

CHAPTER SIX

ACCESS TO ADEQUATE HOUSING

PART A: OVERVIEW

1 INTRODUCTION

When the new government came into existence in 1994, it inherited a huge housing backlog. In its attempt to reduce the backlog, the government committed itself to building one million houses during its first term of office. By December 1999, 980 000 houses were under construction or had already been completed. This was made possible by the R12, 5 billion that was spent on the housing delivery programme during the five-year period.

Notwithstanding the number of houses built, the housing situation in the country remains unsatisfactory. National and provincial departments responsible for housing reported to the South African Human Rights Commission in response to its protocols for the 2nd Economic and Social Rights Report, that approximately 2 778 000 households in South Africa, did not have adequate shelter. There were 6 959 000 households that qualified for housing subsidies, but insufficient budget allocations prevented them from accessing these subsidies. The national department also indicated that the budget allocation could afford to pay 200 000 subsidies per year. This amount would not be sufficient to address the need for housing. The majority of rural communities could not access the housing subsidies due to insecure tenure in informal, mainly communal land arrangements, meaning that the subsidies were out of reach for about half of the country's population. The situations of groups such as persons with disabilities were left unaffected by the rate of housing delivery.

In acknowledgement of the intractability of the housing problem, the national Department of Housing (DoH) has, in the last few years, introduced several measures to deal with these difficulties. These measures have included the development of the People's Housing Process as a participatory approach to improve the responsiveness of housing delivery; the Rural Housing Programme to make housing policy accessible to rural communities, and the Subsidy Scheme to Support Disabled Beneficiaries.

This chapter assesses information provided by the national and provincial departments responsible for housing delivery on legislative and other measures instituted during the 1999/2000 reporting period, to give effect to ss 26 and 28 of the Constitution.

2 CONSTITUTIONAL OBLIGATIONS

There are two sections in the Constitution that specifically deal with housing rights. The first is s 26, which addresses the right of access to

adequate housing, and the second is s 28, which deals with the rights of children to shelter.

2.1 The right of access to adequate housing

Section 26(1) states that 'everyone has the right to have access to adequate housing.' Section 26(2) also provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. Section 26(3) specifically addresses security of tenure issues and provides that 'no one may be evicted from their home or have their home demolished, without an order of court, after considering all relevant circumstances. No legislation may permit arbitrary evictions.'¹

Housing rights are recognised in numerous international human rights instruments. The Universal Declaration of Human Rights, provides that everyone has a right to a standard of living that is adequate to the health and well-being of himself [herself] and his [her] family, including housing.² The Committee on Economic, Social and Cultural Rights has devoted attention to defining the concept of adequate housing,³ a phrase used in the South African Constitution. It elaborates seven criteria to clarify what adequate housing means. These criteria are legal security of tenure, affordability, availability of services, habitability, accessibility, location and cultural acceptability.

- **Legal security of tenure:** *tenure* takes a variety of forms, including rental, co-operative housing, owner-occupied, informal settlements, emergency occupation of land or property. Legal security of tenure is fundamental to the right of access to adequate housing. Secure tenure protects people against arbitrary evictions, harassment and other threats. Security of tenure is provided for by s 26(3) of the Constitution that requires an order of court before an eviction can take place.⁴
- **Affordability:** Housing should be affordable. The amount a person or family pays for housing costs should not be so high that it compromises the attainment of other basic needs. State parties are required to ensure that housing costs are commensurate with income levels. State Parties are also required to give housing subsidies and make loans accessible to those who cannot afford adequate housing. Tenants should also be protected against unreasonable rent increases.

¹ Section 26 of the *Constitution of the Republic of South Africa*, Act 108 of 1996.

² Article 25(1) of the Universal Declaration of Human Rights (1948).

³ General Comment 4 (1990) para 8.

⁴ It was held in the *Despatch Municipality v Sunridge Estate and Development (Pty) Ltd* (1997) 8 BCLR 1023 that previous legislation dating to 1951 which allowed demolition of buildings or structures without a court order no longer applied.

- **Availability of services, materials, facilities and infrastructure.** An adequate house must contain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right of access to adequate housing should have sustainable access to natural and common resources; safe drinking water; energy for cooking, heating and lighting, sanitation and washing facilities; means of food storage, refuse disposal and site drainage; and emergency services.
- **Habitability.** For housing to be considered adequate, it must be habitable. Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, and/or other threats to health, structural hazards or disease. Inadequate and deficient housing is associated with higher mortality and morbidity rates.
- **Accessibility:** Housing must be accessible to everyone. Disadvantaged groups such as the elderly, the physically and mentally disabled, the terminally ill, HIV-positive persons, victims of natural disasters and children should be assured some degree of priority consideration in housing. Laws and policies should prioritise these groups and access to land should be a central policy goal.
- **Location:** For housing to be adequate, it must be situated so as to facilitate access to employment opportunities, health care services, schools, and other social facilities. It must not be located in polluted areas which violate the right to the health of the inhabitants.
- **Cultural adequacy:** Building materials and design must enable the expression of cultural identity and diversity without compromising modern technological facilities.

When one or more of these attributes are not available, it can be said that housing is inadequate. It follows from this that the right of access to adequate housing cannot be viewed in isolation from other human rights such as the right to human dignity.

2.1.1 Reasonable measures, limited resources and the progressive achievement of the right of access to adequate housing

Reasonableness means that the programmes instituted must be balanced and flexible, and make appropriate provision for attention to housing crises in the short, medium and long term. A programme that excludes a significant segment of society cannot be said to be reasonable.⁵

The right to adequate housing is not immediately realisable as it is limited by the provision of the 'progressive realisation' and within available resources. Section 26(1) is an 'access' right with an internal qualifier,

⁵ *Government of the Republic of South Africa v Grootboom and Others* 2000 (11) BCLR 1169 (CC) para 43.

which makes the State's obligations for the progressive realisation of the right dependent on available resources. The State is obliged to show that it is not only taking appropriate steps to implement housing rights, but that there is a continuous improvement of living conditions and that housing is made available to a wider range of people as time progresses.⁶ Therefore, the provision of subsidies is not the only indicator of progressive realisation.

The Committee on Economic, Social and Cultural Rights has emphasised the need to adopt strategies to define the objectives of the housing sector. He strategies should also involve identifying available resources, and the most cost-effective way of utilising them and establishing responsibilities and time frames for the implementation of the necessary measures. Such strategies should include genuine consultation with and participation by all those affected, including the homeless and the inadequately housed and/or their representatives. International law has stressed that States must give priority to those groups living in conditions not consistent with the content and intent of housing rights.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) states that if a State is unable to meet even its minimum obligations due to lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources to satisfy those minimum obligations. However, lack of resources can never be used to justify failure by the state to take steps towards the enjoyment of the right.⁷ Even with extremely limited resources, the state has an obligation to delineate its core minimum obligations to take some measures towards the realisation of the right of access to adequate housing.

2.2 Children's right to shelter

Section 28(1) (c) of the South African Constitution, obliges the State to provide shelter for children in times of crises where parents are unable to do so. Section 28(1)(c) has to be interpreted within the context of the entire s 28 that also addresses issues such as the child's best interests and the role of the parents in caring for children. Section 28 (1) (b) defines primary caregivers as the family or parents. Alternative caregivers must provide shelter when children are removed from the family. The judgement in the Grootboom case stated that the Constitution contemplated that a child had the right to parental or family care in the first place and the right to alternative appropriate care only where parental or family care was lacking.⁸ Therefore the obligation to provide shelter was accordingly imposed primarily on the parents or family and only alternatively on the State, in the event of parents or family not being able to do so.

⁶ Ibid para 45.

⁷ General Comment 3 (1990) para11.

⁸ *Government of the Republic of South Africa and Others v Grootboom and Others* 2000(11) BCLR 1196 (CC) 1174 G-H.

This does not, however, mean that the State incurs no obligation in relation to the children who are being cared for by their parents or families. The State must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated by s 28. The State is also required to fulfil its obligations to provide families with the right of access to land in terms of s (25), as well as access to health care, food, water and social security in terms of s 27 subject to available resources. The Committee reiterated that children, who fall into the vulnerable group category, should be protected by the state, which is obliged to take appropriate measures to ensure that their rights are protected.⁹

In light of the above, it can be said that adequate housing is not just the roof over one's head, but also include the other components mentioned above, such as security of tenure, affordability and habitability. The State is required to take measures that are flexible and are able to address crises in the short-, medium- and long-term. These measures must not exclude a significant segment of society. As regards children, the primary responsibility for the provision of shelter lies with parents. However, in situations where parents are not able to provide shelter for the children, the State is obliged to take legislative and other measures, towards assisting parents with meeting the shelter needs of the children. The State should also provide shelter for children who find themselves in intolerable conditions such as being abused, orphaned or in conflict with the law. These sentiments are also echoed in the Convention on the Rights of the Child (CRC).

3 KEY DEVELOPMENTS FOR THE YEAR UNDER REVIEW

The developments that took place during the 1999/2000 reporting period have to be considered against constitutional provisions referred to above, and the measures that had been introduced before the reporting period, for the realisation of the right of access to adequate housing and the child's right to shelter.

3.1 Policy developments

The Department of Housing did not institute any new policy measures during the reporting period. In the previous report submitted to the Commission for the preparation of the 2nd Economic and Social Rights Report, the Department indicated that it was in the process of developing the Rural Housing Subsidies Programme and the National Norms and Standards in respect of permanent structures.¹⁰ The Rural Housing Subsidies Programme was introduced in November 1999 for implementation by the nine provinces. Its main aim was to enhance the realisation of the right of access to adequate housing for people in rural areas, who on the basis of informal land rights, were excluded from

⁹ General Comment No 4 (1997).

¹⁰ SAHRC 2nd *Economic and Social Rights Report 1998-1999*. (2000) 167.

accessing the National Housing Subsidy Scheme. This was a positive development as it attempted to bring about the realisation of housing rights to the majority of previously disadvantaged rural people and in line with the criteria set out in General Comment No 4 of the Committee on Economic, Social and Cultural Rights mentioned above that a house must be culturally appropriate and enable the expression of cultural identity and diversity without compromising modern technological facilities.

The National Norms and Standards programme was introduced with effect from 1 April 1999.¹¹ The programme was meant to protect housing subsidy beneficiaries from developers who built unacceptably small and badly constructed houses. They were also meant to ensure protection against structural hazards and the availability of services and infrastructure.

3.2 Legislative developments

During the reporting period, two Acts were passed and one Bill initiated. These were the Housing Consumer Protection Measures Act 95 of 1999, the Rental Housing Act 50 of 1999 and the Home Loan and Mortgage Disclosure Bill 53 of 2000.

The Housing Consumer Protection Measures Act 95 of 1999 was aimed at providing protection for all new housing consumers against defects on built structures. This piece of legislation was a step forward as it strengthened the National Norms and Standard in respect of permanent structures.

The Rental Housing Act 50 of 1999 was intended to address the following: facilitation of sound landlord/tenant relations; provision of general conflict resolution principles; establishment of the Housing Rental Tribunals, and the promotion of the housing rental property market. This Act protects people against arbitrary evictions and harassment.

The Home Loan and Mortgage Disclosure Bill 53 of 2000 was a significant development. The Bill attempts to address lending practices by financial institutions. Government recognised that most of the homeless people and people who apply for houses earn less than what banks would require for qualification for a housing loan. Therefore, the Bill advances the right of access to adequate housing.

3.3 The Budget

The national expenditure for housing as a share of the national budget decreased over the past two years from 1.9 percent in 1998/1999 to 1.4

¹¹ In terms of these norms and standards the internal reticulation services that may be subsidised are limited to water, sanitation, roads, storm water and street lightning. This is subject to a funding limit of a maximum amount of R7 500 for the provision of the services and acquisition of land. The minimum size of the permanent residential structures to be provided by means of the balance of the housing subsidy after the provision for basic services is 30 square meters (gross floor area).

1999/2000.¹² This is particularly disconcerting because of the huge backlog in housing delivery. What also became clear from the analysis of spending patterns especially at the provincial sphere was that there were several instances of under spending. This meant that these departments were still not able to apply financial resources efficiently.

4 CONCLUSION

The measures instituted address the dire conditions of housing in the country. Despite the institution of new measures however, the housing backlog is still acute. The decreasing budget makes it extremely difficult for provinces to implement the new measures. The housing programme has not succeeded in accommodating the needs of the vast majority of homeless people who fail to qualify for the housing subsidy and those who qualify but fail to get funding. Adequate shelter is essential to human existence; the provision of affordable and adequate housing remains a challenge for organs of State to meet their constitutional obligations.

There are some issues that remain problematic in the housing sector. These include redlining, continuing location of low-cost housing away from areas of economic opportunities, limited success of housing policies in integrating racially divided settlements and the link between housing delivery and economic development in order to make the housing delivery process sustainable.

¹² Based on the National Expenditure Review 2000.

PART B: ANALYSIS OF RESPONSES BY ORGANS OF STATE

This section of the report analyses information provided by national and provincial departments responsible for housing, on legislative and other measures instituted during the 1999/2000 financial year to realise housing rights contained in ss 26 and 28(1)(c) of the Constitution. National and provincial departments of Housing were required to provide information on policy, legislative and budgetary measures instituted during the period mentioned above. They were also required to provide information on outcomes, which are indicators relevant to the determination of progress in the realisation of housing rights, as well as systems established within the Departments, to monitor the realisation of housing rights.

1 POLICY MEASURES

1.1 *National Sphere*

The National Department of Housing (hereafter DoH) did not provide information on any policies or programmes instituted during the year under review. However, the Department reported that it had implemented the following programmes developed in the previous reporting period:

- The Rural Housing Subsidies: Informal Land Rights
- The National Norms and Standards in respect of Permanent Residential Structures
- Increase of the Housing Subsidy

The Rural Housing Subsidies: Informal Land Rights

This measure was developed before the current reporting period and was referred to in the 2nd Economic and Social Rights Report. The measure was introduced during 1999, to address the housing needs of people in rural areas. Before the promulgation of the Interim Protection of Informal Land Rights Act 13 of 1996 (see chapter seven on land rights, people living on land on the basis of only informal land rights (e.g. tribal land where communal tenure applies), and where registration of ownership of the land was not possible, were excluded from accessing the National Housing Subsidy Scheme. This measure was therefore instituted to terminate discrimination in accessing the subsidy, on the basis of the type of land rights. The measure extends housing subsidies to people who did not have secured land tenure before the 1996 Act.

National Norms and Standards in respect of Permanent Residential Structures

The Norms and Standards were required to protect housing subsidy beneficiaries from exploitation by developers who delivered unacceptably small and poorly constructed houses and local authorities that disregarded the principle of affordability and consequently demanded unreasonable

standards and expensive engineering services. The imposition of unreasonably high standards in particular has had the effect of leaving inadequate funds for the construction of top structures on the stands developed.

An increase in the subsidy amount

An increase of the housing subsidy amount was introduced in April 1999 and was necessary to ensure that the target group of the Government's housing assistance initiatives is assured of quality houses as well as products that comply with the National Norms and Standards in respect of Permanent Residential Structures. The increases introduced were between R500 and R1000. The Table below shows the increases in the different subsidy amounts.

Table 1 Adjustments introduced on the subsidy amount

| Previous amount | New amount |
|------------------------|-------------------|
| R 5 000,00 | R 5 500,00 |
| R 7 500,00 | R 8 500,00 |
| R 9 500,00 | R10 000,00 |
| R15 000,00 | R16 000,00 |

1.1.1 Measures and constitutional obligations

The DoH did not indicate how the instituted measures complied with the constitutional obligations in s 7(2) of the Constitution. According to the Department, the measures were reasonable and effective in meeting constitutional obligations relating to the right of access to adequate housing. The housing subsidy programme was made more accessible to a previously disqualified (rural) sector of the community. The National Norms and Standards in Respect of Permanent Residential Structures was meant to ensure that subsidy beneficiaries receive durable structures of quality.

1.1.2 Special considerations given to vulnerable groups

The programmes introduced made special considerations to the following categories of vulnerable groups:

Persons living in rural areas and homeless persons: The Rural Housing Subsidy was designed around the special requirements and needs of rural communities and homeless people previously excluded from the subsidy schemes due to informal land rights. By recognising informal tenure arrangements, the subsidy enables rural communities to access housing.

People living in informal settlements, low-income groups and previously disadvantaged racial groups including indigenous groups: The Housing Subsidy Scheme focuses on households earning up to R3 500 per month who are in need of housing assistance.

Refugees and asylum seekers: did not qualify since they were not South Africans citizens.

1.1.3 Implementation and difficulties experienced

The major difficulty experienced by the DoH was lack of financial resources. Although the measures for the Rural Housing Subsidy were in place, no additional funding was made available for the programme. As a result, it was being implemented through budget reprioritisation. Moreover, the programme required capacity building and training of officials entrusted with implementation. These activities are handled at the provincial sphere and the DoH has the responsibility to monitor implementation. The National Norms and Standards in Respect of Permanent Residential Structures were implemented without difficulties.

1.2 Provincial Sphere

All provincial departments adapted the National Housing Policy to their local situations. The main programme that provinces instituted was the Housing Subsidy Scheme. Provinces have developed various sub-programmes such as rural subsidies, individual subsidies, non-credit subsidies, credit-linked subsidies, institutional subsidies, consolidation subsidies and rental housing subsidies. Other related measures included the People's Housing Process and the Discount Benefit Scheme. All provincial departments were using the National Norms and Standards in Respect of Permanent Residential Structures to ensure that the quality of new housing meets the required standards.

The most notable policies were instituted by Gauteng Department of Housing. These were the Home Truth Commission, the Special Needs Policy, Mayibuye Upgrading Programme, the High Density and Transitional Housing Programmes.

The *Home Truth Commission* was initiated to investigate alleged acts of corruption committed by officials from the period 16th June 1976 to 27th April 1994. The Commission found that people illegally evicted from their homes experienced difficulties accessing housing subsidies under the Housing Subsidy Scheme. The Commission recommended that victims of unlawful removals from their homes be provided with alternative accommodation. As a result, a policy was developed to facilitate access to the subsidy, for victims of unlawful removals.

A *Special Needs Policy* was developed in order to promote sustainable and integrated housing delivery. It was aimed at addressing the specific needs and housing requirements of special categories of beneficiaries, namely, women, persons infected with and/ or affected by HIV/AIDS, persons with disabilities, the aged and youth. No further information on the policy was provided.

The *Mayibuye Upgrading Programme* was initiated as a result of the Department's recognition of the realities of urban landlessness and tenure

insecurity. The Department introduced the programme to release land and upgrade the tenure rights of citizens living in informal settlements.

The *High-Density* programme provides affordable housing usually to a multi- storey design specification in the inner cities through the upgrading of existing buildings.

Transitional Housing: provides shelter assistance to destitute people on a temporary basis.

1.2.1 Special considerations given to vulnerable groups

Some comments were made on how the various provincial departments gave special considerations to groups identified in the protocols. The groups that were mentioned were persons living in rural areas, female-headed households, older persons and persons with disabilities

Persons living in rural areas: The Gauteng province is predominantly urban but the provincial housing department implemented projects to accommodate individuals who reside in peri-urban areas and rural areas. No further information on the nature of these projects was provided.

The Eastern Cape started implementing two housing projects within the rural housing subsidy scheme and was planning to have a needs assessment done to establish the needs of rural community.

The North-West reported that the relaxation of terms of tenure and survey requirements, for the first time allows access to housing subsidies to the value of approximately R300 million. Approximately 20 000 subsidies have already been approved for housing development in rural areas.

Persons living in informal settlements: In Gauteng, the Peoples' Housing Process benefited people living in informal settlements. Through the Mayibuye programme, informal settlements were formalised to confer freehold ownership to residents. Where it was not possible to formalise informal settlements; residents were relocated to vacant land as part of the programme.

The North West, Eastern Cape, Northern Province, KwaZulu Natal, Western Cape and Mpumalanga reported that the housing delivery programme largely addressed the needs of people living in informal settlements. Projects on new settlements, comprising serviced stands and top-structures were provided to qualifying beneficiaries.

Female-headed households: All the provincial departments of housing indicated that female-headed households were afforded preference on the waiting list in order to ensure that imbalances created in society with regard to women by the past oppressive policies, were addressed.

The most notable response with regard to female-headed households came from the North West. Approximately 30 percent of all qualifying beneficiaries were female-headed households. The People's Housing Process was primarily managed and controlled by females, whereas females were to a large extent involved in other housing programmes as labour, or as members to steering committees.

Older persons: Gauteng implemented a policy where 5 percent of the budget allocation for various projects was earmarked for the elderly. The process was in the initial stages of implementation and processes were being put in place to ensure that various stakeholders complied with the policy. No further information was provided.

The North West and KwaZulu-Natal reported that the qualifying criteria for relocation subsidies in terms of the Relocation Subsidy Programme allowed older persons to occupy and own their existing homes and therefore ensured that older persons were not subjected to undue hardship.

The Western Cape and Mpumalanga reported that there were no special mechanisms aimed at providing special assistance to the above-mentioned groups.

Persons with disabilities: The Gauteng province had two housing projects specifically meant to address the needs of persons with disabilities. These projects fell under institutional subsidy¹³ and provided shelter to 15 persons with disabilities.

The Eastern Cape DoH reported that people with disabilities were integrated into the community and were therefore catered for within a regular housing project.

The North West and Northern Province reported that a special dispensation existed for disabled persons who qualify for additional allowances/subsidy amounts to cater for their specific needs.

The remaining provincial departments did not provide information.

Refugees and asylum seekers: All the provincial departments indicated that they did not have policy measures to assist refugees or asylum seekers, and that the National Housing Subsidy Scheme was only available to South African citizens.

1.2.2 Implementation and difficulties experienced

The Gauteng Department consulted with the various stakeholders and embarked on a regular process, which entailed the prioritisation of

¹³ This type of subsidy is provided to beneficiaries through institutions. Under this arrangement, an institution providing housing to a designated group of beneficiaries receives a subsidy from the state.

provincial and local government development needs. In determining such priorities, empirical data collated by the department by way of research and statistics from Statistics South Africa was used as a guiding tool. The main difficulty experienced by the Department arose when there had to be deviation from national policy. The Department had to seek the approval of the Minister Member of Executive Committee (MINMEC), which was time consuming. In some instances, approval was not even granted.

The Eastern Cape experienced difficulties affecting municipalities with respect to the lengthy process of land release. Within the Hostel Redevelopment Scheme, difficulties arose from disputes between beneficiaries and the Local Negotiating Group.

The North West, Gauteng, Northern Province, Mpumalanga, Western Cape, Northern Cape and KwaZulu-Natal reported that they experienced the following difficulties with regard to the implementation of the policy measures:

- Reduced institutional housing subsidy budget allocations
- Lack of assistance from communities and private sector partners in mobilising additional resources and inherited backlogs
- Lack of suitable land for housing, poor past planning practices and lack of capacity and expertise at local government
- Delays in the implementation of projects by developers
- Community conflicts over resources

KwaZulu-Natal realised the urgent need to move away from the developer driven to a department-driven approach, since the latter focuses on optimising services to housing recipients rather than maximising profits for shareholders.

1.3 Critique

The responses from the national and provincial Departments showed a lack of understanding of their obligations to respect, protect, promote and fulfil the right of access to adequate housing.

The Northern Cape, North West, Mpumalanga, Northern Province and Western Cape only listed the policies and/or related programmes but failed to explain what the benefits of such programmes were to the intended beneficiaries.

Responses from Gauteng, Eastern Cape, KwaZulu-Natal were relatively satisfactory. Housing departments in these provinces provided detailed information on the nature of the measures instituted.

The DoH has laid the foundation for provincial departments to realise the right of access to adequate housing. However, due to huge backlogs and unavailability of land and insufficient funds there was a slow pace of delivery.

Although the Department's policies and programmes were geared towards the realisation of the right, it is noted that the realisation of this right is dependent on the availability of resources. It should also be noted that with the decrease in the housing budget allocation, provincial departments are facing a huge challenge to prioritise their limited funding.

The White Paper on Housing views credit as one of the cornerstones of housing delivery and opportunities for beneficiaries to access additional funding towards adequate housing. Despite the efforts of the DoH to mobilise housing finance, banks and other lending institution have been reluctant to extend housing finance to low-income groups. One could therefore argue that the housing finance system is not effective as it fails to take cognisance of unemployment rates and gender inequalities prevailing in South Africa.

The development of the policy on Norms and Standards was a critical development as it protects beneficiaries from exploitation by developers.¹⁴

1.4 Recommendations

The provinces should adhere to the format of the protocols when responding and should provide the Commission with detailed answers.

The housing departments should encourage environmentally efficient housing development to promote sustainability, by working closely with all the departments whose mandates impact on the environment, such as Environmental Affairs and Tourism, Health, Water Affairs and Forestry, Minerals and Energy, and Provincial and Local Government.

There is a need to give special considerations to those living with HIV/AIDS, especially children and orphans.

Changes in rules and regulations that affect the way in which policy mandates are interpreted and implemented by provinces are necessary. This is raised in view of the fact that the recommendations made by the Housing Truth Commission in Gauteng could not be adopted because the recommendations were contrary to the principles of the housing subsidy scheme.

National and provincial Departments need to recognise levels of unemployment and gender inequalities that prevail in the country, and should therefore provide corresponding financial assistance to women.

¹⁴ Ndinda C 'Women's Access to Housing: Accessing Policy Through Practice' in *Indicator South Africa* Vol 18 No1 (2001).

2 LEGISLATIVE MEASURES

2.1 National Sphere

The DoH reported that the Housing Act 107 of 1997 provides the legislative framework for the right of access to housing. During the reporting period, the following legislative measures were instituted: the promulgation of the Housing Consumer Protection Measures Act 95 of 1998, Rental Housing Act 50 of 1999 and the Home Loan and Mortgage Disclosure Bill 53 of 2000.

The Housing Consumer Protection Measures Act 95 of 1998

This law, which was promulgated on June 4, 1999, established a body called the National Home Builders Registration Council (NHBRC), which is responsible for providing protection for all new housing consumers against structural defects. The Act ensures that builders abide by approved standard when they build houses.

Rental Housing Act 50 of 1999¹⁵

The Act advances the constitutional obligations to protect the right of access to housing. The objectives of the Act are to:

- define Government's responsibility in respect of rental housing and to create mechanisms to promote the provision of rental housing;
- promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market;
- make provision for the establishment of Rental Housing Tribunals and to define the functions, powers and duties of such Tribunals;
- lay down general principles governing conflict resolution in the rental housing sector, and
- provide for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases.

Home Loan and Mortgage Disclosure Bill 53 of 2000

The Department reported that the Bill supports the constitutional obligations to respect, protect, promote and fulfil the right of access to housing because it was aimed at:

- promoting lending practices by financial institutions;
- establishing an Office of Disclosure to monitor compliance with financing requirements.¹⁶
- rating the financial institutions and making such rating public;
- amending the definition of housing loan in the Usury Act;

¹⁵ This Act repealed the Rent Control Act 80 of 1976.

¹⁶ Financial institutions that are engaged in the provision of home loans are required to disclose information in their reports and annual financial statements.

- empowering the Minister of Housing to introduce measures by way of regulations; and
- promoting the sustainable provision of home loans.

2.1.1 Special considerations given to vulnerable groups

Regarding the question of the special considerations given to vulnerable groups, the DoH reported that the Rental Housing Act was applicable in rural areas and also to persons living in informal settlements where rental housing occurs. The Act also promotes access to adequate housing to homeless persons through the proper functioning of the housing rental market, and through the provision of housing rental property. The Home Loan and Mortgage Disclosure Bill was reported to be considering the needs of special groups as it was intended to reveal discriminatory lending patterns by banks, which adversely affect female-headed households, older persons, persons with disabilities, low-income groups and the previously disadvantaged groups, including indigenous groups. According to the department, the needs of refugees and asylum seekers are not considered because the National Housing Subsidy Scheme requires beneficiaries to be citizens of the Republic or have permanent residence permit to reside in the country.

2.2 Provincial Sphere

Several provincial departments provided information on legislative measures instituted during the 1999/2000 reporting period.

In line with the National Housing Act 107 of 1997 the Eastern Cape formulated the Provincial Housing Development Bill to realise the right of access to adequate housing. No further details of the Bill were provided.

The Free State Department passed the Provincial Housing Act in 1999 and was in the process of promulgating a Provincial Rental Housing Act, which would provide for the establishment of a Rental Tribunal.

The Gauteng Department instituted the Gauteng Housing Amendment Bill of 2000 as an amendment to the Gauteng Housing Act.

The KwaZulu-Natal Department passed the Provincial Housing Act 12 of 1998 aimed at the provision of effective housing delivery in the province. This Act is based on the National Housing Act of 1997.

The Western Cape Department promulgated Housing Development Act 6 of 1999.

The remaining provinces mentioned legislative measures instituted before the reporting period.

2.3 Critique

The report from the DoH attempted to provide answers to most of the questions in the protocol. However, the Department did not report on other legislative measures instituted. Since the Housing Act of 1997, there have been two amendments to this law. The first amendments were made in Act 28 of 1999. The amendments were made to recognise the Social Housing Foundation as a national institution, and to further regulate the transfer of movable and immovable property to the provincial Housing Development Boards and the phasing out of certain housing subsidies. The second amendment was Act 60 of 1999. This law authorises a Member of the Executive Council (MEC) of a provincial government to approve the sale or other alienation of welfare facilities in certain circumstances. For example, an MEC may after consultation with members responsible for welfare matters, absolve a juristic person from its obligation to repay a loan or part of it that was granted by a municipality or a Housing Board.¹⁷

There was also an amendment to the Housing Consumers Protection Measures Act of 1998. This was amended by Act 27 of 1999, to remove ambiguity in the wording of certain sections, to make further provision for regulating measures, and to make better provision for the necessary phased implementation of the Act.

Though the measures were adequately described in terms of their provisions, there was little account of how the measures were implemented, and whether there were problems experienced with the implementation. The DoH has mentioned that the Housing Act forms the legislative framework for matters relating to the right of access to housing but failed to discuss the implementation of the Act.

The measures were inclined to make housing accessible without addressing the question of the quality and adequacy of houses. Legislative measures should not only make it possible to access housing, but also should also define and set the minimum standards of adequacy.

Several provinces cited their own provincial legislative measures, but failed to describe how the measures would advance the right of access to adequate housing. Since those measures were not described, Departments could also not give an account of the impact of those measures on the realisation of the right of access to adequate housing. Some Departments cited national legislation such as the Housing Act of 1997, without explaining how that law was implemented at the provincial sphere of government.

None of the provincial responses provided sufficient information on the four constitutional obligations to respect, protect, promote and fulfil the right of access to adequate housing.

Another observation made about provincial reports is that they tend to be too general without addressing specific issues. For example, it could not

¹⁷ See section 1 of Act 60 of 1999.

be determined what specific legislation is said to have considered the interests of vulnerable groups.

2.4 Recommendations

The DoH should provide in its response all relevant legislation regarding housing matters.

The determination of the progressive realisation can only be made on the basis of the extent of the implementation of the measures. The DoH should provide information on how these laws if implemented affect the realisation of the right.

3 BUDGETARY MEASURES

National and provincial departments were required to provide information on budgetary allocations for housing programmes. They were also required to explain variances, comment on budget adequacy and show what special considerations were given to vulnerable groups.

Table 2 Budgetary Allocation of the National Department of Housing

| YEAR | TOTAL ALLOCATION IN RANDS | ACTUAL EXPENDITURE* |
|-----------|---------------------------|-----------------------------|
| 1998/1999 | 3 812 539 000 | 3 747 565 805 |
| 1999/2000 | 3 629 107 000 | 3 494 376 042 |
| 2000/2001 | 3 439 355 000 | 1 666 398 776 ¹⁸ |

The budgetary allocation decreased by R183 432 000 from 1998/1999 to 1999/2000 and by a further R189 752 000 for the 2000/2001 financial year. The total budget allocation during the period 1998 to 2001 decreased by an amount of R373 184 000. The Department under spent its budget by approximately R134 731 000 for the period under review.

Variances: The DoH attributed the decrease in the budgetary allocation to a number of cases, such as Housing Institution Establishment funds, RDP funds, and Special Integrated Presidential Project (SIPPS) funds, which were included in the housing budgets of the previous years.

Adequacy: The DoH responded that there were about 2 778 000 households living in conditions of inadequate shelter and about 5 959 000 households qualifying to receive housing subsidies. The allocated budget was therefore insufficient to cater for the demand for housing subsidies. To address these challenges, the DoH reported that it was in the process of developing a Housing Strategy for the New Millennium, which was expected to address the challenges faced due to budgetary constraints.

¹⁸ It needs to be recalled that departments submitted the reports during the course of the 2000/2001 financial year. By that time, there was not yet information on total spending for the 2000/2001 financial year.

Special considerations given to vulnerable groups: With regard to special consideration given to vulnerable groups, the Department responded that the National Housing Fund provides budget for subsidies in rural areas through the Informal Land Rights Subsidy. The provincial allocation formula has also been adjusted in consultation with MECs responsible for housing in order to facilitate a shift in emphasis from urban to rural provinces to support the Integrated Sustainable Rural Development Strategy.

The Housing Subsidy Programme caters for people with disabilities, older persons, persons living in informal settlements, low-income groups and previously disadvantaged racial groups earning up to R3 500 per month. The Housing Subsidy Scheme's general qualifications criteria have been developed on the principles of, inter alia, gender equality. The needs and requirements of female-headed households were accommodated in the allocation of subsidies by the provinces.

3.1 Provincial Sphere

The budgetary allocations in the provinces are given below.

Table 3 Total Budgetary Allocations for provinces

| PROVINCE | YEAR | TOTAL ALLOCATION IN RANDS | ACTUAL EXPENDITURE |
|-------------------|-----------|------------------------------|----------------------------------|
| Eastern Cape | 1998/1999 | 389 705 000 | 313 302 000 |
| | 1999/2000 | 338 731 000 | 312 587 712 |
| | 2000/2001 | 689 942 000 | |
| Free State | 1998/1999 | 132 597 000 | 323 152 559 |
| | 1999/2000 | 131 971 000 | 129 608 926 |
| | 2000/2001 | 370 062 000 | 95 078 685 as of 31 July 2000 |
| Gauteng | 1998/1999 | 725 700 000 | 815 100 000 |
| | 1999/2000 | 725 800 000 | 767 200 000 |
| | 2000/2001 | 718 900 000 | |
| KwaZulu-Natal | 1998/1999 | 627 755 137 | 661 138 754 |
| | 1999/2000 | 579 150 000 | 468 333 257 |
| | 2000/2001 | 587 650 199 | |
| Mpumalanga | 1998/1999 | 165 132 749 | 153 108 588 |
| | 1999/2000 | 163 487 749 | 106 194 715 |
| | 2000/2001 | 176 068 502 | |
| Northern Cape | 1998/1999 | 46 407 000 | 45 038 000 |
| | 1999/2000 | 41 357 000 | 45 912 000 |
| | 2000/2001 | 111 797 000 | |
| Northern Province | 1998/1999 | 224 640 000 | |
| | 1999/2000 | 224 640 000 | |
| | 2000/2001 | 257 000 000 | |
| North West | 1998/1999 | 233 800 000 | 228 400 000 |
| | 1999/2000 | 216 400 000 | 189 400 000 |
| | 2000/2001 | 280 400 000 | 105 500 000 |
| Western Cape | 1998/1999 | 380 457 659 | 474 721 450 |
| | 1999/2000 | 351 375 209 | 396 450 209 |

| PROVINCE | YEAR | TOTAL ALLOCATION IN RANDS | ACTUAL EXPENDITURE |
|----------|-----------|------------------------------|-----------------------|
| | 2000/2001 | 341 500 000 | 376 870 724 |

Variances: The Eastern Cape DoH reported that the decrease in budgetary allocations for the year under review (1999/2000) in relation to the 1998/1999 financial years was due to a policy shift introduced by the Department of Provincial and Local Government. The policy requires the allocation, which used to be transferred to provincial departments, to be paid directly to the municipalities. The reduction in actual expenditure was as a result of savings from the various programmes induced by the moratorium from the provincial Department of Finance to cater for financial crises in other departments. Some of the funds were transferred to the Department as conditional grants towards the end of March and could therefore not be utilised in time, which resulted in a roll over of R20m.

The Free State indicated that the variance (an increase between 1999/2000 and 2000/2001 financial years of R218 306) was mainly due to the fact that the housing fund of R218 306 was allocated for the first time to the budget whereas in the previous financial years it was handled as an agency service.

The Gauteng Department received a conditional grant from the DoH that was utilised to implement the various programmes. The operating expenditure of the Department was funded out of allocations made by the Provincial Treasury Department in the Province. The Department also received additional grants to implement special programmes such as special urban renewal programmes like the Kathorus Special Presidential Project, which did not form part of the housing budget.

KwaZulu-Natal over spent in 1998/1999 due to additional projects that were approved during the year.

In the Northern Cape, the variance between 1998/1999 was a result of transfer of responsibility for the payment of the equitable share allocation to local government. During 1998/1999 the Department was allocated R6 million as a once off amount to accommodate this shift.

The North West reported that housing allocations were granted to provinces on the basis of a National Housing Fund Allocation Formula, which was amended from time to time. Allocations for the 2000/2001 financial year was based on the MTEF formula, which was more advantageous to provinces with large rural populations, and were allocated to provinces in the form of a conditional grant. All unspent funds were rolled over for utilisation in the following financial year.

The Western Cape, Mpumalanga and Northern Province did not provide reasons for the variances.

3.1.1 The subsidy scheme

Budgetary allocations for the subsidy scheme are shown in the Table below.

Table 4 Budgetary Allocations for Subsidy Schemes

| PROVINCE | YEAR | TOTAL ALLOCATION IN RANDS | ACTUAL EXPENDITURE |
|---------------|-----------|------------------------------|-----------------------|
| Eastern Cape | 1998/1999 | 434 415 705 | 382 616 956 |
| | 1999/2000 | 396 650 000 | 325 728 183 |
| | 2000/2001 | 422 200 000 | |
| Free State | 1998/1999 | 207 360 000 | |
| | 1999/2000 | 210 600 000 | |
| | 2000/2001 | 218 306 000 | |
| Gauteng | 1998/1999 | 725 700 000 | 815 100 000 |
| | 1999/2000 | 725 800 000 | 767 200 000 |
| | 2000/2001 | 718 900 000 | |
| KwaZulu-Natal | 1998/1999 | 489 178 168 | 497 558 131 |
| | 1999/2000 | 483 070 000 | 408 083 563 |
| | 2000/2001 | 524 274 000 | |
| Northern Cape | 1998/1999 | 60.239 | |
| | 1999/2000 | 55 600 000 | 60 239 000 |
| | 2000/2001 | 58 100 000 | 55 600 000 |
| North West | 1998/1999 | 225 100 000 | 221 400 000 |
| | 1999/2000 | 207 700 000 | 181 400 000 |
| | 2000/2001 | 268 800 000 | 103 100 000 |
| Western Cape | 1998/1999 | 380 457 659 | 474 721 450 |
| | 1999/2000 | 351 375 209 | 396 450 209 |
| | 2000/2001 | 341 500 000 | 376 870 724 |
| Mpumalanga | 1998/1999 | 165 132 749 | 144 867 485 |
| | 1999/2000 | 160 800 000 | 102 521 997 |
| | 2000/2001 | 173 460 753 | |

Variances: The Northern Cape and Northern Province did not provide information on variances.

In the Eastern Cape, the allocation to the province in terms of the MTEF budgetary cycle was guaranteed at R388, 8m for the three financial years. These amounts were however increased to accommodate cash flow projections in terms of provincial commitments. The amount of R51m that was not spent in the year 1998/1999 was rolled over to the following financial year hence the reduced allocation during the 1999/2000 financial years. The amount allocated to the province, as capital budget for the financial year 2000/2001 was initially R388, 8m but was subsequently revised as per MINMEC resolution in order to address the rural nature of the province hence the revised amount of R422, 2 200 000 was allocated to the province for the reporting period.

In Mpumalanga, the variance was due to the cash flow submitted by the developer's actual expenditure, which was sometimes outside the developer's control.

KwaZulu-Natal indicated that, there was an over expenditure in 1998/1999 due to additional projects approved during the year. Under spending in 1999/2000 was caused by projects that were hampered by the floods in KwaZulu Natal.

The North West, Gauteng, Free State and Western Cape indicated that provincial housing allocations were granted to provinces on a basis of a National Housing Fund Allocation Formula, which was amended from time to time. The allocation for the 2000/2001 financial years was based on a MTEF formula, which was more advantageous to provinces in the form of conditional grant.

Budget adequacy: The Eastern Cape found the budget to be adequate to meet commitments in terms of approved projects but not for new projects. During the financial year 2000/2001 the Department approved funding to only 68 new projects. There were insufficient funds to allocate to new projects. The Department allocated funding only to those projects that were ready to commence and thus spent most of their budget within a short space of time.

In Gauteng the budget was sufficient to meet the Department's commitments to the various programmes. The budget was however, insufficient to meet the backlogs. The Department instituted mechanisms and research into alternative financing mechanisms to unlock private sector funding for housing.

The Northern Cape, Mpumalanga, Western Cape, KwaZulu-Natal and North West indicated that, the allocation was not adequate.

In the North West DoH the allocation only covered the growth in housing needs of 16 000 households per annum which represented R256 million worth of subsidies and did not address the backlog estimated at 486 000 households requiring funding in the order of R7, 776 billion. There were problems experienced, as an increasing number of project proposals had to be rejected or shelved whilst the backlog marginally increased each year and could not be addressed without a substantial increase in funding.

The Western Cape indicated that the budgeted allocation was totally inadequate for the provision of subsidies. The budgetary allocation to the DoH over the reporting period was systematically reduced from R4, 6 billion in 1998/1999 to R4, 2 billion in 1999/2000. The Department introduced a Prioritisation Model to ensure the effective use of inadequate funding.

Special considerations given to vulnerable groups: All the provincial departments reported that the current subsidy was by its nature directed at benefiting low- income groups, the homeless, people living in informal settlements, older person, persons with disabilities, female-headed households and the previously disadvantaged racial groups including indigenous groups.

Mpumalanga set up a disability desk, which came into effect on 1 April 1999. The unit was facilitating applications for housing subsidies.

3.1.2 Physical infrastructure

Budgetary allocations towards infrastructure are given in the Table below.

Table 5 Budgetary Allocations for Physical Infrastructure

| PROVINCES | YEAR | TOTAL ALLOCATION IN Rands | ACTUAL EXPENDITURE |
|--------------|-----------|------------------------------|-----------------------|
| Eastern Cape | 1998/1999 | 108 741 160 | 98 741 160 |
| | 1999/2000 | 110 797 000 | 100 747 000 |
| | 2000/2001 | 145 302 000 | 33 911 571 |
| Free State | 1998/1999 | 138 637 810 | 135 695 352 |
| | 1999/2000 | 61 212 885 | 61 212 065 |
| | 2000/2001 | 67 820 000 | 15 484 005 |
| Gauteng | 1998/1999 | 342 000 000 | 815 100 000 |
| | 1999/2000 | 203 000 000 | 767 200 000 |
| | 2000/2001 | 299 000 000 | |
| North West | 1998/1999 | 58 552 000 | 58 400 000 |
| | 1999/2000 | 130 530 000 | 126 990 000 |
| | 2000/2001 | 139 260 000 | - |
| Western Cape | 1998/1999 | 157 000 | 157 000 000 |
| | 1999/2000 | 160 000 | 160 000 000 |
| | 2000/2001 | 155 000 | 155 000 000 |

- No information was provided on variances.

Budget adequacy: In the Eastern Cape, due to poor performance by local authorities to spend their budgets, a total amount of R10 million in 1998/1999 and 1999/2000 had to be returned to Pretoria.

According to the North West, the budgeted allocation was not adequate as the backlog in the provision of infrastructure was estimated to be more than R22 million. The Department reprioritised and sourced additional funding from the Provincial Capital Development Fund and private sector funding opportunities. The Western Cape indicated that they had not instituted measures. The remaining provinces did not respond to the question

The Western Cape DoH indicated that a direct impact of the lack of sufficient funding for infrastructure was that the Department was unable to provide basic services to all beneficiaries.

3.2 Critique

The DoH did not provide relevant information on the allocation as a percentage of the GDP and the actual amount acquired from other sources. The only information provided for the three-year period was on total amounts allocated and the actual expenditures. There has been under-spending in 1998/1999. The DoH confines the information to the National Housing Fund and failed to address the Rural Housing Subsidy to which mention was made in the section on policy measures. This fund was meant

to provide subsidies for rural communities that did not have access to housing since they only had informal land rights.

Other sources showed that planned housing expenditure for 1999/2000 was only 1.6 percent of the total national expenditure and this figure has been steadily decreasing over the past few years from a maximum of 2.4 percent in 1997/1998. This fails to meet the White Paper's goal of increasing housing's share in the national budget to 5 percent. Despite priorities given to other social services like education, health and social welfare, the government fails to recognise the magnitude of the nature of the problems low-income families experience in accessing housing.

3.3 Recommendations

The DoH should adhere to the questions in the protocol and not send selective information.

The limited budgetary allocation for housing and the progressively declining housing budget are areas of concern. If the Department of Housing is going to meet the backlog in housing needs, the State should increase the share for the Housing budget to 5 percent of the total national budget, as requested by the White Paper on Housing.

4 OUTCOMES

The national and provincial departments were requested to provide the following information: number of households granted State subsidies, houses built through self-help housing schemes with some assistance from the State, households that were eligible for subsidies, shelters provided for older persons, homeless persons, households in informal settlements, households in illegal settlements, people on the housing waiting list and average waiting period on the list. Departments were also required to provide information according to racial, rural and urban categories.

4.1 National Sphere

The DoH reported that during the first five years of implementation of the Housing Programme, the emphasis has been on the number of units delivered. By 31 March 1999, five years after the Housing Programme was initiated, a total of 745 717 units were either completed or under construction. The target of 1 000 000 houses was reached in April 2000.

The DoH did not monitor the type of housing developments approved by Provincial Housing Development Boards or Provincial Housing Departments. There was therefore no data at the national sphere on the rural-urban split, or on the population groups to whom subsidies were

allocated. The DoH did not monitor the number of subsidies granted through the People's Housing Process projects.

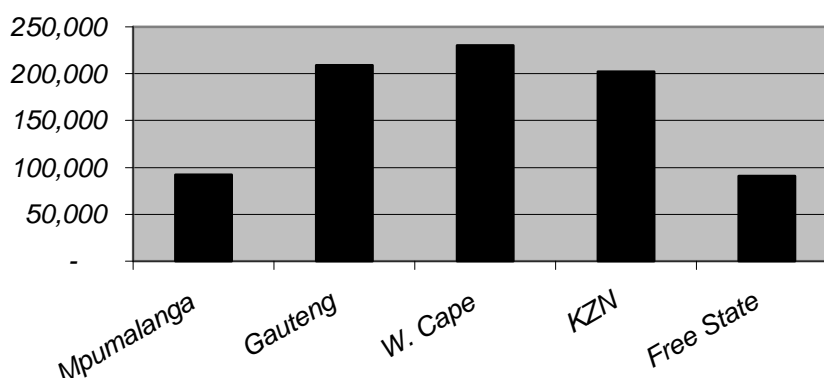
No data was collected on the status of households' accommodation prior to them accessing a subsidised housing unit and illegal settlements. This was a matter that was dealt with at the local sphere of government, as there was no National Housing waiting list. As previously explained, decisions relating to the allocation of housing subsidies were made at the provincial sphere. Some provinces established housing waiting lists as a tool for managing the allocation process.

4.2 Provincial Sphere

The North West and Northern Cape did not provide information on housing delivery statistics. KwaZulu-Natal awarded the highest number of state subsidies and the Northern Cape awarded the lowest number of subsidies as compared to other provinces. Numbers of subsidies granted by provincial departments were not proportionate to the number of houses built. The disproportion was linked to the fact that individual subsidy programmes, which were introduced on 5 June 1995, gave qualifying beneficiaries access to housing subsidies to acquire ownership of existing property or property not located in a project approved by a Provincial Housing Development Board. A person could also buy a serviced site and build his or her own top structure.

The Eastern Cape reported that out of 110 423 subsidies granted, 10 947 were granted to households in urban areas while 945 went to households in rural areas. Northern Cape reported that out of 11 556 subsidies, 9 384 were granted to urban households and 2 172 to rural households. KwaZulu-Natal granted about 200 000 subsidies and has reported that the Department has abolished the waiting list. Gauteng granted about 430 000 subsidies.

Figure 1 **Number of households living in informal settlements**



The Western Cape, Gauteng and KwaZulu-Natal showed a larger proportion of households living in informal settlements. The North West, Northern Cape, Eastern Cape and Northern Province did not provide information on the number of households living in informal settlements. Compared to the 1998/1999 report, the number of households living in informal settlements in the Western Cape increased by 66 820 whereas in KwaZulu-Natal it increased by 15 930.¹⁹

Gauteng provided 622 shelters to homeless persons and 2 925 shelters to older persons. The North West, Northern Cape, Eastern Cape, Northern Province, Western Cape and KwaZulu-Natal did not provide the information on the number of shelters provided.

The Gauteng DoH reported that 24 403 houses were built during the year under review however in its annual report, it indicated that 46 741 houses were constructed.

4.3 Critique

The DoH only provided information on the number of houses built. However, it is appreciated that the DoH does not deal with implementation of the measures and that is the responsibility of the provincial departments. The monitoring of the realisation of the right to housing cannot be measured by the statistics from certain provinces. In order to make a sound analysis of all provincial departments there is a need to provide information so that a countrywide comparison of the progressive realisation of the right could be made. The national department should therefore take initiatives to capture data that gives a national picture. Provincial departments could help by feeding the necessary data to the national Department.

The fact that provinces have been given the prerogative to make decisions relating to the allocation of subsidies requires that the provincial

¹⁹ South African Human Rights Commission. *2nd Economic and Social Rights Report 1998-1999* (2000) 184.

departments should provide all the necessary information required by the protocols.

Looking at the provincial population gains scenario (1995-2025), the figures clearly indicate that the Northern Cape will experience a tremendous population decrease in both urban areas (21 percent) and rural areas (60 percent). The highest drop in population in the rural areas is expected in the Free State (70 percent) followed by Western Cape (63 percent) and the highest increase in the population in the urban areas was expected in KwaZulu-Natal (64 percent) followed by Western Cape and Gauteng (54 percent). This implies an increasing projected housing backlog in KwaZulu-Natal and a decreasing projected housing backlog in the Free State.²⁰

Research shows that due to the DoH prioritising provinces with large rural populations, the Western Cape housing subsidies face further obstacles. Current approved projects come to R500 million of funding per year and the provincial housing budget was expected to further decrease in the future.²¹ Gauteng, which was predominantly urban, faced similar problems.

Increased numbers of households living in informal settlements together with the high population figures and decreasing housing funds in the three above-mentioned provinces mean that the majority of households will not be able to obtain decent quality housing.

4.4 Recommendations

Provincial departments, as implementers of national policies and legislation need to provide information required by the protocols. Departments should follow a set monitoring criteria, where monitoring systems do not exist, the DoH should establish guidelines on monitoring and evaluation.

With increasing numbers of households living in informal settlements and the decreasing amounts of funding, a comprehensive rehabilitation strategy needs to be engaged. Rehabilitation of existing settlements by providing the necessary infrastructure and facilities to enhance sustainable human settlements is an option. Departments should also start looking at establishing social housing clusters.

5 NATIONAL ACTION PLAN

The national and provincial departments were required to provide the following information:

- number of dwellings without access to safe and healthy drinking water,
- dwellings without adequate sanitation facilities

²⁰ DoH Annual Report 1999-2000

²¹ Ibid.

- dwellings without electricity
- dwellings that did not conform to the departmental construction and safety standards
- persons that were eligible for subsidies but did not receive such subsidies due to budgetary constraints
- persons that were eligible for subsidies but did not receive such subsidies due to administrative problems
- families without houses
- informal settlements
- households with no security of tenure due to administrative problems.

5.1 National Sphere

The DoH did not collect information on the indicators required but relied on the statistics collected by Statistics South Africa (SSA).²² According to this survey, there were 182 600 dwellings without access to safe and healthy drinking water ie households obtaining water from a tanker, borehole on site, communal tap, rainwater tank, flowing water or stream, dam or pools, wells or springs). 1 683 000 were in urban areas and 144 000 in rural areas.

There were 4 933 000 dwellings without adequate sanitation facilities ie households using pit latrines or bucket systems, 3 671 000 urban and 1 251 000 rural. There were 3 318 000 dwellings without electricity ie households using sources other than mains electricity for lighting. About 2 283 000 were in urban areas and 1 037 000 were in rural areas.

5.2 Provincial Sphere

North West, Mpumalanga and KwaZulu-Natal did not provide information on the number of households without adequate water, sanitation and electricity, urban and rural dwellings without adequate sanitation facilities and access to safe and healthy drinking water.

Gauteng, Northern Cape, Eastern Cape and Northern Province, Mpumalanga and KwaZulu-Natal did not provide information on the number of households without adequate water, sanitation and electricity. The Western Cape showed a larger proportion of household without electricity whereas households without adequate water and sanitation were minimal.

None of the provincial departments provided information on the number of households that did not conform to departmental standards, number of households eligible for subsidies but denied due to budget limitations and households with no security of tenure.

The Western Cape indicates that 292 000 families compared with 486 000 families in the North West were without houses who qualified for housing subsidies but did not receive such subsidies due to budgetary constraints. Gauteng, Northern Cape, Eastern Cape, Free State, Mpumalanga and

²² Statistics South Africa *October Households Survey* (1999).

KwaZulu-Natal did not provide the information required on the number of families without houses and eligible for housing subsidies.

The North West showed a bigger proportion of rural dwellings without access to safe and healthy drinking water whereas the Free State showed a bigger proportion of urban dwellings without access to safe and healthy drinking water. Other provinces did not provide the information.

All the provincial Departments did not provide information on dwellings that did not conform to departmental construction and safety standards, persons that were eligible for subsidies but did not receive such subsidies due to budgetary constraints, persons that were eligible for subsidies but did not receive such subsidies due to administrative problems, families without houses, informal settlements and households with no security of tenure due to administrative problems.

5.3 Critique

The DoH and provincial Departments' failure to provide adequate information makes it difficult to make a sound analysis of housing delivery in South Africa.

The statistics received from the provinces are problematic because they differ substantially from the statistics received from Statistics South Africa. This makes it difficult to measure the level of progress achieved in the provision of adequate housing. The failure of provincial departments to provide information according to the rural and urban categories also poses a problem. The departments indicated that the Rural Housing Subsidy was specifically developed for rural communities. However, it is unsatisfactory that the departments could not provide information on rural communities.

Information from the three provinces showed that the provision of infrastructure for the satisfaction of 'adequate housing' in South Africa remains a challenge. It is not only the challenge to housing in the form of a structure but 'adequate housing which must contain certain facilities essential for health, security and comfort' which remains unfulfilled.²³ Research indicates that there were problems with the quality of the houses delivered in the Western Cape which in turn affected issues such as health, safety and education. The main problems included unplastered concrete walls that retain dampness, water-logged houses which result in respiratory diseases from the dampness.²⁴

5.4 Recommendations

Provincial departments should maintain intelligible disaggregated databases on relevant indicators so as to be able to assess housing needs in different areas, and to monitor progress in implementing initiatives to

²³ Note 7 above, para 8.

²⁴ South African Human Rights Commission *2nd Economic and Social Rights Report 1998-1999*. (2000) 184.

facilitate effective planning for the next three years in terms of the MTEF budget.

PART C: CONCLUSION

The measures that have been undertaken by national and provincial Departments of Housing are relevant to the realisation of housing rights contained in ss 26 and 28 of the Constitution. However, the measures remain inadequate to address the key issues that need to be resolved for the realisation of the right of access to adequate housing and children's right to shelter. These problems are to be found in the allocation of budgetary resources towards housing. As a share of the national budget, the housing budget has been declining over the years. The State is reducing the enjoyment of a right without reasonable grounds for the reduction being provided. This occurs in a climate of rising housing needs, and failure of alternatives financing mechanisms such as personal savings, banks and other institutions to provide much-needed finance. This sets serious constraints even on the policy measures that are put in place to improve delivery. For instance, the State's focus, before the reporting period, was on expanding the outreach of the housing programme by including people holding informal land rights. However, the budget was not increased in the light of this new, previously excluded category of beneficiaries. As a result, there had to be reprioritisation, despite the fact that allocated resources were already insufficient to meet the needs of urban dwellers.

Another disturbing trend, also relates to the allocation of budgetary resources and to under-spending. Almost all provincial Departments under-spent their budgets over the three-year period, including the reporting period. It is therefore clear that the State is not even able to prove that it is applying the resources efficiently, meaning that housing rights are being violated.

ABBREVIATIONS

| | |
|---------------|--|
| CRC | - Convention on the Rights of the Child |
| DoH | - Department of Housing |
| ICESCR | - International Covenant on Economic, Social and Cultural Rights |
| MEC | - Member of the Executive Council |
| MINMEC | - Minister Member of Executive Committee |
| NHBRC | - National Home Builders Registration Council |
| SIPPS | - Special Integrated Presidential Project |
| SSA | - Statistics South Africa |

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