

Taking those with special housing needs from the doldrums of neglect: A call for a comprehensive and coherent policy on special needs housing

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1 INTRODUCTION

A growing awareness of the differentiation of need within the broad categorisation of the poor has led to an evolving focus on special needs or vulnerable groups, such as the elderly and the disabled.¹ There is, therefore, an increasing need for government housing policies to reflect a constant awareness of, and to make provision for, the special housing needs of vulnerable groups. Accordingly, HIV/AIDS and special needs groups are high on the development agenda of South Africa and the National Department of Housing continues to emphasise the need to meet the special housing needs of marginalised women and people with disabilities.² The National Department of Housing has, in principle, agreed to assist the Departments of Health and Social Development in providing shelter. Moreover, the South African Human Rights Commission has acknowledged the need for housing projects to take into account the special needs of vulnerable groups, such as people with disabilities, orphans and vulnerable children.³

However, housing delivery takes place in a legal and social framework that results in inequalities. Vulnerable groups and people with special needs, 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.

Therefore, this article establishes the need for a comprehensive and coherent policy on special needs housing at the national level, as well as in those provinces where it does not exist. The article also highlights the limitation of current housing policies with respect to special needs housing. These issues

1 Charlton S *An overview of the housing policy and debates, particularly in relation to women (or vulnerable groupings)* (2004) A research report written for the Centre for the Study of Violence and Reconciliation p 18

2 See First Periodic Report of South Africa (combining the 1988-1996 overdue reports) on the African Charter on Human and Peoples' Rights, submitted to the African Commission on Human and Peoples' Rights (2005) 115.

3 South African Human Rights Commission (SAHRC) *6th Economic and Social Rights Report 2003-2006* (2006) 28 & 68

are examined against the current housing environment in South Africa.

2 THE CURRENT HOUSING SITUATION

The right to adequate housing is of central importance for the enjoyment of all economic, social and cultural rights.⁴ It is also linked to other human rights. A house is fundamental for human dignity and physical and mental health, which are crucial for socio-economic development.⁵ Yet, the right to housing is one of the most widely violated human rights worldwide. South Africa is not free of this crisis, as housing is one of the greatest challenges facing the government. Due to socio-economic conditions, such as unemployment and low income, many South Africans 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 (the Constitution)⁶. The Constitution further guarantees the right of children to shelter⁷ and the right of detained persons to adequate accommodation at state expense.⁸ The Constitution obliges the government to take 'reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right'.⁹

Accordingly, the government has put in place a number of legislative and other measures that provide a sound basis for fulfilling this right. The measures include the provision of rental housing, alternative tenure options, subsidising the building of houses, the allocation of land for purchase, emergency housing and social housing. Generally speaking, South Africa has made great progress in the realisation of the right to adequate housing.¹⁰ During his visit to South Africa in April 2007, the United Nations Special Rapporteur on adequate housing was impressed with several housing and land initiatives designed to help secure an adequate standard of living for all South Africans, including the extent of housing delivery under the national housing subsidy scheme that since 1994 has financed the construction of over 2.4 million houses.¹¹ The Special Rapporteur, however, added that success cannot be measured merely through the number of houses built but also needs to take into account the quality of housing and access to services especially for the poor and those with special needs.

Despite the strides aimed at realising housing rights, South Africa's housing situation is characterised by, amongst others, a severe housing shortage, a huge backlog in the provision of housing, provision of inadequate housing and severe overcrowding in existing dwellings. About 7.5 million South

4 See United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) General Comment 4 'The right to adequate housing' 13/12/1991, para 1, UN Doc. E/1992/23.

5 SAHRC (fn 3 above) 16

6 Act 108 of 1996

7 S 28(1)(c) of the Constitution

8 S 35(2)(e) of the Constitution

9 S 26(2) of the Constitution

10 Urban Sector Network *Expanding socio-economic rights and access to housing* (2003) 4

11 UN press release 'United Nations expert on adequate housing concludes visit to South Africa', reproduced in (2007) 8(2) *ESR Review* 34–36

Africans do not have access to adequate housing and secure tenure.¹² 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.¹³ The rate of delivery for housing is below the rate of low income household formation. Inadequate housing and homelessness therefore remain a problematic reality, affecting mostly the socially, economically, environmentally and politically disadvantaged and vulnerable sectors of the society, including the poor, people living with disabilities, women, children and the elderly, who are engaged in a daily struggle to survive.

What is more disturbing is the fact that housing for people with special needs is lagging far behind. The national government and most provincial governments do not have a coherent and comprehensive policy on special needs housing, despite the fact that there is a legal and socio-economic basis for special needs housing in South Africa (discussed below). This gap in housing policies results in difficulties in accessing adequate housing for vulnerable groups, especially those who have special housing needs.

3 DEFINING SPECIAL NEEDS HOUSING

It is important to first define what special needs housing is and who can benefit from it before considering the basis for such housing. Astrid Wicht, an architect and community development facilitator, defines special needs housing as follows:

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.¹⁴

Put differently, special needs housing is accommodation for people who, because of their special needs whether physical or psychological, require either adaptation to their housing units or special care support to significantly improve their quality of life.¹⁵ Special needs housing is therefore widely used to describe housing that is aimed at meeting the specific needs of groups who have varying degrees of vulnerability. Vulnerability is affected, amongst others, by the conditions in the housing sector (including marginalisation in and exclusion from the socio-economic mainstream and decision-making processes), and the availability, enforcement and effectiveness of legal protection

12 See 'South Africa: Winter freeze highlights homeless crisis' 24 May 2007 at http://www.worldprou-tassembly.org/archives/2007/05/south_africa_wi_1.html.

13 See 'Housing the poor requires innovative thinking, design and planning' Speech by the Minister of Housing, Lindiwe Sisulu, prepared for the opening of the IAHS World Congress on Housing, 27 September 2005, published in *ANC Today* 30 September 2005.

14 Wicht *A Special needs housing: Developing an approach for policy guidelines* (2006) A research paper prepared for Rooftops Canada p 6

15 See City of Cape Town Social Housing Programme Special Needs Housing Policy draft 1 dated 1 July 2007, 1 & 8-9.

guaranteeing equal access to resources and opportunities.¹⁶ This means that some people are more likely to be vulnerable and have special needs with regard to shelter and the conditions in human settlements.

Frequently mentioned vulnerable groups in international human rights instruments that South Africa has ratified include the disabled, the elderly, children, women and refugees.¹⁷ In the South African context, deducing from housing legislation and policy framework (discussed below), special needs housing would benefit people who are affected by poverty¹⁸ and are further disadvantaged because they live with disabilities, or are old and infirm, homeless on the street, infected or affected by HIV/AIDS, victims of domestic abuse and violence, critically ill or because they are orphans and vulnerable children.¹⁹

Furthermore, people with special requirements have a multitude of needs that will often change over time. This implies that special needs housing can take different forms – 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). Hence, special needs housing could be temporary (transitional) 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 housing.²⁰ For example, victims of abuse or violence may need a place to stay while looking for permanent accommodation. Permanent housing, on the other hand, implies home ownership plus, in some instances, the provision of basic, as well as support services.

16 S 93 of the Habitat Agenda, adopted by the Second United Nations Conference on Human Settlements (Habitata II) at Istanbul in 1996. South Africa is a signatory to the Habitat Agenda

17 See, for instance, the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees (both acceded to on 12 January 1996); the International Convention on the Elimination of All Forms of Discrimination against Women (ratified on 15 December 1995); and the International Convention on the Rights of the Child (ratified on 16 June 1995). See also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (not yet signed or ratified by South Africa); and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (agreed upon by member states of the UN, including South Africa).

18 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 life-cycle and other changes.

19 This categorisation is similar to that in other domestic jurisdictions. For instance, in Manchester (United States of America) special needs populations include mentally ill, persons with HIV/AIDS, frail elderly, persons recovering from alcohol or drug abuse, developmental disabled, domestic violence victims, homelessness or families at risk of homelessness, and physically handicapped, multiple diagnosis. See New Hampshire Housing Finance Authority Special Needs Housing Program at http://www/nhhfa.org/mf_specialneeds.htm. Also, the special needs housing programmes of the Department for Families and Communities (Government of Australia) benefits people with special requirements, such as people with disabilities, people in acute housing crisis or who are at risk of becoming homeless, tertiary students and new immigrants. However, the programmes are directed to community agencies that provide support to these people rather than the individuals. See Department for Families and Communities (Government of Australia) Special Housing Programs at <http://www.housingtrust.sa.gov.au/site/page.asp?swId=5&pgId=79>.

20 Lund *et al Exploring transitional and communal housing as a form of social housing in South Africa* (2004) Social Housing Foundation Research Series p 12

4 THE BASIS FOR SPECIAL NEEDS HOUSING

4.1 The legal basis

Recognising the specific housing needs of vulnerable and special needs groups is a principle that has been emphasised at both international and national levels. South Africa has committed itself to implementing the principles on the housing needs of vulnerable groups and people with special needs enshrined in international legal documents, and underscored in South African legislation. General Comment 4²¹ and the Habitat Agenda are instructive in this regard, since they serve as a guide to interpreting the right to have access to adequate housing in the Constitution.

Although these documents are not binding treaties, the Constitutional Court of South Africa has stated that public international law would include ‘non-binding’, as well as binding law, both of which provide a framework for the interpretation of the rights in the Constitution.²² In addition, the Constitution requires the courts to consider international law when interpreting constitutional rights.²³ The relevance of international law as a guide to interpreting the right to have access to adequate housing was endorsed in the *Grootboom* case.²⁴ General Comment 4 states, as one of the entitlements of housing rights, that

such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.²⁵

Although General Comment 4 refers to prioritisation, some writers have argued, in the South African context, that the effect of the Constitutional Court’s jurisprudence is that vulnerable groups be catered for and not necessarily that they be ‘prioritised’.²⁶ However, it is unquestionable that while some vulnerable groups may require specific delivery programmes, such as emergency housing, others – like women and people with disabilities – may require policy sensitivity and possibly priority allocation rather than specific delivery programmes.²⁷

Furthermore, the Habitat Agenda provides a comprehensive set of recommendations as to suitable policies to contribute to the realisation of the right to adequate housing. It requires governments to promote shelter and support basic services and facilities for education and health for the homeless, displaced persons, indigenous people, women and children who are survivors of family violence, persons with disabilities, older persons, victims of natural

21 See UN CESCR (fn 4 above).

22 *S v Makwanyane & Another* 1995 (3) SA 391 (CC) para 35

23 S 39(1) & s 233 of the Constitution

24 *Government of the Republic of South Africa and Others v Grootboom & Others* 2001 (1) SA 46 (CC) para 34. This case concerned the government’s obligations under section 26 of the Constitution – the right to have access to adequate housing.

25 See UN CESCR (fn 4 above) para 8(e).

26 Theunis R ‘Understanding Grootboom – A response to Cass R. Sunstein’ (2002) 12 *Constitutional Forum* 41–51

27 Urban Sector Network (fn 10 above) 43

and man-made disasters and people belonging to vulnerable and disadvantaged groups, including temporary shelter and basic services for refugees.²⁸ Governments are also required to, when necessary, review and adjust the legal, fiscal and regulatory framework to respond to the needs of those belonging to vulnerable and disadvantaged groups.²⁹ Special attention must also be paid to the shelter needs of vulnerable children, such as street children, refugee children and children who are victims of sexual exploitation.³⁰

South Africa is a signatory to the Habitat Agenda and the government has listed it as one of the guides to South Africa's international obligations with regard to housing and shelter.³¹ South Africa has therefore committed itself to implementing the principles enshrined therein.

Accordingly, the South African housing legislative framework provides a basis for special needs housing. Despite the failure to explicitly include provisions on special needs housing in the National Housing Code, the White Paper on Housing (1994), which is aimed at guiding government policies, 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, the Housing Act No. 107 of 1997 broadly refers to the principle of serving special needs. Section 2(1)(a) of the Act requires the government – national, provincial and local spheres – ‘to give priority to the needs of the poor in respect of housing development’. It is further required to promote ‘the meeting of special housing needs of the disabled’, and ‘marginalised women and other groups disadvantaged by unfair discrimination’.³² Housing development must thus provide the widest possible choice of housing and tenure options.

Furthermore, the effect of the principle in *Grootboom* is that the state must develop and implement a ‘coherent’ programme to realise the right to have access to adequate housing. The Constitutional Court held in *Grootboom* 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.³³ A measure that fails to reflect these obligations would be considered unreasonable. In the *Grootboom* case, 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,³⁴ the extent of which is qualified by three key elements: the obligation to (a) ‘take reasonable legislative and other measures’; (b) ‘to achieve the progressive realisation’ of

28 S 40(l) of the Habitat Agenda

29 S 70(d) of the Habitat Agenda

30 S 13 of the Habitat Agenda (see also s 68(f))

31 Urban Sector Network (fn 10 above) 13

32 Section 2(1)(e)(viii & x)) of the Housing Act

33 *Grootboom* (fn 24 above) para 44

34 *Grootboom* (fn 24 above) para 69

the right; (c) 'within available resources'. The Constitutional Court further observed that the National Department of Housing has the responsibility for ensuring that laws, policies, programmes and strategies are adequate to meet the government's section 26 obligations.³⁵ The lack of a coherent and comprehensive national policy on special needs housing would therefore imply that the government is not meeting its obligations in realising the housing rights of those who fall into this category.

The absence of a national policy framework on special needs housing has resulted in the reluctance to support special needs housing by provinces with no special needs housing policy. This reluctance has been attributed to the limited understanding of the structuring of such policy frameworks given the provinces' limited project experience.³⁶ A national framework would therefore provide some guidance in developing a special needs policy at the provincial and local government levels.

4.2 Socio-economic basis

Access to the housing sector is restricted by poverty and inequality. It is increasingly difficult for people who are affected by poverty to access housing due to, amongst others, the significant increase in housing prices, which increased by an estimated 92 percent from 2000 to 2005 and continued to increase in 2006.³⁷ With the widening inequalities between the rich and poor, the provision of special needs housing is a growing necessity. Generally, the provision of housing is dependent on prevalent social and economic realities. However, the current housing situation in South Africa does not (adequately) offer the poor an asset that can promote their socio-economic development and reduce their vulnerability to, for instance, homelessness, HIV/AIDS and domestic violence.

In addition, there is an increasing prevalence of HIV/AIDS in South Africa. An estimated 5.5 million people live with HIV/AIDS.³⁸ The HIV/AIDS crisis results in vast numbers of orphans, estimated at 1.2 million, and increased poverty and homelessness.³⁹ HIV/AIDS has introduced other dimensions to the housing demand, such as the increase in the number of extended family structures and the phenomenon of child-headed households. It results in the widespread breakdown of families and the need for a variety of housing services. As Tomlinson rightly puts it, while families that do not break down would warrant a continuation of pre-existing housing policies, families headed by HIV-infected adults, child-headed households, expelled HIV-positive family members, homeless children (some orphans and others HIV-positive)

35 *Grootboom* (fn 24 above) para 40

36 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 p 4

37 SAHRC (fn 3 above) 18

38 UNAIDS Report on the global AIDS epidemic (2006) Annex 2 – HIV/AIDS estimates and data for 2005 at www.unaids.org/en/HIV_data/2006GlobalReport/default.asp.

39 *Ibid.* According to Statistics South Africa, between 1998 and 2005, maternal orphans increased by 88% for those aged 0–4 years, and 135% for those aged 10–14 years. The percentage of children who are paternal orphans is much higher (see Anderson B and Phillips H *Trends in the percentage of children who are orphaned in South Africa 1995–2005* Statistics South Africa (2006)).

will require housing policies that take into consideration their special needs.⁴⁰ In a study on the impact of HIV/AIDS on the demand for low income housing, a majority of the individuals interviewed with regard to housing design issues indicated their preference for housing without steps, with an internal bathroom and toilet, and close to health centres; 25% of the respondents wanted care through an institution where they would be resident, while 74% indicated that their relatives would take care of them.⁴¹ Moreover, with some HIV-affected households prioritising their expenditure in favour of medical costs, it becomes difficult for households to pay the required financial contribution to access housing under the housing subsidy scheme that will, although it is not always the case, address their specific housing needs.

Furthermore, South Africa faces high levels of domestic abuse and violence, which is one of the circumstances that renders people homeless. Though the UN Committee on Economic, Social and Cultural Rights (CESCR) made no mention of domestic violence when interpreting the various aspects of the right to adequate housing,⁴² the UN Special Rapporteur on adequate housing has observed that domestic violence can greatly increase women's vulnerability to homelessness.⁴³ Domestic abuse and violence therefore have a profound effect on, particularly, women and children's access to housing. It can result in the loss of housing due to separation or divorce or the need for secure housing.⁴⁴ In most cases of domestic abuse or violence, shelters provide the victims with temporary protection. However, they cannot remain in shelters indefinitely because of their short-term nature. Without alternative accommodation, many may have little option but to return to their abusive environment. Currently, although some shelters are funded by means of institutional subsidy, the National Department of Housing does not have a policy that addresses the specific housing needs of victims of abuse. A needs-oriented approach to housing for people with special needs would take into consideration not just the victims' short-term housing needs but their long-term housing needs as well.

Assistance with shelter requirements is undoubtedly an important part of health and social development strategies to address the HIV/AIDS and gender-based violence crisis. Hence, a comprehensive and coherent special needs housing policy is crucial in dealing with these crises.

40 Tomlinson R 'Housing policy in context of HIV/AIDS and globalization' (2001) 25(3) *International Journal of Urban and Regional Research* 649, 650

41 The findings of this study are referred to in the National Department of Housing (South Africa) HIV/AIDS Housing Framework dated February 2003 at <http://www.housing.gov.za>.

42 The CESCR has interpreted the right to adequate housing in two of its general comments: see UN CESCR (fn 4 above) and General Comment 7 'Right to adequate housing: Forced evictions' 1997, UN Doc. E/1998/22 annex IV.

43 See *Women and adequate housing* (2006) A report of the UN Special Rapporteur on adequate housing, Miloon Kothari, UN Doc. E/CN.4/2006/118 para 33.

44 Pillay et al. *Rights, roles and resources: An analysis of women's housing rights – Implications of the Grootboom case* (2002) A research paper for Women's Budget Initiative p 9; see also Westendorp I 'Haven or hell? The effect of domestic violence on women's housing rights' (2005) *Africa Legal Aid Quarterly* 8–14.

5 CURRENT HOUSING POLICIES AND THEIR LIMITATIONS

At present, there are some policies, including framework documents that relate to special needs housing. However, the policy environment in this area is poorly developed. Policy responses in this regard have largely been in the form of concessions, for instance, an additional subsidy amount for modifications of houses for persons with disabilities or relaxation of the beneficiary contribution for the aged, disabled and health stricken beneficiaries. The policies and framework documents are certainly inadequate in addressing the housing needs of those with special needs. Differently put, special needs housing does not fit squarely into existing housing policies, as they were not specifically designed for special needs housing. This is elaborated on in the following analysis of the current national policies that come close to dealing with special needs housing.

5.1 Institutional subsidy

The institutional subsidy⁴⁵ is the mechanism that comes closest to dealing with special needs housing. It deals with the acquisition and development of housing for occupation, and in some cases acquisition, by the beneficiaries. The 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.

However, due to the fact that the institutional subsidy mechanism was not initially designed for special needs projects, it cannot be sufficiently adapted for special needs housing, especially non-institutional forms of special needs housing. Hence, the need for additional policy or guidelines on special needs housing. Limitations of the institutional subsidy mechanism include the fact that the subsidy is designed for households rather than individuals. It does not, therefore, meet the needs of abused women or single HIV-infected or homeless persons who have no dependants, as they do not meet the requirement that they must be married or live with a partner or be single or divorced with one or more financial dependants. Further, 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. Consequently, in KwaZulu-Natal and Gauteng, two provinces that have special needs housing policies, a sub-type of the institutional subsidy mechanism – the transitional subsidy – has been employed. When used for special needs housing, some of the subsidy requirements of this grant are waived. The transitional subsidy mechanism is discussed further below.

45 The rules of this subsidy are dealt with in the National Housing Code, Part 3, Chapter 6.

5.2 Housing subsidy for the disabled

People with disabilities or people with a financially dependent disabled person normally have a variety of special housing needs. Disabled housing subsidy beneficiaries or beneficiaries with a financially dependent person as part of his or her household may qualify for extra funds. These additional funds are available to 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. The funds are used for the building of special structures, such as concrete aprons and ramps to facilitate access to houses, handrails, special access arrangements to toilets, visual doorbell indicators, kick plates to doors, slip resistant flooring or vinyl folding doors. The addition to the subsidy amount varies as it is determined by taking into account the severity of the person's disability.

Clearly, the housing subsidy for the disabled is limited to addressing the housing needs of a specific vulnerable group – disabled housing subsidy beneficiaries or beneficiaries with a financially dependent person as part of his or her household. It cannot, therefore, be applicable to other vulnerable groups with special housing needs, such as orphans and the homeless. Hence, the 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.

Notwithstanding, very few people with disabilities reportedly utilise the housing subsidy programme.⁴⁶

5.3 HIV/AIDS housing framework

The HIV/AIDS housing framework was prepared by the National Department of Housing in 2003. It embodies a housing response to HIV/AIDS. The framework 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 HIV/AIDS housing framework proposes a number of interventions in response to the impacts of HIV/AIDS. These include the need for the National Department of Housing to:

- (a) collaborate with other government departments in facilitating HIV/AIDS prevention programmes in the housing sector;
- (b) address the housing needs of institutions, households and communities that care for people living with HIV/AIDS;
- (c) assist the Department of Social Development with shelter requirements and solutions;
- (d) develop, together with the provincial housing departments, appropriate guidelines to implement the transitional subsidy mechanism; and
- (e) 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.

⁴⁶ SAHRC (fn 3 above) 28

The HIV/AIDS housing framework emphasises the need for housing delivery models to be reviewed so as to address the housing needs of people living with HIV/AIDS. The aim of the framework document is to shape any special needs housing policy that is subsequently adopted.

5.4 Emergency housing programme

The emergency housing programme⁴⁷ was developed as a response to the *Grootboom* case, in which the Constitutional Court required the state to devise and implement within its available resources a comprehensive and co-ordinated programme to progressively realise the right of access to adequate housing, which must provide relief for vulnerable groups or those in crisis situations.⁴⁸ Under the emergency housing programme, assistance is rendered only in emergency situations of exceptional housing need, including situations of homelessness as a result of floods or devastating fires; evictions or threatened evictions; or conditions that pose immediate threats to life, health and safety. Temporary assistance is provided in the form of municipal grants, to enable municipalities to respond to emergencies by providing secure access to land, boosting infrastructure and basic services, and improving access to shelter through voluntary relocation and resettlement. Municipalities are encouraged to assess in advance the emergency housing needs in their areas and take concrete steps to address them.

Although the emergency housing programme is a response to vulnerable groups, the current form of the programme is not necessarily suitable for addressing the housing needs of groups with special housing needs, such as abused women, orphans or the old and infirm especially considering that they are often badly located.⁴⁹ Nonetheless, the implementation of this programme by provinces has been very slow. Recently, the City of Johannesburg was found to be in breach of its constitutional and statutory obligations as it did not have such a programme in place.⁵⁰

5.5 Social housing

Social housing is a new housing option provided by housing institutions for persons with low or medium income, which excludes immediate ownership.⁵¹ Social housing is defined in the Social Housing Bill as 'a rental or co-operative housing option for low income persons at a level scale and built form which requires in-

47 National Department of Housing National Housing Programme: Housing Assistance in Emergency Circumstances dated April 2004 at available on http://www.housing.gov.za/Content/legislation_policies

48 *Grootboom* (fn 24 above) para 99

49 Emdon E *Expanding women's access to housing* (2006) Research report written for the Centre for the Study of Violence and Reconciliation p 7

50 *City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2006 (6) BLCR 728 (W). This case concerned several applications in which the municipality sought the eviction of over 300 people (the occupiers) from six properties in the inner city of Johannesburg. The municipality (the applicant) justified the eviction on the basis of section 12(4)(b) of the National Building Regulations and Building Standards Act 103 of 1977 (NBRA), which gives it statutory powers and duties to prevent dangerous living conditions in its area of jurisdiction. The occupiers opposed the eviction application.

51 National Department of Housing A Social Housing Policy for South Africa: Towards an Enabling Environment for Social Housing Development dated July 2003

stitutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding'.⁵² 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'.⁵³ The policy clearly states that cooperation would be required with the Departments of Health and Social Development in order to accommodate this group of persons.

Social housing is still being developed. It is, however, not a policy that targets the poor and does not address non-institutional forms of housing. There has therefore been a call for the integration and allocation of a percentage of special needs housing into all social housing projects to meet non-institutional forms of special needs housing.⁵⁴ The City of Cape Town has accordingly decided to, amongst others, allocate 10% of all independent living units within social housing projects to be adapted and provided to households with special needs requirements who can live independently, and can afford and are willing to pay the subsidised rental by the social housing institution.⁵⁵

5.6 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.⁵⁶ 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 for the next ten years 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.

Though the policy seeks to promote sustainable human settlement and alludes to a commitment to housing projects and developments that are socially inclusive and integrated, it makes no explicit mention of special needs housing. However, it emphasises the need for the delivery of alternative housing and tenure options and forms, and focuses more on quality rather than quantity of housing. The inclusion of special needs housing mechanisms for groups with special needs could thus find its basis here.

52 Section 1 of the Social Housing Bill, 2006, published in Government Gazette 29339, vol 497, General Notice 1526 of 3 November 2006

53 See National Department of Housing (fn 51 above).

54 Wicht (fn 14 above) 14

55 City of Cape Town (fn 15 above) 3 and 15. The City's delivery models are discussed subsequently, albeit briefly.

56 National Department of Housing Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements dated August 2004

6 GAUTENG AND KWAZULU-NATAL EXPERIENCES

6.1 Transitional housing

Though the concept dates back a few years, transitional housing is relatively new and has not yet received adequate attention in terms of housing policies and practice. This explains why there is no national policy framework yet on transitional housing. However, as mentioned above, transitional housing – a variation of the institutional subsidy – has been used in Gauteng and KwaZulu-Natal mostly for the provision of housing for vulnerable groups in inner city buildings.

Transitional housing is a specific housing programme in which an institution accesses the institutional housing subsidy and uses it to acquire or renovate a building or facility in which people can be accommodated. As the name suggests, the accommodation provided is temporary in nature and generally managed by a non-profit organisation. As stated earlier, transitional housing is for people who are in transition between homelessness and permanent housing. The names of the beneficiaries of a transitional housing project are not recorded on the national housing database; hence, they may still benefit from an individual subsidy at a later stage, if they have not already benefited from one.

Transitional housing was developed in Gauteng in 1996 as a strategy to deal with homelessness in the inner City of Johannesburg providing temporary accommodation to destitute and homeless people on the streets.⁵⁷ This has been implemented on a pilot basis, on the understanding that the beneficiaries will subsequently move on to permanent accommodation. The funding goes to an approved housing institution,⁵⁸ which then provides accommodation to single persons earning R1 250 or less per month, families with a household income of R2 500 or less per month, children under the age of 18 years who are under parental guidance or adult care givers.⁵⁹ As is the case with other subsidy mechanisms, these persons must be lawfully resident in South Africa.

On the other hand, transitional housing in KwaZulu-Natal is rather different from that in Gauteng. In KwaZulu-Natal, it is short term or overnight rental accommodation, which mainly caters for street traders, low budget tourists and visitors. Moreover, there are no qualifying criteria specifically for transitional housing and no maximum period of stay.⁶⁰ The institution to which the subsidy is paid must be a legal entity, preferably a section 21 company.⁶¹

Unlike other housing subsidies, transitional housing, therefore, caters for both single people and families. When the transitional subsidy is used for special needs housing in KwaZulu-Natal and Gauteng, it is allocated to indi-

57 Charlton (fn 1 above) 29

58 The institution must be registered with the registrar of Social Housing Institutions at the Gauteng Department of Housing in terms of a 2001 regulation passed under the Gauteng Housing Act 6 of 1998 (see Emdon (fn 49 above) 20).

59 Lund *et al* (fn 20 above) 17. See also Charlton (fn 1 above) 29

60 Lund *et al* (fn 20 above) 17

61 Emdon (fn 49 above) 20

viduals and paid per bed. Also, there is a waiver of the requirement that the subsidy must be allocated for a household.⁶² In the case of KwaZulu-Natal, the requirement that the beneficiary be lawfully resident in South Africa is also waived.⁶³

The draft special needs housing policy framework of the Western Cape Provincial Department of Local Government and Housing provides for the application of transitional housing subsidies to special needs housing. As is the case in KwaZulu-Natal and Gauteng, the subsidy will be allocated per bed and will be up to the equivalent amount of an institutional subsidy.⁶⁴ The City of Cape Town has also adopted a similar position in its draft policy on special needs housing.⁶⁵

6.2 Special needs housing

In addition to the transitional subsidy mechanism, KwaZulu-Natal has a number of special needs housing policies. In 1999, the Department of Housing adopted the Policy to Cope with the Effect of AIDS on Housing, which makes provision for giving subsidies to appropriate institutions in terms of transitional accommodation or for home-based care.⁶⁶ In terms of this subsidy variation, subsidies are made available to qualifying institutions – one subsidy per bed. Thus, the beneficiaries need not be designated. The rental rates are low, people live in rooms (not flats) and there are communal ablutions, kitchens and recreational areas in some, while in others there are no communal recreation areas. Also, in 2004, it was made possible for non-profit organisations that are registered with the Department of Social Development to access the transitional subsidy. The proportion of the subsidy made available to special needs projects was increased from 70% to 100% of the subsidy.⁶⁷ Further still, in 2005, a Pilot Policy for Home Extensions and Home Based Care was adopted, which made provision for funding to assist *de facto* community care givers to improve or extend their homes.⁶⁸ As can be deduced from the above policies, the subsidy for special needs housing projects is not only available to institutions providing transitional accommodation but also to those providing home-based care.

Accordingly, special needs housing projects that cater for orphans and vulnerable children, people with disabilities, people with AIDS and the homeless have been implemented in KwaZulu-Natal by the provincial Department of Housing, in partnership with the Departments of Health and Social Development.⁶⁹ The delivery models of the special needs housing projects have largely been institutional, community care, and home care or home exten-

62 Emdon (fn 49 above) 19

63 Emdon (fn 49 above) 19

64 Western Cape Department of Local Government and Housing Provincial Programme for the Delivery of Special Needs Housing Draft 1 (undated) at 3

65 City of Cape Town (fn 15 above) 14

66 eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal (fn 36 above) 6

67 *Ibid.*

68 See Policy on Recognition of Non Profit Organisations dated March 2004. See also eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal (fn 36 above) 7.

69 Emdon (fn 49 above) 22

sion. These are discussed in the subsequent section that looks at the proposed special needs housing policy framework.

7 PROPOSED SPECIAL NEEDS HOUSING POLICY FRAMEWORK⁷⁰

In a submission by eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal to the National Department of Housing, a framework for special needs housing has been proposed. The proposed framework requires collaboration 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 special needs housing 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. Besides, the right to adequate housing is not just a legal issue. The way in which it is defined and realised is largely a political process that depends upon the mobilisation of organs of state, citizens and civil society organisations, and the engagement of civil society with the organs of state around basic needs.

The framework document gives preference to special needs housing delivery models focusing on community or family-based care. These include institutional, community care home, and home care/extension models, which have largely been the models used for special needs housing in KwaZulu-Natal.

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. In KwaZulu-Natal this model houses between 33 to 410 people and has largely been used for the provision of shelter for orphans and vulnerable children, and persons with physical disabilities.⁷¹

The *community care home model*, a non-institutional model, consists of a care giver with four to six beneficiaries in his or her care. The use of the word 'home' is illustrative of the aim of creating a family environment. The housing subsidy is used to either acquire existing housing stock or develop new housing stock within 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; for instance, they have insufficient living

70 This section is largely based on eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal (fn 36 above).

71 Emdon (fn 49 above) 23

space within the household. The HIV/AIDS framework document, discussed earlier, also highlights the need for this model. The home care/extension model is different from the community care home model in that, amongst other things, ownership of the home remains with the existing homeowner 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 families or other community networks) and the care for those who are sick and receiving palliative care by these support networks.

The advantage of the above three models is that they 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.⁷² In this case, special needs housing 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.

The Western Cape Provincial Department of Local Government and Housing has in fact incorporated the above three delivery models into its draft special needs housing policy framework, with preference given to non-institutional forms of care.⁷³ However, the Department is of the view that the implementation of the home care extension model be suspended until further research has been carried out, as there are sometimes practical difficulties in implementing support of this nature. The draft also requires a partnership between the Department and the relevant municipality, either the Department of Social Development or Health, plus an appropriate welfare or health non-profit organisation or similar organisation operating at the grassroots level.

The proposed delivery models of the City of Cape Town, though based on the broad national housing frameworks and the draft provincial policy on special needs housing, are structured somewhat differently as special needs housing is situated within the city's social housing programme. The city would provide both permanent and transitional special needs housing in three broad categories.⁷⁴

The first is *independent living*, providing for the building of self-contained units as part of social housing projects with special adaptations to allow individuals and households with special needs to live independently. In some instances, independent living might require additional care support in the beneficiary's own home, such as home-based care that will then be linked to an organisation providing such specialist services. The subsidy allocation for this category, as noted earlier, is 10% of all units on social housing projects.

The second is *specialist support housing within social housing projects*, providing for greater integration of people with special needs in a broader social housing project. It involves the development of housing that requires specialist care support but which can be designed and incorporated into an overall

72 eThekweni Municipality and Project Preparation Trust of KwaZulu-Natal (fn 36 above) 13

73 See generally, Western Cape Department of Local Government and Housing (fn 64 above)

74 City of Cape Town (fn 15 above)

social housing development alongside or amongst non-special needs units. An example is cluster accommodation for children. This would require a partnership between special needs care organisations and the City's social housing partners. The City has set a target of allocating one hundred transitional or institutional subsidies per annum for this category.

Housing under the third category, *specialist support housing independent of social housing projects*, will be provided by a special needs care organisation on a separate site not linked to other social housing development. One hundred transitional or institutional subsidies will also be allocated per annum for this category.

8 CONCLUSION

As part of their development of effective and comprehensive responses to homelessness, governments must turn their attention to the needs of vulnerable populations as a matter of urgency.⁷⁵ State programmes must take into account the special needs of disadvantaged groups, including people with mental and other disabilities.⁷⁶ Also, the special concerns of women and their housing needs must be reflected in master plans for urban and rural development.⁷⁷ The UN Special Rapporteur on adequate housing sees these, amongst others, as crucial in realising the right to adequate housing.

Housing in South Africa is no doubt a nationwide problem as millions of people do not have access to adequate housing. But amongst these are individuals and households who require special approaches to housing to assist them to deal with their special needs. Some provinces, such as KwaZulu-Natal and Gauteng have accordingly made provision to meet the housing requirements of people with special needs. However, as seen in this paper, current (national) 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. An approach to housing that is also special needs oriented would improve access to adequate housing for people with special needs. The absence of a comprehensive and coherent national policy framework for special needs housing constitutes a *prima facie* violation 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 special needs housing.

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76 *Ibid* para 70(b)(ii)

77 *Ibid* para 70(b)(v)

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