, within its available resources, to achieve the realisation of this right” (section 26(2)).

The government has put in place a number of legislative and other measures aimed at fulfilling this right. They include the provision of rental housing, allocation of land for purchase and subsidising the building of houses. However, about 2.5 million households in South Africa do not have access to adequate housing (South African Human Rights Commission, 2006). In addition, thousands of people have no access to housing or shelter of any kind. About 2.4 million households live in informal housing structures (Minister Lindiwe Sisulu, 2005). The rate of delivery of housing is below the rate of low-income household formation.

More disturbing is that housing delivery takes place in a legal and social framework that results in inequalities. For example, vulnerable groups such as women (especially

abused women), people living with HIV/Aids, the aged, children, people with disabilities and the poor still face difficulties in accessing housing. Worse still, although HIV/Aids and special needs groups are high on the development agenda of South Africa and the National Department of Housing (NDoH) has, in principle, agreed to assist the departments of health and social development in providing shelter, there is no coherent policy at the national level on special needs housing (SNH). In addition, SNH is not explicitly enshrined in the National Housing Code and some provinces do not have a policy on it.

The aim of this article is to examine the need for such a comprehensive and coherent policy at the national level as well as in those provinces where it does not exist. The meaning of SNH is considered first. The article then looks at current housing policies with the aim of highlighting their limitations in accommodating the special needs of vulnerable groups, and hence establishing the need for a coherent and specific policy on SNH. This is followed by a brief analysis of the proposed national policy on SNH and the SNH policy framework prepared by eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal

(KZN), which was submitted to the NDoH.

Defining special needs housing

According to Astrid Wicht:

Special Needs Housing can be defined, on the one hand, as a facility provided for a temporary period for vulnerable groups in our society that have been rendered homeless through a range of circumstances, during which, as residents, they can be provided with secure accommodation and programmes by which they can ‘rectify their vulnerability’; on the other hand it is housing for people who cannot live in a typical house without some form of physical adaptation or some level of assistance to cope with the tasks of daily living (Astrid Wicht, 2006).

Although Wicht uses the word ‘temporary’ in her definition, SNH could be transitional (temporary) or permanent, depending on the circumstances under which it is provided. Transitional housing is temporary accommodation for people who are in transition between homelessness and permanent accommodation. For example, victims of abuse or violence may need a place to stay while looking for permanent accommodation. Transitional housing is subsidized through government housing subsidies and normally managed by an institution. This type of housing requires short-term tenure and empowerment training. Permanent housing, on the other hand, implies home ownership plus, in some instances, the provision of support services.

Simply put, SNH is housing that is aimed at meeting the specific needs of certain vulnerable households. SNH would therefore benefit people who are affected by poverty and are further disadvantaged because

they live with disabilities, or are old and infirm, homeless, infected or affected by HIV/Aids, victims of domestic abuse and violence, critically ill or because they are orphans.

SNH can take the form of emergency shelters (short-term accommodation), shelters (medium-term accommodation), second stage housing (short-term rental accommodation), community foster care homes, home based care and individual housing (ownership).

The basis for a (national) policy on SNH

With the widening inequalities between the rich and poor, the provision of special needs housing is a growing necessity in South Africa. A national policy on special needs housing can be justified on the following basis:

First, the White Paper on Housing (1994) states that housing policies and subsidy programmes must reflect a constant awareness of, and make provision for, the special needs of the youth, disabled people and the elderly. In addition, section 2(1)(a) of the Housing Act No 107 of 1997 requires the government – national, provincial and local spheres – “to give priority to the needs of the poor in respect of housing development”. They are further required to promote “the meeting of special housing needs of the disabled”, “marginalized women and other groups disadvantaged by unfair discrimination” (section 2(1)(e)(viii & x)). Thus, housing development must provide the widest possible choice of housing and tenure options. Yet, there is no comprehensive and coherent national policy specifically on SNH.

Second, the Court in *Government of the Republic of South Africa and Others v Grootboom and Others*

2001 (1) SA 46 (CC) [*Grootboom*] specifically held that the State has the obligation to develop and implement a coherent and comprehensive programme to realise the right of access to adequate housing. In addition, it held 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 (para 44). A measure that fails to reflect these obligations would be considered unreasonable. In *Grootboom*, although the government had a plan for the progressive realisation of the right of access to adequate housing and major achievements had been made in this regard, there was a major flaw in its programme in that it did not make reasonable provision for those in desperate circumstances. The Constitutional Court held that the government was not meeting its obligations in terms of section 26(2) of the Constitution (para 69). This case, therefore, provides a legal basis for the development of a SNH policy.

Third, the failure to include provisions on SNH in the National Housing Code and guidelines of the NDoH on SNH has brought about confusion on how to deal with the issue of SNH. Again, as stated in *Grootboom*, the NDoH has the responsibility of ensuring that laws, policies, programmes and strategies are adequate to meet the government’s section 26 obliga-

tions (para 40). The lack of a coherent national policy on SNH would therefore imply that the NDoH is not meeting its obligations in realising the right of access to adequate housing.

Fourth, provinces with no SNH policy are reluctant to support special needs housing without a national policy framework. This reluctance could be attributed to the limited understanding of the structuring of such policy frameworks given the provinces’ limited project experience (eThekweni Municipality and Project Preparation Trust of KZN, 2005). A national framework would provide some guidance in developing a SNH policy at the provincial or local government levels.

Fifth, the prevalence of HIV/Aids in South Africa is increasing, coupled with high levels of gender-based violence (GBV), and resulting in vast numbers of orphans and increased homelessness. As a result, some provinces such as KZN and Gauteng have made provision to meet the housing requirements of people with special needs. Likewise, a SNH policy is currently being developed in the Western Cape by both the City of Cape Town and the Provincial Department of Local Government and Housing. Assistance with shelter requirements is undoubtedly an important part of health and social development strategies to address the HIV/Aids and GBV crisis.

Lastly, SNH does not squarely fit into existing housing policies. As will be shown below, current housing

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policies were not specifically designed for SNH purposes and can therefore not be adapted to meet SNH in all instances.

The limitations of current housing policies

There are a number of national policies which come close to dealing with SNH. These are critiqued in the following paragraphs.

Institutional subsidy

The institutional subsidy is the closest mechanism to SNH as it deals with the acquisition and development of housing for occupation and, in some cases, acquisition by the beneficiaries. The institutional subsidy is given to qualifying housing institutions so that they can buy residential property and manage it. An institution that receives the subsidy must provide subsidised housing for families earning below R3 500 per month on a rental or rent-to-buy option. A beneficiary rents the property for at least four years. During this time, ownership of the property is vested in the institution. After the four years, the house may be sold or transferred to the beneficiary.

A subtype of institutional subsidy – transitional subsidy – has been used by Gauteng and KZN to provide SNH. For example, the KZN Department of Housing's Policy to Cope with the Effect of AIDS on Housing (July 1999) makes provision for giving subsidies to appropriate institutions in terms of transitional accommodation or for home based care.

In terms of this subsidy variation, subsidies are made available to qualifying institutions – one subsidy per bed. Thus, the beneficiaries need not be designated.

However, due to the fact that the institutional subsidy mechanism was

not initially designed for SNH projects it cannot be sufficiently adapted for SNH, especially non-institutional forms of SNH, resulting in the need for additional policy or guidelines on SNH. For instance, as evidenced in KZN, a subtype of the institutional subsidy mechanism was employed instead.

Limitations of the institutional subsidy mechanism include the fact that the minimum age requirement for applying for a housing subsidy is 21 years, so the subsidy would not meet the housing needs of orphans and child-headed households. Furthermore, the institutional subsidy does not meet the needs of abused women who have no dependents, as they would fail to meet the requirement that they must be married or live with a partner or be single or divorced with one or more dependants.

Housing subsidy for the disabled

People with disabilities normally have special housing needs. Disabled housing subsidy beneficiaries may qualify for extra funds to enable them to acquire, where applicable, such facilities as handrails, visual doorbell indicators, kick plates to doors, slip-resistant flooring or vinyl folding doors. These extra funds are available for those who, for instance, have lost their vision, who have hearing problems, are in wheelchairs, or who have little or no use of their arms.

Clearly, this subsidy is limited to a specific vulnerable group – people with disabilities. Hence, there is need for the formulation of an additional subsidy mechanism or a coherent policy that will also cater for other vulnerable groups with special housing needs.

HIV/Aids framework document

The HIV/Aids framework was prepared by the NDoH in 2003. It highlights the critical role of housing in fostering improved access to health – through the provision of healthy living conditions including access to clean water and sanitation – and promoting prevention as well as enhancing the quality of life of persons living with HIV/Aids.

The framework proposes a number of interventions in response to the impacts of HIV/Aids. These include the need for the NDoH to:

- collaborate with other government departments in facilitating HIV/Aids prevention programmes in the housing sector;
- address the housing needs of institutions, households and communities that care for people living with HIV/Aids;
- assist the Department of Social Development with shelter requirements and solutions;
- develop, together with the provincial housing departments, appropriate guidelines to implement the transitional subsidy mechanism, which is already in place in Gauteng and KZN; and
- investigate an additional subsidy for the building of additional rooms and services for households currently under strain of providing care due to inadequate space and facilities

The HIV/Aids framework document emphasises the need to review housing delivery models and address the housing needs of people living with HIV/Aids.

Social housing

This is a new housing option provided by housing institutions for persons with low or medium income, which excludes immediate ownership.

Social housing institutions help with the preparation of development plans and business plans and find suitable land for housing developments. They also deal with the administration of the properties and consider the applications of those seeking housing.

The potential target groups for the social housing option include "persons with special housing needs but who are able to live independently, such as those with disabilities living with HIV/AIDS, including orphans and children" (*A Social Housing Policy for South Africa: Towards an Enabling Environment for Social Housing Development*, July 2003 draft).

The policy clearly states that co-operation would be required with the Departments of Health and Social Development in order to accommodate this group of persons.

Social housing is a fairly new concept and is still being developed. It must be pointed out, however, that it is not a policy that targets the poor. There has therefore been a call for the integration and allocation of a percentage of SNH into all social housing projects to meet non-institutional forms of SNH (Wicht, 2006).

Breaking new ground

To accelerate the delivery of houses, the government introduced the Comprehensive Plan on Sustainable Human Settlements in 2004 - generally referred to as Breaking New Ground in Housing Delivery (*Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements*, August 2004). The

adoption of this plan is in line with South Africa's commitment to achieving the Millennium Development Goals.

It represents a holistic approach to housing development and requires the government to redirect and enhance existing mechanisms to move towards more responsive and effective housing delivery. The government has committed itself, under this plan, to ensuring the availability of adequate housing to all.

Although the policy makes no explicit mention of SNH, it emphasises the need for the delivery of alternative housing and tenure options and forms. The inclusion of SNH mechanisms for groups with special needs could thus find its basis here.

Proposed SNH policy framework

In a submission to the NDoH, a framework for SNH has been proposed based, *inter alia*, on the KZN Department of Housing Guidelines (eThekweni Municipality and Project Preparation Trust of KZN, 2005).

The framework highlights the need for a partnership between the Departments of Housing, Health and Social Development, and an appropriate welfare or health organisation working at the grassroots level in developing and implementing SNH projects. This is in line with section 41(1)(h) of the Constitution, which requires all spheres of government and all organs of state within each sphere to co-operate with one another. Preference is also given to SNH delivery models focussing on community or family-based care.

The proposed SNH delivery models include the institutional model, the community care home model and the home care/extension model.

The institutional model consists of the provision of care at a single locality to a group of beneficiaries either in one structure or by means of several structures on one site. Project types include children's homes, places of safety and shelters, hospices and homes for the elderly.

The community care home model, a non-institutional model, consists of a care giver with four to six beneficiaries in his/her care. The housing subsidy is used to either acquire existing housing stock or develop new housing stock within affected communities. The house is owned by an approved organisation or institution, which is responsible for its operation and maintenance. However, operational costs are shared between the organisation and the care giver in the case of foster care grants. Project types include community foster care homes, places of safety for children and palliative care.

The home care/extension model provides home improvements or home extensions to *de facto* care givers, who provide care to those in special need but who do not have adequate shelter - that is, insufficient living space within the household. The HIV/Aids framework document also highlights the need for this model. It should be noted that this model is different from the community care home model in that, among other things, ownership of the home remains with the existing home owner and care giver. Project types under this model include the provision of home extensions or improvements to shelter and accommodation for orphans and vulnerable children (including those in the care of extended family or other community networks) and the care for those who are sick and receiving palliative care by these support networks.

eThekweni Municipality and Project Preparation Trust of KZN also state that the above models can be linked to existing housing projects as a way of adding value to them and making them more integrated and better able to accommodate those in special need. In this case, SNH is treated as a range of sub-projects with separate subsidy applications being lodged for them but with provision

in the planning and management of the greater housing project.

Conclusion

Current housing policies do not adequately cater for the housing needs of vulnerable groups such as the people living with HIV/Aids, orphans, abused women and the disabled. The absence of a comprehensive and coherent national policy framework for SNH constitutes a *prima facie* vio-

lation of the right of access to adequate housing. Therefore, the national government and, where applicable, provincial governments, need to develop and implement appropriate, comprehensive and coherent policies on SNH.

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References and resources

Minutes of the Transitional and Special Needs Housing Forum held at the social housing foundation offices, Johannesburg, on the 23 May 2006, available online at <http://shf.org.za/products/transitional.html>.

Astrid Wicht, *Special needs housing: Developing an approach for policy guidelines*, April 2006, available online at http://ftp.shf.org.za/tsn_special_needs_policy.pdf.

Centre on Housing Rights and Evictions, An introduction to housing rights, 13 August 2006, available online at www.cohre.org/view_page.php?page_id=1.

eThekweni Municipality and Project preparation Trust of KZN, *Framework for the provision of housing subsidies for special needs housing (including HIV/AIDS relief)*, Submission

to the NDoH, 14 July 2005, available online at <http://shf.org.za/products/transitional.html>.

African National Congress, Housing the poor requires innovative thinking, design and planning, *ANC Today*, 5(339), 30 September 2005. Speech by the Minister of Housing, Lindiwe Sisulu, prepared for the opening of the IAHS World Congress on Housing, 27 September 2005.

South African Human Rights Commission (SAHRC), *Sixth economic and social rights report 2003-2006*, p. 16.

UNAIDS, Report on the global AIDS epidemic, 2006, available online at www.unaids.org/en/HIV_data/2006GlobalReport/default.asp.