

---

---

## CHAPTER 7

# Housing rights



# Contents

	<b>Key words</b>	<b>232</b>
<b>7.1</b>	<b>Why is it important to understand your housing rights?</b>	<b>234</b>
<b>7.2</b>	<b>History and current context</b>	<b>234</b>
7.2.1	The impact of apartheid	234
7.2.2	Statistics on the current housing crisis	235
7.2.3	Current barriers to adequate housing	236
<b>7.3</b>	<b>Your housing rights in the Constitution</b>	<b>237</b>
<b>7.4</b>	<b>Guides to interpreting your housing rights</b>	<b>238</b>
7.4.1	The meaning of “adequate housing”	238
	a) Legal security of tenure	238
	b) Availability of services, materials, facilities and infrastructure	239
	c) Affordable housing	239
	d) Habitable housing	239
	e) Accessible housing	239
	f) Location	239
	g) Culturally adequate housing	239
7.4.2	Protection against arbitrary evictions	240
7.4.3	Children’s rights to shelter and the general right of access to adequate housing	242
<b>7.5</b>	<b>Policies, legislation and programmes to implement your housing rights</b>	<b>243</b>
7.5.1	The White Paper on Housing	243
7.5.2	Legislation	244
	a) The Housing Act	244
	b) The Extension of Security of Tenure Act	245
	c) The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act	247
	d) The Housing Consumers Protection Measures Act	251
	e) The Rental Housing Act	252
	f) The Home Loan and Mortgage Disclosure Act	252

7.5.3	Programmes	253
	a) The Housing Subsidy Scheme	253
	b) The National Housing Programme for Housing Assistance in Emergency Circumstances	256
	c) Social housing policy	257
	d) Other national housing initiatives	258
<b>7.6</b>	<b>Protecting and advancing your housing rights</b>	<b>259</b>
7.6.1	The People's Housing Process	259
7.6.2	Getting organised	259
7.6.3	Community participation	260
7.6.4	Access to information	261
7.6.5	Lobbying for making and implementing policy and legislative change	261
7.6.6	Making complaints about poor housing	262
7.6.7	Addressing rental housing problems	263
7.6.8	Improving the position of women and other disadvantaged groups	264
	<b>Discussion ideas</b>	<b>265</b>
	<b>References and resource materials</b>	<b>267</b>

## KEY WORDS

Access	Able to get, have or use something, eg the right of access to adequate housing.
Adequate	Suitable and up to a good enough standard.
Administrative action	Decisions taken or not taken that negatively and directly affect your legal rights, eg administrative action by local authorities.
Arbitrary	Without good reason and not following the law.
Beneficiary	Person that benefits from something.
Compliance	Whether or not you obey a policy, law or court judgment.
Disproportionately	Affected much more than others by something, eg farm workers disproportionately experiencing evictions.
Equitable	Fair and reasonable.
Grossly	To a large extent, seriously, eg grossly unfair.
Onus	Legal responsibility to prove something.
Organ of State	Government departments or public bodies carrying out legal functions (but excluding courts).
Peri-urban	Bordering on or surrounding an urban area.
Prejudiced	Seriously affected or put at a disadvantage.
Public interest	In the interests of the general public.
Repeal	Withdraw a law or part of a law.
Sanitation	Toilets and sewerage facilities.

Security of tenure	Giving people legally secure rights in land or housing.
Sustainability	Something that will last and stay in good condition or function for a long time.
Unfair discrimination	A policy, law, condition or situation that unfairly disadvantages you, eg because you are a woman, black, lesbian, living with a disability, or living with HIV.
Violate/Violation	Abuse or not respect, eg violate your housing rights.
Vulnerable groups	People that need special protection, eg people living with disabilities, refugees.
Warranty	A guarantee of protection for a fixed time period, eg a warranty against structural defects in your new home.

## 7.1

# Why is it important to understand your housing rights?

### CASE STUDY



### ALEXANDRA TOWNSHIP

In 2002, the Gauteng provincial government started an Urban Renewal Project aimed at improving the living conditions in Alexandra Township in Johannesburg, through building houses and upgrading the area with better roads, bridges, sanitation and shopping centres. At present, residents say their lives are no better than they were four years ago and fear they are going to live in a dump forever. Also, some of the new houses cannot be said to be permanent structures, as they are already falling down.

Residents of Alexandra continue to experience overcrowding, high rates of unemployment, lack of basic services, such as water and electricity, and very bad environmental conditions. In some cases, five to seven people live in a one-room shack. Due to overcrowding, water pressures are low and sewers frequently block and overflow.

Anna Mlangeni has lived in Alexandra for 16 years in front of an open sewer that smells all the time. She does not have access to toilets, water or electricity. Anna now has tuberculosis (TB) because of these conditions.

People still live along the banks of the Jukskei River that is in danger from flooding. Mabore Mamabolo has been living in Stjwetla, a settlement on the banks of the Jukskei River, for the past 11 years. She and her kids stay in a one-room shack, with no access to water, electricity and toilets, or a nearby clinic or schools.

*Special Assignment, SABC 3, 4 October 2005*

*Housing rights are important for people in Alexandra and Stjwetla. They need to know what their right to have access to adequate housing means. Understanding your right to have access to adequate housing will help you and your community to take the necessary steps to protect and advance your housing rights.*

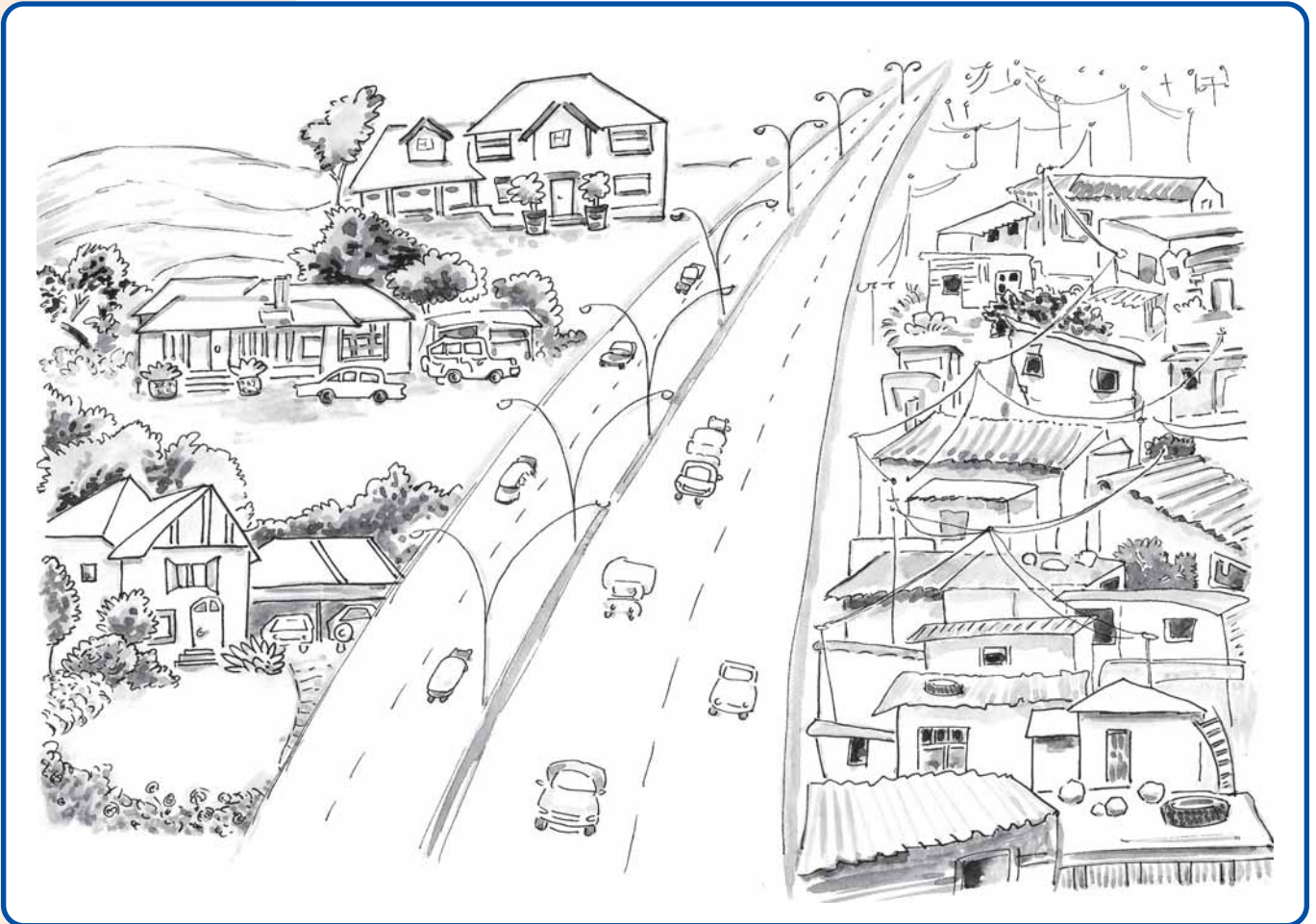
## 7.2

# History and current context

### 7.2.1 The impact of apartheid

Apartheid laws and policies are largely responsible for the housing crisis South Africa is facing today. The *Group Areas Act 41 of 1950*, and its succeeding Acts, resulted in people being evicted from their homes without any compensation and being relocated to remote, racially-defined areas that deprived them of work and educational opportunities. More homes were demolished than were built.

The apartheid Government had grossly unequal approaches to housing for each race group. There was a large amount of overlap, duplication and confusion because access to housing was run by the three previous 'own affairs' administrations and the Department of Housing. Subsidy schemes



were racially divided, poorly targeted and inadequately funded. Black residential areas were exposed to growing housing shortages, lack of resources, poor infrastructure and poor service delivery, resulting in substandard and very inadequate housing for black people in South Africa.

Apartheid laws and policies have, therefore, shaped the current housing crisis, despite the introduction of new policies and approaches on housing in post-apartheid South Africa. Many people have confirmed this point, including the Minister of Housing. She stated that “despite the huge public investment into housing over the last 10 years of R29,5 billion, apartheid’s legacy remains strongly tenacious” (*Minister Lindiwe Sisulu, 2005a*).

## 7.2.2 Statistics on the current housing crisis

- Millions of people lack proper housing, while thousands of others have no access to housing or shelter of any kind (*De Vos, 2005, 85*). For example, in the Western Cape alone, an estimated 350 000 families are waiting for housing, and the city needs 260 000 housing units (*Pretoria News, 26 September 2005*).
- About 2.4 million households live in informal housing structures (*Minister Sisulu, 2005a*).
- The estimated growth rate of informal settlements is 4% up to 2010 and thereafter, 3% a year (*Van der Walt, 2004*).

- The rate of delivery of housing is below the rate of low-income household formation, estimated at 200 000 households a year (*Charlton, 2004*).
- There is a backlog of over 3 million houses that increases each year. An increase in housing delivery of 12% a year is needed to overcome the current backlog and prevent new slum formation (*Minister Sisulu, 2005a*).
- Between 2004 and 2005 alone, thousands of people have been affected by evictions (*COHRE, 2005*).

### 7.2.3 Current barriers to adequate housing

Despite the introduction of new policies and approaches on housing in post-apartheid South Africa, and the fact that our *Constitution (Act 108 of 1996)* guarantees the right to have access to adequate housing, people are still faced with barriers to gaining access to adequate housing.

#### EXAMPLES



#### HOUSING BARRIERS

- *Some people are not aware of the meaning of housing rights (“access to adequate housing”) and the programmes in place to give effect to these rights, and are thus unable to access housing.*
- *The cost of housing is high and, very often, subsidies do not fully cover the cost.*
- *People do not have access to adequate services necessary for the enjoyment of the right to housing, such as the lack of space for key amenities (eg laundry, parking, refuse), widespread decay in old buildings, and the lack of community and social space.*
- *Housing subsidy beneficiaries lack the necessary education to empower them to identify quality shortcomings in their housing units and make use of the complaints procedures of the National Home Builders Registration Council (SAHRC, 2004).*
- *The lack of, or inadequate, communication between government and affected communities contributes to the slow pace of housing delivery.*
- *Underspending by provincial departments on housing delivery results in slow housing delivery.*
- *People have difficulties in accessing land. Some land identified for housing forms part of land restitution claims, resulting in the slow release of land at a scale that does not meet the demand. As a result, there is a delay in housing delivery (SAHRC, 2004).*
- *The lack of a mechanism for everyone to have a degree of security of tenure that guarantees legal protection against forced eviction. Security of tenure is a crucial pillar of the right to adequate housing.*
- *Corruption and maladministration result in tampering with housing waiting lists.*
- *Women, people living with disabilities, refugees, people living in informal settlements and other disadvantaged groups have special housing needs that still need to be taken into account in housing programmes.*



These barriers affect the rural poor most severely because the government has deliberately shifted its policies from the rural poor to the urban poor, due to the difficulties of accessing land in the rural areas.

## 7.3

# Your housing rights in the Constitution

The Constitution clearly guarantees the right to have access to adequate housing:

Section	What is the right?	Who benefits?
Section 26(1)	The right of access to adequate housing.	Everyone.
Section 26(3)	The right not to be evicted from your home, or have your home demolished, without an order of court, made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.	Everyone.
Section 28(1)(c)	The right to shelter.	Every child.
Section 35(2)(e)	The right to adequate accommodation at State expense.	Everyone who is detained, including every sentenced prisoner.

Other constitutional rights that can be used to protect housing:

- The right to equality (*section 9*)
- The right to just administrative action (*section 33*)
- The right to dignity (*section 10*)
- The right of the child to family care or parental care (*section 28(1)(b)*).

Also, land rights (discussed in Chapter 6) and the right to have access to adequate housing are closely linked – “the stronger the right to land, the greater the prospect of a secure home” (*Port Elizabeth Municipality v Various Occupiers, 2004, paragraph 19*). Therefore, section 25(5) dealing with access to land is important, as realising the right of access to adequate housing also requires available land.

Note that section 25(5) does not use the clear language of a ‘right to land’ or a ‘right to have access to land’. It only directs the State to:

“Take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”

Also, section 25(6) protects vulnerable groups by reinforcing security of tenure.

## 7.4

# Guides to interpreting your housing rights

Section 26(1) of the Constitution does not give you a right to housing or shelter, but a right of “access” to adequate housing. This means that there are no obligations on the State to provide free housing on demand for all people in need of housing.

### 7.4.1 The meaning of “adequate housing”

In understanding what the term “adequate housing” really means in our Constitution, we can be guided by the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 11(1) of the ICESCR says State parties must recognise the right of everyone to adequate housing.

However, it says that this right can be “progressively” realised, “within the available resources” of the State. This means that the State should try and give effect to this right through legislation and other steps, but this does not have to be achieved overnight. South Africa has signed the ICESCR, meaning it agrees with what the ICESCR says.

The Committee on Economic, Social and Cultural Rights (CESCR) monitors the duties of State parties under the ICESCR. The CESCR has given some attention to the meaning of “adequate housing” in paragraph 8 of its *General Comment No. 4*.

The CESR has identified these key elements of the right to adequate housing:

- Legal security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordable housing
- Habitable housing
- Accessible housing
- Location
- Culturally adequate housing.

#### a) **Legal security of tenure**

All people should have some form of security of tenure that guarantees legal protection against forced evictions, harassment and other threats. The different types of tenure include rental accommodation (private or public), owner-occupation, cooperative housing, lease, emergency housing and informal settlements, including occupation of land or property.

Governments must take steps aimed at ensuring security of tenure to people and households that do not have security of tenure.

**b) Availability of services, materials, facilities and infrastructure**

Housing must have facilities essential for health, security, comfort and nutrition. People who benefit from housing must therefore have access to drinkable water, sanitation, washing facilities, energy for cooking, heating and lighting, food storage, refuse disposal, drainage and emergency services.

**c) Affordable housing**

People must be able to afford housing. They must not be deprived of other basic needs to pay for their housing. Further, governments must make housing subsidies and finance available, and protect people from unreasonably high or sudden rent increases.

**d) Habitable housing**

For housing to be adequate, it must provide adequate space, be physically safe, offer protection from cold, damp, rain, heat, wind or other threats to health for all occupants, and guarantee the physical safety of occupants.

**e) Accessible housing**

Housing must also be accessible to all. Legislation and policy must especially cover the housing needs of the homeless, the poor, the elderly, single mothers, people living with disabilities, people who are mentally ill, people living with HIV/AIDS (including children orphaned by HIV/AIDS), and other vulnerable groups.

**f) Location**

Housing must be in areas that allow easy access to places of work and potential economic opportunities, schooling, child care centres, health care services and recreational facilities. Housing should also be in a safe and healthy environment, for example, it should not be built on polluted sites.

**g) Culturally adequate housing**

The way housing is built and the type of materials used must enable people living there to express their cultural identity. Activities geared towards development or modernisation in the housing sphere should ensure that they do not sacrifice cultural aspects of housing, and yet that they provide modern technological facilities.

**The Habitat Agenda**

We can also be guided by the *Habitat Agenda* that has also given some attention to the meaning of “adequate housing”. It was adopted by the participating States

at the Second United Nations Conference on Human Settlements, held in Istanbul in 1996. South Africa has signed the Habitat Agenda.

Section 60 of the Habitat Agenda says that:

“Adequate shelter means more than a roof over one’s head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost.”

It also says that people should be involved in determining the adequacy of their houses, and that adequacy may vary from country to country, depending on specific circumstances.

People in States that have signed the Habitat Agenda can use what it says to motivate that their housing is inadequate. However, it does not have the same legal status as the ICESCR, because States committing themselves to the Habitat Agenda do not have the legal duties they have under the ICESCR.

#### CASE STUDY



#### HOUSING FOR PEOPLE LIVING WITH DISABILITIES

To uplift the living standards of people with disabilities, who do not have a roof over their heads, the People with Special Needs Task Team started a project in 2002 to provide homes for people who have special housing needs.

By the end of 2002, 100 units were completed. The houses provided to community members in Lakeside Proper were one-room units with a toilet, but no bathroom or special toilets for people in wheelchairs. The walls of some of the units are shaky, roofs leak, door handles and electricity boxes are too high for people in wheelchairs, inside walls are not plastered, floors and walls are badly cracked, toilet water supply systems leak, and there is no storm water drainage and no vegetation.

Although this is an improvement on the previous housing condition of people with disabilities, these units cannot be considered as “adequate”.

*SAHRC, 2004, 44*

## 7.4.2 Protection against arbitrary evictions

The right to be protected against arbitrary evictions is a part of the right to have access to adequate housing. Section 26(3) of the Constitution prohibits evictions from and demolitions of your home without an order of court made after considering all the relevant circumstances.

The CESCR has covered legal protection against forced evictions. This can provide some guidance to interpreting section 26(3) of our Constitution. The CESCR defines forced evictions as:

For court cases on evictions, see pages 242 and 249–251.

“The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy without providing access to appropriate forms of legal or other protection.” *General Comment No. 7, 1997, paragraph 4*

## GUIDELINES



### CESCR PROTECTION AGAINST EVICTIONS

- Evictions should not result in people being left homeless or open to having other human rights violated.
- Where people affected are unable to provide for themselves, the State must take all necessary steps, using the best available resources, to ensure that there is adequate alternative housing, resettlement or access to productive land.
- Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable groups disproportionately experience forced evictions. Therefore, when evictions take place, the State must ensure that proper steps are taken to ensure that no form of unfair discrimination is involved.



### 7.4.3

## Children's rights to shelter and the general right of access to adequate housing

#### COURT CASE



#### INTERPRETING HOUSING AND SHELTER RIGHTS

In the 2001 case of *Government of the Republic of South Africa and Others v Grootboom and Others* (Grootboom case), the Constitutional Court interpreted the right of access to adequate housing in section 26 and the right of children to shelter in section 28(1)(c) of our Constitution.

The Grootboom case involved a group of people, including a number of children, who had been evicted from private land they had moved onto, because of the bad conditions in which they lived in the informal settlement they moved from.

The Constitutional Court decided that:

- The State's housing programme must include measures that are reasonable in the way they are set up and implemented. The programme must not exclude a significant segment of society, and must respond to the urgent needs of those in desperate situations.
- The State's housing programme was unreasonable because it made no provision for access to housing for people in desperate need.
- The State had violated section 26(2) of the Constitution and had to act to meet its duties under section 26(2). The State thus had to devise, fund, implement and supervise measures aimed at providing assistance to those people in desperate need.
- The State has an immediate duty to provide shelter only for those children who are removed from their families. As the children in this case were under the care of their parents or families, the State must provide the legal and administrative infrastructure necessary to ensure that children are given the protection intended by section 28.

For more information on the Grootboom case, see Chapter 1 on page 31.

The decision in the Grootboom case has been praised internationally as a great victory for the homeless and landless people of South Africa, and for developing case law on the nature of the State's duty to progressively realise a specific socio-economic right (*Pillay, 2002a and 2002b*). However, close to six years after the judgment, the State has not yet adequately enforced the Court's orders.

Challenges to enforcing the Court's orders in the Grootboom case include:

- The community's lack of understanding of legal and technical issues relating to housing.
- Lack of skills, as most members of the community are illiterate.
- Inadequate communication and consultation between government and the community leading to non-consultative decision-making and a lack of understanding by the community of government plans.
- No maintenance of services provided, leading to their deterioration.

## GUIDELINES



## ISSUES ARISING FROM THE GROOTBOOM CASE

1. Housing means a lot more than a roof over your head. For a person to have access to adequate housing, there must be land, the house itself, services such as the provision of water, and the removal of sewage. In addition, these must be properly financed.
2. It is not only the State that is responsible for providing housing. Other people and structures within our society must be permitted by legislative and other measures to provide housing. This is because the State's duty is to create the conditions for access to adequate housing for people at all economic levels of our society.
3. Shelter cannot be provided on demand. Access to housing has to be realised progressively within available resources.
4. Parents or family have the primary duty to fulfil their children's socio-economic rights under section 28(1)(c) of the Constitution. When they are unable to do this, then the duty shifts to the State.
5. Priority has to be given to the needs of the most vulnerable people.
6. The State has a duty to ensure that an eviction is carried out humanely. If the eviction results in possessions and building materials being destroyed and burnt, it could be a violation of the State's duty under section 26(1) of the Constitution.

## 7.5

# Policies, legislation and programmes to implement your housing rights

### 7.5.1 The White Paper on Housing

In 1995, the Government adopted a *White Paper on a New Housing Policy and Strategy for South Africa*. The White Paper recognises:

- Housing as a basic human right and the role of the Government to take steps and create conditions that will lead to an effective right to housing for all.
- The duty of the Government to stop taking any steps that encourage or cause homelessness.
- The responsibility of the Government to ensure conditions suitable for the delivery of housing.
- The importance of involving communities in the housing development process.
- The right of individuals to freedom of choice in satisfying their housing needs.
- The principle of non-discrimination in the delivery of housing.

## 7.5.2 Legislation

### a) The Housing Act

*The Housing Act 107 of 1997* sets out the framework for housing delivery in South Africa. The Act:

- Repeals all discriminatory laws on housing, dissolves all apartheid housing structures and creates a new non-racial system for implementing housing rights in South Africa.
- Defines the roles of national, provincial and local government on housing.
- Commits local government to take reasonable steps to ensure that all people in its area have access to adequate housing progressively – in other words, over a period of time.
- Places a duty on municipalities to set housing delivery goals and identify land for housing development.
- Deals with the basic principles that must guide housing development.
- Limits the sale of State-subsidised housing:
  - *Voluntary sale* of a State-subsidised house cannot be done within a period of eight years from the date on which it was acquired, without first offering it to the provincial government involved.
  - With *involuntary sale*, a person's creditors cannot sell the house unless it has first been offered to the provincial government involved at a price not greater than the subsidy received for the property. This restriction was introduced into the Act by the *Housing Amendment Act 4 of 2001*. It came into operation on 1 February 2002.

Section 1 of the Housing Act defines "housing development" as the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure that households and communities have convenient access to economic opportunities, and to

#### GUIDELINES



#### HOUSING ACT PRINCIPLES ON HOUSING DEVELOPMENT

1. Giving priority to the housing needs of the poor, people living with disabilities, marginalised women and other disadvantaged groups.
2. Encouraging and supporting individuals and communities to fulfil their own housing needs by assisting them in accessing land, services and technical assistance.
3. Promoting education and consumer protection in housing development.
4. Promoting steps to prohibit unfair discrimination based on gender and other grounds of unfair discrimination in housing development.





health, educational and social amenities, and that all citizens and permanent residents have progressive access to:

- Permanent residential structures with secure tenure, internal and external privacy, and adequate protection against the weather.
- Drinkable water, adequate sanitation and a home energy supply.

## b) **The Extension of Security of Tenure Act**

The *Extension of Security of Tenure Act 62 of 1997* (ESTA) provides security of tenure and protection from arbitrary evictions for people in rural areas and peri-urban land.

### **Who does ESTA affect?**

ESTA is aimed at “occupiers”. Under ESTA, an *occupier* is a person living on land belonging to someone else and who has on or since 4 February 1997 had the permission of the owner, or another legal right to live there. The Act says a land owner must get a court order before evicting occupiers.

These people are not occupiers under ESTA:

- A labour tenant under the *Land Reform (Labour Tenants) Act 3 of 1996*.
- A person using or intending to use the land mainly for industrial, mining, commercial or commercial farming purposes.
- A person who has an income of more than R5 000 a month.

There are two different procedures for evictions under ESTA:

- A procedure for people occupying land before or on 4 February 1997.
- A procedure for people who started occupying land after 4 February 1997.

## Evictions of people who were occupiers on or before 4 February 1997

ESTA sets out the circumstances for granting an eviction order for this group of occupiers – these are mainly situations where an occupier has done something wrong. It says that, even if there are none of these circumstances, a court may grant an eviction order if it is satisfied that suitable alternative accommodation is available for occupiers. This means that they can remain on the land until suitable alternative accommodation is found.

### GUIDELINES



### POSSIBLE EVICTION

ESTA also says that an occupier, who has not done anything seriously wrong and even if no alternative accommodation is available immediately, can be evicted if these steps are covered:

1. Suitable alternative accommodation is available to the occupier within a period of nine months after the date of termination of his/her right of residence.
2. The owner or person in charge provided the house where the occupier lives.
3. The business of the owner or person in charge will be seriously prejudiced unless the housing is available for occupation by another person, who will be employed.
4. The court is convinced that it will be just and equitable to evict the occupier, considering:
  - The efforts which the owner or person in charge and the occupier have made to secure suitable alternative accommodation for the occupier, and
  - The interests of each side, including whether refusing to grant an eviction will cause the owner or person in charge more hardship than the occupier will experience if the eviction order is granted.

## Evictions of people who became occupiers after 4 February 1997

### GUIDELINES



### POSSIBLE EVICTION

Occupiers after 4 February 1997 can be evicted if these steps are covered:

1. If it is a clear and fair part of the agreement between the occupier and owner or person in charge that the occupier would live on the land for a specific period, that period has come to an end, and the court thinks that an eviction order is just and equitable.
2. The court for any other reason believes that an eviction order is just and equitable.
3. In deciding whether it is just and equitable to grant an order for eviction, the court must consider:
  - How long the occupier has lived on the land.
  - Whether the agreement between the parties is fair.
  - Whether the occupier can get suitable alternative accommodation.
  - The reason for the eviction.
  - The interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

## GUIDELINES



## EVICION DATE

In deciding on the date for an eviction, ESTA says:

1. A court that orders the eviction of an occupier must:
  - Decide on a just and equitable date when the occupier must leave the land.
  - Decide on the date for the eviction order if the occupier has not left the land on the date in the eviction order.
2. In deciding on a just and equitable date, a court must consider all relevant factors, including:
  - The fairness of the agreement.
  - The interests of the owner or person in charge, the occupier and the remaining occupiers on the land.
  - The period that the occupier has lived on the land.

### c) **The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act**

The *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* (PIE) provides a framework to prevent unlawful occupation and at the same time ensure that unlawful occupiers are treated with dignity, giving special consideration for the most vulnerable occupiers.

PIE emphasises the court order requirement under section 26(3) of the Constitution. PIE is for occupants in urban and rural areas.

#### **Who does PIE affect?**

PIE is aimed at “unlawful occupiers” – occupiers who did not have the consent of the owner or person in charge, or any legal right to occupy the land.

PIE does not cover:

- “Lawful occupiers” – people who occupy land with the consent of the owner or person in charge, or have the right to occupy the land.
- Occupiers of rural land, who are protected by ESTA.
- Rural occupiers, who have informal rights to land.

#### **Evictions by an owner or person in charge of land**

Section 4 of PIE says that an owner or person in charge of land may evict unlawful occupiers.

If an unlawful occupier has occupied the land for *less than six months* at the time when the eviction procedures are started, a court may grant an order for eviction if it thinks that this is just and equitable. The court must consider all the relevant circumstances, including the rights and needs of the elderly, children, people living with disabilities, and households headed by women.

If an unlawful occupier has occupied the land for *more than six months* at the time when the eviction procedures are started, a court may grant an order for eviction if it thinks this is just and equitable. Again, the court must consider all the relevant circumstances, including:

- Whether land has been made available or can reasonably be made available by a municipality, another organ of State, or another landowner for the relocation of the unlawful occupier.

- The rights and needs of the elderly, children, people living with disabilities, and households headed by women.

## Evictions by an organ of State

Section 6 of PIE says that an organ of State can in some circumstances start procedures to evict an unlawful occupier.

A court may grant an eviction order if this is just and equitable, after considering all the relevant circumstances. The unlawful occupier must occupy the land without the consent of an organ of State where this consent is needed, and it must be in the public interest to grant the eviction order.

In deciding whether it is just and equitable to grant an eviction order, a court must consider:

- The circumstances under which the unlawful occupier occupied the land and erected the building or structure.
- The period that the unlawful occupier and his/her family have lived on the land.
- The availability to the unlawful occupier of suitable alternative accommodation or land.

PIE is currently under revision. The proposed amendments (*Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2005*) are problematic, as they expose ex-tenants and ex-mortgagors to evictions.

### GUIDELINES



### WHEN THREATENED WITH EVICTION

1. Landlords often do not know the law or try to avoid applying to the court.
2. The landlord cannot use threats or force to get you to leave the land you are living on.
3. Only a court can force you out by issuing you with an order to leave.
4. You should be given adequate and reasonable written notice before the scheduled date of eviction.
5. Get advice and find out what your rights are by going to an advice office or another relevant community-based organisation.
6. Show the advice worker or community worker all correspondence you received from the landlord or the court.
7. The court should inform you of the date, time and place of the hearing to decide on your case.
8. You may need an attorney to represent you in court.
9. Your case may be strengthened or you may have a right to alternative accommodation if:
  - The affected household includes a child, someone with a disability, an elderly person or a single mother.
  - You have lived on the land for six months or more.
10. If the court grants an eviction order, you could be asked to pay the landlord's legal costs needed to evict you.
11. Only the sheriff of the court can carry out an eviction order.

## "Relevant circumstances" and "alternative accommodation"

The courts have said that the circumstances listed in PIE are not the only circumstances that should be taken into account.

### COURT CASE



### CITY OF CAPE TOWN

In the 2004 case of *City of Cape Town v Rudolph and Others*, the Cape High Court addressed the relevant circumstances to be taken into account in an eviction case.

The Metropolitan Municipality of the City of Cape Town brought an application for the eviction of residents of Valhalla Park from accommodation owned by the City. Some of the residents had been placed on the housing waiting list of the City for more than 10 years. As a result of the overcrowded, intolerable conditions under which they were living under at the time, they decided to move onto vacant land that was owned by the City.

The City claimed that:

- PIE does not apply to the residents, as they occupied their land without the City's consent.
- If PIE is applicable, an urgent eviction order should be granted.

The residents opposed the application and also brought a counter-application. They argued that the City's housing policies and programmes had failed to give effect to their right of access to adequate housing under section 26 of the Constitution. The Court decided that:

- The provisions of PIE apply to the eviction, and the circumstances did not warrant the granting of an urgent eviction order.
- The housing policy must make temporary provision for the people in Valhalla Park in a crisis or desperate situation.

The Court also said that, in allocating housing, all relevant circumstances must be considered, including the rights of the elderly, children, people living with disabilities and households headed by women. If the period of occupation is more than six months, factors to consider are whether land has been made available, or can reasonably be made available by a municipality, another organ of State or another landowner for the relocation of the unlawful occupier.

## COURT CASE



## PORT ELIZABETH MUNICIPALITY

In the 2004 case of *Port Elizabeth Municipality v Various Occupiers* (PE Municipality case), PIE had to be interpreted to give meaning to section 26(3) of the Constitution.

The case involved an eviction application by the Port Elizabeth Municipality against 68 people (“occupiers”), who had occupied private, undeveloped land within the Municipality area. They had been living on the land for periods ranging from two to eight years. Most of them had moved onto the land after being evicted from previously occupied land.

The occupiers indicated that they were willing to leave the property, provided that they were given suitable alternative land to which they could move. However, they refused to move to a place called Walmer Township, saying that no form of security of tenure had been provided and they might be vulnerable to further eviction if they move to the land.

The Municipality argued that giving them alternative land would be preferential treatment. They said that this would disrupt the existing housing programme and would be ‘queue-jumping’ by the occupiers.

The Constitutional Court decided not to order the eviction. It said that:

- Section 26(3) recognises that the eviction of people living in informal settlements may take place, even if it results in loss of a home. This included situations where people deliberately occupy land with the purpose of disrupting an organised housing programme and placing themselves at the front of the queue.
- A court should be reluctant to grant an eviction against relatively settled occupiers, unless it is satisfied that a reasonable alternative is available, even if only as an interim measure while waiting for eventual access to housing in the formal housing programme.
- The circumstances listed in section 6 of PIE are not the only ones that should be considered. The Court must consider all circumstances that may be important, including:
  - The vulnerability of the elderly, children, people living with disabilities and households headed by women.
  - The extent to which proper discussions and, where possible, mediation has taken place.
  - The reasonableness of offers made regarding alternative accommodation or land.
  - The amount of disruption involved.
  - The willingness of the occupiers to respond to reasonable alternatives presented.

## COURT CASE



## MODDERKLIP BOERDERY

In the 2005 case of *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd and Others* (Modderklip case), about 40 000 people moved onto private land owned by Modderklip Boerdery (Pty) Ltd. This was as a result of overcrowding and shortage of land in the nearby Daveyton and Chris Hani informal settlements. The land owner failed to get various organs of State to assist him in enforcing the eviction order granted by the Pretoria High Court.

The Constitutional Court decided that:

- It was unreasonable to force the land owner to carry the State's burden of providing the occupiers with accommodation.
- The unlawful occupiers were entitled to occupy the land until alternative land is made available to them by the State, or by the provincial or local authority.
- Land owners also deserved protection and could be awarded damages.

## Balancing the housing rights of unlawful occupiers and the property rights of land owners

Land owners also have rights that must be protected. PIE tries to strike a balance between a land owner's right to evict unlawful occupiers *and* the occupiers' right to have access to adequate housing and be protected from arbitrary eviction. According to the Grootboom case, the State has a duty to try to satisfy both rights (*paragraph 74 of judgment*).

The courts have attempted to establish an appropriate relationship between sections 25 and 26 of the Constitution. The courts consider the interest of both the unlawful occupiers and the land owner – they try to ensure that there is a balance between the housing rights (section 26) of unlawful occupiers and the property rights (section 25) of the owner of land:

- In the PE Municipality case, the Constitutional Court said that its role is to balance both rights. This means that the State must show equal accountability to occupiers and land owners. If the State does not provide alternative land in an eviction case when it should have, it breaks its constitutional duty to both the land owner and unlawful occupiers.
- In the Modderklip case, the Supreme Court of Appeal said that the State's failure to provide alternative accommodation to the unlawful occupiers was a violation of the right to property of the land owner *and* the right of the occupiers to housing.

## d) The Housing Consumers Protection Measures Act

The *Housing Consumers Protection Measures Act 95 of 1998* (HCPMA) protects housing consumers by establishing the National Home Builders Registration Council (NHBRC).

This Council aims to:

- Represent the interests of housing consumers by providing warranty protection against defects in new homes.
- Improve the structural quality of houses built.
- Promote housing consumer rights and give housing consumer information.

## **e) The Rental Housing Act**

The *Rental Housing Act 50 of 1999*:

- Defines the role of the Government in rental housing.
- Creates structures to ensure the proper functioning of the rental housing market.
- Allows the Minister to introduce a rental subsidy housing programme or other steps to make rental housing property accessible and available for people with low income.
- Sets out the relationship between tenant and landlord, including their rights and duties.
- Allows a local authority to establish a Rental Housing Information Office to advise tenants and landlords on their housing rights and duties.
- Allows the MEC for Housing to set up tribunals, called 'Rental Housing Tribunals' in provinces, to deal with problems or disputes between landlords and tenants.

Therefore, a tenant or landlord can make a complaint to the Rental Housing Tribunal about an unfair rental housing practice. The tribunal has the power to investigate an issue, appoint a mediator or conduct a hearing, and make a ruling that is just and fair in the circumstances.

Rental tribunals have been set up in Gauteng, the Western Cape and the North West. Other provinces are busy establishing these tribunals.

## **f) The Home Loan and Mortgage Disclosure Act**

The *Home Loan and Mortgage Disclosure Act 63 of 2000* aims to promote fair lending practices among financial institutions that provide home loans.

To achieve this aim, the Act calls for the disclosure of certain information by financial institutions that provide home loans. For example, they must disclose:

- The total number of applications for home loans.
- The number and amount in Rand of applications granted.
- The number and amount in Rand of unsuccessful applications.
- The reasons for rejections.



The Act establishes an Office of Disclosure to:

- Monitor if the required information is being given.
- Make information available to the public that shows whether or not financial institutions are serving the housing credit needs of their communities.
- Rate financial institutions in accordance with their service record.
- Assist in identifying possible discriminatory lending patterns and in enforcing compliance with anti-discrimination laws.

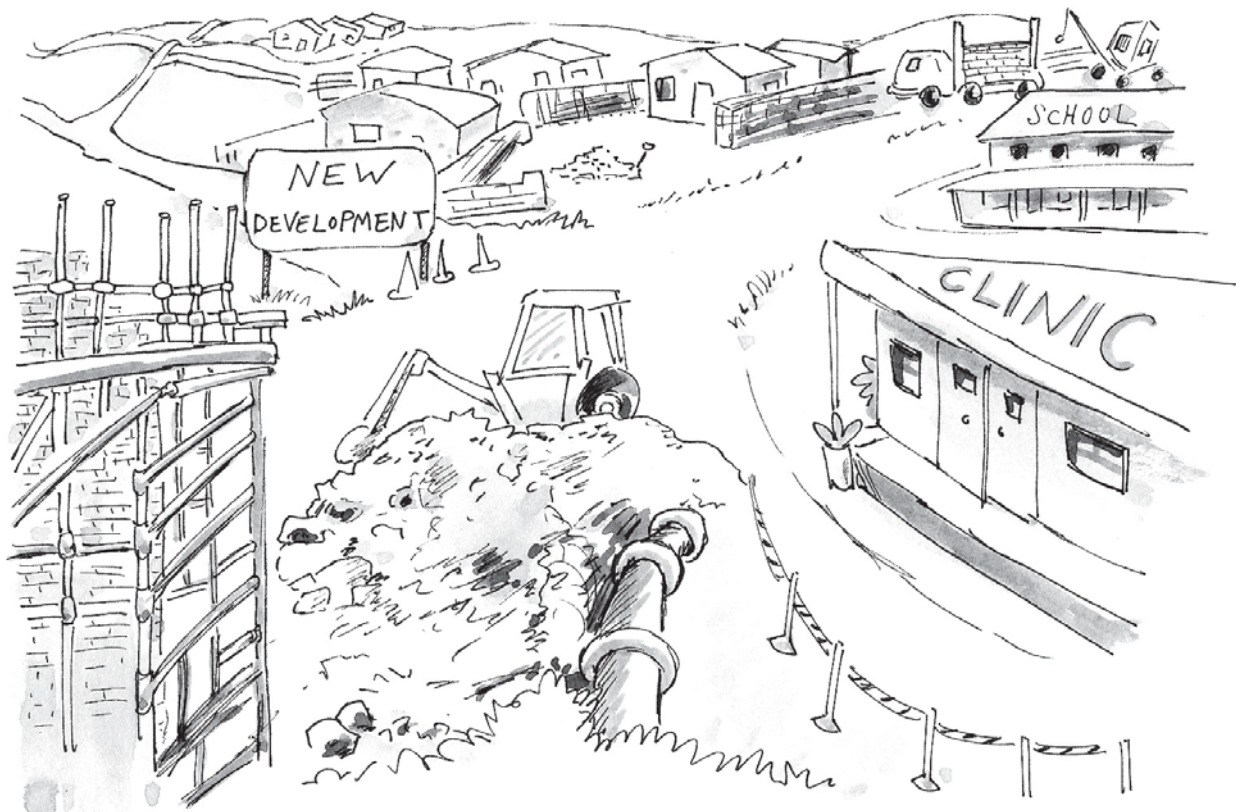
The Act was approved at the end of 2000, and came into operation during 2003.

## 7.5.3 Programmes

### a) The Housing Subsidy Scheme

The Housing Subsidy Scheme, introduced in 1995, is one of the Government's most important ways of implementing the constitutional right of access to adequate housing.

People who qualify for a housing subsidy receive a once-off grant from the Government for housing purposes. The Government does not give cash to beneficiaries. The grant is only used for the purchase of housing goods and services (building materials and basic municipal services such as water and sanitary services) to provide complete houses that comply with the minimum technical and environmental norms and standards.



Housing subsidies	The types of subsidies currently available include:
1. A consolidation subsidy	<p>This gives people who have already received serviced stands from the State the opportunity to acquire houses:</p> <ul style="list-style-type: none"> <li>• Beneficiaries (those who qualify) with a household income of not more than R1 500 a month get a top-up subsidy of R21 499 to construct a house.</li> <li>• Beneficiaries with a household income of between R1 501 to R3 500 a month get a top-up subsidy of R19 020.</li> </ul>
2. An individual subsidy	<p>This allows beneficiaries to buy a serviced stand and build their own home, or to purchase existing improved residential properties that are not part of approved housing subsidy projects. There are two types of individual subsidies:</p> <ul style="list-style-type: none"> <li>• <i>A credit-linked individual subsidy</i> – given to beneficiaries who can afford loan finance. The beneficiary acquires property, using both the subsidy and additional loan applied for.</li> <li>• <i>A non-credit-linked individual subsidy</i> – given to beneficiaries who wish to acquire property entirely out of the subsidy amount.</li> </ul>
3. A project-linked subsidy	<p>This enables individuals to own houses in projects approved by Provincial Housing Departments. The subsidy is allocated to a developer, who initiates and manages the building of houses under an approved project. The houses are then sold to qualifying beneficiaries. The developer can be a municipality, an organisation in the private sector, or a non-governmental or community-based organisation.</p>
4. An institutional subsidy	<p>This is available to institutions that create affordable housing for individuals, who qualify for subsidies. The institution provides houses on a rental or rent-to-buy basis. After four years, the house may be sold or transferred to the beneficiary.</p>
5. A relocation subsidy	<p>This provides defaulting borrowers, who were three months in arrears on 31 August 1997 and cannot afford to rehabilitate the mortgage loans, with the option of getting affordable housing under the Housing Subsidy Scheme. The person enters into a relocation agreement that allows them to relocate to affordable housing.</p>
6. A rural subsidy	<p>This is available to beneficiaries who only enjoy tenure rights to the State land they occupy. The subsidies are available on a project basis and beneficiaries are supported by implementing agents approved by the Provincial Housing Departments. The subsidies can be used either for service provision, building of houses, or for a combination of both.</p>

## GUIDELINES



## WHO QUALIFIES?

To qualify for the Housing Subsidy Scheme, you must:

1. Have a combined household income of less than R3 500.
2. Be a South African citizen or permanent resident.
3. Be 21 or older.
4. Be married, live with a partner, or be a single person with one or more dependants. *Unmarried couples* must produce an affidavit to prove they are living together as a couple. *Dependants* usually include children, elderly people and people with severe disabilities.
5. Not have received a housing subsidy previously. However, a person who received only a vacant serviced site under the previous dispensation on the basis of ownership, leasehold or deed of grant, qualifies for a consolidation subsidy. This does not apply to people who qualify for relocation assistance or people with disabilities. With divorce, the terms of the divorce order will determine if a person qualifies.
6. Not own or have owned property in South Africa, except under a consolidation subsidy or relocation assistance. This does not apply to people living with disabilities.

To apply for a housing subsidy, you need to contact the provincial Housing Department in the province where you stay, or the local or district municipality. The provincial Housing Department checks and approves or rejects people applying for the subsidy scheme. All information provided on the application form is recorded on a National Database.

## GUIDELINES



## IMPORTANT POINTS ON THE SUBSIDY SCHEME

For more on the PHP,  
see page 259.

- Some beneficiaries will have to pay a financial contribution, or they will have to participate in the building of their houses through an approved People's Housing Process (PHP).
- Beneficiaries living with disabilities, who have special housing needs, can be given additional funds for the provision of facilities such as a handrail, visual doorbell indicators, kick plates to doors, slip resistant flooring or a vinyl folding door. Beneficiaries have to submit a medical certificate from a registered medical doctor explaining their disability. The additional amount depends on the seriousness of the disability.
- Beneficiaries with health problems, who are permanently or temporarily unable to build their own homes, can get an increased subsidy amount. Beneficiaries have to submit a medical certificate from a registered medical doctor setting out their health situation.
- Housing subsidies are now available to people living in rural areas where there is communal tenure and people have informal land rights. Subsidies are only available on a project basis and the land owner has to consent in consultation with communities.

## SUBSIDY QUANTUM FOR 30M<sup>2</sup> HOUSES IN THE 2006–7 FINANCIAL YEAR

Income category	Previous subsidy	New subsidy	Contribution	Product price
<b>Individual, project-linked and relocation subsidies</b>				
R0 to R1 500	R31 929	R36 528	None	R36 528
R1 501 to R3 500	R29 450	R34 049	R2 479	R36 528
Elderly, living with disability, or in poor health: R1 501 to R3 500	R31 929	R36 528	None	R36 528
<b>Institutional subsidies</b>				
R0 to R3 500	R29 450	R34 049	Institution must add capital	At least R36 528
<b>Consolidation subsidies</b>				
R0 to R1 500	R18 792	R21 499	None	R21 499
R1 501 to R3 500	R16 313	R19 020	R2 479	R21 499
Elderly, living with disability, or in poor health: R1 501 to R3 500	R18 792	R21 499	None	R21 499
<b>Rural subsidies</b>				
R0 to R3 500	R29 450	R34 049	None	R34 049
<b>People's Housing Process</b>				
R0 to R3 500	R31 929	R36 528	None	R36 528

*Department of Housing website*

### b) **The National Housing Programme for Housing Assistance in Emergency Circumstances**

The Emergency Housing Programme was created in 2004 as a result of the Grootboom judgment. It aims to assist people in urban and rural areas, who have urgent housing problems due to circumstances that they had no control over, such as disasters, evictions or threatened evictions, demolitions or imminent displacement, or immediate threats to life, health and safety.

The assistance is through grants to municipalities to enable them to help people in emergencies by providing land, municipal services infrastructure and shelter. The people may also be relocated and resettled if they agree to it, and are involved in the process. People who get assistance under this programme can later apply for subsidies for permanent housing under the Housing Subsidy Scheme if they qualify.

## GUIDELINES



## IMPORTANT POINTS ON THE EMERGENCY PROGRAMME

1. The housing problem must be urgent, should not have been caused by you, and you are not able to address the problem from your own resources or other sources (eg money from insurance policies).
2. The provincial housing department or the municipality identifies people who need emergency housing and applies to the MEC for assistance.
3. The assistance is temporary, except for assistance with repair or rebuilding of damaged, permanent formal housing.
4. The aid provided is the first step towards a permanent housing solution.
5. Beneficiaries can also include people who do not qualify for subsidies under the Housing Subsidy Scheme:
  - Households with monthly income over R3 500
  - Non-lawful residents (in other words, people who are not citizens or permanent residents)
  - People below 21, who head households
  - People without dependants
  - People who own or have owned a house before
  - People who have previously received housing assistance.

## EXAMPLES



## EMERGENCY CIRCUMSTANCES

- *The houses of people are destroyed or damaged by fire, wind or earthquakes to the extent that they can no longer live there. Assistance can be provided by repairing or building the permanent formal housing on the land or on new land where the land becomes unsafe for further occupation.*
- *People are forced to vacate land because of severe frequent flooding, failure of a dam wall, eviction, unsafe buildings or civil unrest. They can no longer live on the land or buildings either temporarily or permanently. However, it is possible for them to return to the land in the future. In this kind of situation, assistance can be provided by relocating them to a temporary settlement area, to be relocated again, once a permanent housing solution is possible*

*Department of Housing, National Housing Programme: Housing Assistance in Emergency Circumstances, 2004, Table 1*

## c) **Social housing policy**

Social housing is a housing option for people with low- to medium-incomes provided by housing institutions. Social housing excludes immediate individual ownership.

The social housing policy aims at creating an environment that enables the social housing sector to develop and deliver housing opportunities on a large scale in South Africa. It also aims to provide housing under different tenure options, such as cooperative housing and instalment sale. The policy was launched on 15 August 2004.

## GUIDELINES



## SOCIAL HOUSING

For more on the PHP, see the next page.

- Social housing is not an option for the very poor.
- People accessing accommodation from housing institutions will have to earn a secure income – formally or informally.
- People have to be able to afford the rental or other periodic payment for the accommodation.
- Social housing cannot be used by beneficiaries wanting immediate individual ownership. The conversion of rental schemes into ownership options may be considered after 10 to 15 years.
- Social housing projects can include initiatives where beneficiaries participate in the solution of their housing needs through the People's Housing Process (PHP).

## d) Other national housing initiatives

### The National Housing Finance Corporation

The National Housing Finance Corporation (NHFC) was set up in 1996 to assist people with a regular monthly income between R1 500 and R7 500 to access finance, and to acquire and improve a home of their own. Banks are reluctant to provide loans to people in this range.

The NHFC does not finance possible house buyers directly. It acts as an intermediary between possible house buyers and the non-traditional lenders who are prepared to offer loans. The NHFC provides funds to these lenders.

In 2003–4, 55 loans to the value of more than R632 million were paid out to finance 220 602 houses (*GCIS, 2004–5, 376*).

### The National Urban Reconstruction and Housing Agency

The National Urban Reconstruction and Housing Agency (NURCHA) was established in 1995 to assist households earning less than R1 500 a month to access bridging (temporary) housing finance. It provides guarantees to banks prepared to issue housing credit to low-income borrowers.

Since 1995, NURCHA supported the building of 135 421 houses, of which 13 827 were built during 2003–4 (*GCIS, 2004–5, 377*).

### Servcon Housing Solutions

Servcon Housing Solutions (Servcon) was set up to address the problem of non-payment of housing loans. They offer a number of options to defaulters, including:

- The rescheduling of loans.
- The conversion of loan repayments into a rental scheme.
- The relocation of defaulters to properties they can afford.

Where individuals refuse to join the programme and they are seriously in arrears, their property can be taken back.

## 7.6

# Protecting and advancing your housing rights

### 7.6.1 The People's Housing Process

The PHP aims to assist the very poor, who have access to housing subsidies and wish to enhance their subsidies by building or organising the building of their homes themselves.

The Government provides these people with housing subsidies, and technical, financial, logistical and administrative support to build their homes on a basis that is sustainable and affordable. Government also gives an additional grant for the training of communities in PHP development. The programme is useful for the upgrading of informal settlements.

The advantages of the PHP include:

- Increased community participation and community development.
- An outcome better suited to the needs of people, as the community has more control over the design of the housing project.
- Capacity-building of participants.
- Easier access to housing for women.

The Homeless People's Federation was established as an independent civil society organisation to promote this approach to housing.

### 7.6.2 Getting organised

Organised communities can better express their needs and have a more powerful voice in housing projects. Strong community leadership and organisation also means more effective involvement in the longer-term development of your area.

#### GUIDELINES



#### GETTING INVOLVED IN PROTECTING HOUSING RIGHTS

1. Get organised in communities at a local level in civic or community organisations.
2. If you form a committee, make sure that it is recognised by the local council.
3. Hold meetings on the housing needs of residents to highlight their housing problems.
4. Discuss the housing plans of the municipality and challenge decisions that do not favour the housing interests of local people.
5. Involve people in gathering reliable information on the housing and other socio-economic needs of people in the area.
6. Hold workshops and training sessions on housing rights.
7. Run campaigns around key housing developments.

## CASE STUDY



## WALLACEDENE

Wallacedene is on the eastern side of Kraaifontein about 30 kilometres from the City of Cape Town. The judgment in the Grootboom case aimed at ensuring the realisation of access to adequate housing for the Wallacedene community. But almost six years after the judgment, the community still faces housing problems. The settlement is still very dense, some of the houses are built in waterlogged areas, and there are limited sanitation and water services, with no proper drainage system.

The community is dissatisfied with the delay in fully implementing the court judgment and other agreements with the Government on realising their right to have access to housing. They have elected a Committee with the task of ensuring that the judgment and agreements are implemented. The Committee forms part of the Greater Wallacedene Project Steering Committee that aims to facilitate housing development in the area.

The Committee, on behalf of the community, approached the Legal Resources Centre (LRC), a non-profit public interest law centre that provides legal services for vulnerable and marginalised communities in South Africa. They asked the LRC about possible legal steps to respond to the delay in fully implementing the court judgment and agreements. Subsequently, a number of meetings have been held between the community and the LRC to see how the community can be assisted. The aim was to put effective pressure on the Government to fully implement the court judgment.

## 7.6.3 Community participation

### EXAMPLES



### ISSUES WHERE CONSULTATION IS IMPORTANT

- *The location of the land allocated for housing needs to be suitable for housing and close to places of work, health care facilities, schools, shops, transport and other facilities. The community can check if the area, the plot and the 'starter' house meet the guidelines for adequate housing.*
- *The layout of the project site should consider the need for open spaces, and architectural, environmental, public health, and safety and anti-crime factors.*
- *If people are to be relocated, the time (including day and month of the year) of relocation is relevant, so that children's education, for example, is not disrupted.*

The lack of community participation in housing projects results in beneficiaries not getting what they need. The active involvement of people who lack adequate housing in all stages of the processes of getting housing is therefore very important.

Participation and consultation should be meaningful, not 'token' involvement for the sake of saying: "We have consulted the people". Communities should also be directly involved in monitoring the municipality and other participants in the process.

Communities can often have more influence over an elected council and a public body like a municipality. To be effectively involved, communities need:

- Relevant information to make informed decisions.
- Information on the meaning of 'home ownership' – for example, taking on



responsibility for your own repairs and maintenance, and having to pay rates and other service charges.

- Open communication with government on all practical, legal or technical issues relating to housing.

## 7.6.4 Access to information

For more on access to information, see Chapter 2 on page 57.

Lack of access to information has contributed to unethical behaviour, corrupt practices and irregularities in housing development in South Africa, undermining the livelihoods of millions of poor people (SAHRC, 2004, *Housing*, 54). Therefore, access to accurate and adequate information is important in advancing housing rights.

Section 32(1) of the Constitution says:

“Everyone has the right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights.”

The *Promotion of Access to Information Act 2 of 2002* and the Home Loan and Mortgage Disclosure Act promote access to information.

### EXAMPLES



### INFORMATION NEEDED ON HOUSING RIGHTS

- *All resource and planning issues that can have an impact, positively or negatively, on your struggle for housing.*
- *The available housing schemes and how to access them.*
- *Where and what land is available.*
- *Your rights to water, sanitation and other services.*

## 7.6.5 Lobbying for making and implementing policy and legislative change

For example, civil society organisations can use opportunities for discussion on the PIE Amendment Bill to examine their meaning for poor people trying to access housing.

You can then:

- Influence the legislation and policy through submissions to the Housing Portfolio Committee in Parliament.
- Write to the Department of Housing identifying communities that can benefit from the Emergency Housing Programme.

## 7.6.6 Making complaints about poor housing

There is widespread dissatisfaction with the quality of housing that has been provided so far. The complaints include cracked walls, weak doors and roofs, and insecure buildings (*Minister Sisulu, 2005b*).

New housing consumers can make complaints to the NHBRC about structural defects in their houses. An example of a *structural defect* is a leaking roof. You have a one-year warranty against roof leak after occupying your new home.

Complaints are dealt with under the HCPMA. Before making a complaint to the NHBRC, you should:

- Notify the home builder in writing of all the complaints requiring attention within the time periods stated in the HCPMA (*section 13(2)(b)*).
- Keep a copy of your letter of complaint and proof of the date that it was sent to the builder.
- Allow the builder reasonable access to the house to rectify the defect.
- Make sure that you meet all financial obligations to the builder.



## GUIDELINES



## HANDING IN YOUR COMPLAINT

You need:

- Proof of the occupation date of the home.
- Proof of notification to the home builder within the necessary time periods.
- A complete list of the items of dispute given to the home builder.

You approach the NHBRC with your complaint after the home builder has failed to respond to the complaint within the necessary time frames, or there is an unresolved dispute between you and the home builder about the extent of the home builder's liability.

## 7.6.7 Addressing rental housing problems

Houses that are in a poor condition and badly in need of maintenance cannot be regarded as 'adequate'. Examples of complaints about rental housing are:

- "The rent you are being charged is very high."
- "Your property is in a very bad condition and is not being maintained by your landlord."

## GUIDELINES



## TAKING ACTION

You or your community organisation can organise to:

1. Check the municipality's legal duties, and its repairs and maintenance policy.
2. Monitor the municipality's performance and gather information on the typical repair and maintenance problems residents have.
3. Pressurise municipalities to meet their duties to repair and maintain council flats and houses.
4. Make a formal complaint to the Rental Housing Tribunal about an 'unfair practice' you have experienced as a tenant or landlord.

Getting more information about rental housing can enable you to protect and advance your rental housing rights. A local authority can set up a Rental Housing Information Office to advise tenants and landlords on housing rights and duties in the area. You can ask your local authority if a Rental Housing Information Office has been set up in your area.

## 7.6.8

# Improving the position of women and other disadvantaged groups

### GUIDELINES



### STEPS TO TAKE

1. Form special committees to discuss the special housing needs of women, people living with disabilities and other disadvantaged groups.
2. Develop strategies and take action against discrimination facing these groups in housing.
3. Monitor the development and implementation of policies and laws to ensure equality for women and other disadvantaged groups in housing.
4. Lobby the Government to properly address these special needs in developing housing policies, laws and programmes.

## Discussion ideas



### TALKING POINT 1

1. Do existing housing conditions in your area or in other areas fall short of the meaning of “adequate housing”? Consider the type and size of house, the cost, quality of building materials, its location and the impact of the environment on the people, and access to basic services such as water, sanitation, electricity, roads and drainage. If some of the houses are inadequate, think of steps your community can take to advance your right to adequate housing.
2. Based upon your personal experience or the experience of other people you know, what barriers can you identify to accessing housing?
3. What do you understand by ‘equitable access’ to housing? Discuss the issue of equitable access to housing for vulnerable groups.

### TALKING POINT 2

1. What are the duties of the State on the right to have access to adequate housing?
2. What do you understand by “reasonable legislative and other measures”, “within available resources” and “progressive realisation”?

### TALKING POINT 3

1. *What are the types of housing subsidies available?*
2. *How can you access a housing subsidy?*
3. *Do you think the housing subsidy schemes provided by government are adequate to meet the needs of the people?*

### TALKING POINT 4

*What will you do if a landlord tries to force occupants off the land without a court order? Some of them are people with disabilities, children and people over 60.*

*Divide into small groups to discuss in more detail. Examples of groups:*

- *The occupants*
- *A housing rights organisation*
- *The landlord.*

### TALKING POINT 5

1. *Can a mother claim housing based on her child's right to shelter?*
2. *Who has the responsibility of providing shelter to children?*

### TALKING POINT 6

*How can the Emergency Housing Programme be used to reduce the housing crisis in South Africa?*

### TALKING POINT 7

1. *How can you address your housing problems to do with structural defects or rental problems?*
2. *Are there any institutions that you can approach?*
3. *What are the procedures you have to follow?*
4. *Discuss the rights and duties of a landlord and a tenant in a rental agreement.*

# References and resource materials

## Constitution, legislation and policy documents

Constitution of the Republic of South Africa, Act 108 of 1996.

Department of Housing, *A social housing policy for South Africa: Towards an enabling environment for social housing development*, revised draft, July 2003.

Department of Housing, *National Housing Programme: Housing Assistance in Emergency Circumstances*, April 2004.

Extension of Security of Tenure Act 62 of 1997.

Group Areas Act 41 of 1950, 77 of 1957, and 36 of 1966.

Home Loan and Mortgage Disclosure Act 63 of 2000.

Housing Act 107 of 1997.

Housing Amendment Act 4 of 2001.

Housing Consumers Protection Measures Act 95 of 1998.

Land Reform (Labour Tenants) Act 3 of 1996.

National Norms and Standards in Respect of Permanent Residential Structures (came into effect on 1 April 1999) contained in the *Implementation Manual Housing Subsidy Scheme and Other Housing Assistance Measures, 1995*.

Prevention of Illegal Eviction from and the Unlawful Occupation of Land Act 19 of 1998.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill (B11-2005).

Promotion of Access to Information Act 2 of 2002.

Rental Housing Act 50 of 1999.

South African Housing White Paper: *A New Housing Policy and Strategy for South Africa*, 1995.

## Cases

*City of Cape Town v Rudolph and Others* 2004 (5) SA 39 (C).

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

*Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC).

*President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* 2005 (8) BCLR 786 (CC).

## International documents

CESCR, General Comment No. 4 (6<sup>th</sup> session, 1991), UN doc. E/1992/23, *The right to adequate housing*.

CESCR, General Comment No. 7 (16<sup>th</sup> session, 1997), UN doc. E/C. 12/1997/4, *Forced Evictions*.

*Habitat Agenda*, Habitat II, Istanbul, June 1996.

International Covenant on Economic, Social and Cultural Rights, 1966.

## Publications

Bond P and Tait A, 1997, The Failure of Housing Policy in Post-Apartheid South Africa, *Urban Forum* 8(1).

Chetty M, 2002, The applicability of the prevention of Illegal Eviction Act, *ESR Review*, 3(3), 14.

Christmas A, 2005, Proposed Amendments to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act: A setback for vulnerable occupiers, *ESR Review*, 5(3), 6.

Christmas A, 2005, The Modderklip Case: The State's Obligations in Evictions Instituted by Private Landowners, *ESR Review*, 6(2), 6.

De Visser J, 2003, A Perspective on Local Government's Role in Realising the Right to Housing and the Answer of the Grootboom judgment, *Law, Democracy and Development*, 7(2), 201.

De Vos P, 2005, The right to housing, in Brand D and Heyns C, *Socio-Economic Rights in South Africa*, Pretoria: Pretoria University Law Press, 85.

Du Plessis W, Olivier N and Pienaar J, 2001, Evictions, Restitution, Spatial Information, the Right to Housing and Minerals: New Approaches from the Government and the Courts, *SAPR/PL*, vol. 16, 181.

Government Communication Information Service (GCIS), *South African Yearbook 2004–5: Housing*.

Liebenberg S 2005, Towards a Right to Alternative Accommodation? South Africa's Constitutional Jurisprudence on Evictions, *Housing and ESC Rights Law Quarterly*, 2(3), 1.

Mahomed A, 2003, Grootboom and its Impact on Evictions: Neville Rudolph and Others v City of Cape Town, *ESR Review*, 4(3), 2.

Pienaar J, 2002, The Housing Crisis in South Africa: Will the Plethora of Policies and Legislation Have a Positive Impact? *SAPR/PL*, vol. 17, 336.

Pienaar J and Muller A, 1999, The Impact of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 on Homelessness and Unlawful Occupation the Present Statutory Framework, *Stell LR* vol. 3, 370.

Pillay K, 1998, Local Government and the Right to Housing, *ESR Review* 9(1), 11.

Pillay K, 2002a, Implementation of Grootboom: Implications for the Enforcement of Socio-Economic rights, *Law, Democracy and Development*, vol. 6, 255.

Pillay K, 2002b, Implementing Grootboom: Supervision Needed, *ESR Review*, 3(3), 13.



Pillay K, 2004, Property Rights v Housing Rights: Balancing the Interests in Evictions Cases' *ESR Review*, 5(5), 16.

South African Human Rights Commission (SAHRC), 2004, *5th Socio-Economic Rights Report 2002–3: Housing*, 44.

Tomlinson M, 1996, From Rejection to Resignation: Beneficiaries' Views on the Housing Subsidy Scheme, Johannesburg: Centre for Policy Studies.

Tomlinson M, 1996, Whose Houses? Getting South Africa's Housing Policy Right, *Indicator South Africa* 13(4), Spring 1996.

Tomlinson M, 1998, Looking to the Local: Local Government and Low-Cost Housing Delivery, Johannesburg: Centre for Policy Studies.

## Reports, submissions and other resource materials

Centre on Housing Rights and Evictions (COHRE), 2005, *Evictions Monitor: Focus on Africa*, vol. 1, no. 3, August 2005.

Charlton S, 2004, *An overview of the housing policy and debates, particularly in relation to women (or vulnerable groups)*. Research report written for the Centre for the Study of Violence and Reconciliation: [www.csvr.org.za/papers/papcharl.htm](http://www.csvr.org.za/papers/papcharl.htm).

Department of Housing, *Annual Report, 2003–2004*.

Department of Housing, *Annual Report, 2004–2005*

Department of Housing, 2004, *Human settlements*, South Africa's progress report to the UN Commission for Sustainable Development, 12th Session, April 2004.

Former Minister of Housing, Sankie Mthembu-Mahanyele, *The South African housing policy: Operationalising the right to adequate housing*, Report on experience and progress between 1996 and 2001 in reference to the commitments of the Habitat Agenda, Istanbul+5 Thematic Committee, 6–8 June 2001.

Liebenberg S and Pillay K, 1998, Chapter 3, Social Contract for Rapid Housing Delivery, *Poverty and Human Rights*, Report of the National 'Speak Out on Poverty' Hearings, convened by SANGOCO, the CGE and the SAHRC (SANGOCO: Johannesburg), March–June 1998.

Minister of Housing, Lindiwe Sisulu, 2005a, Opening address at the Housing Indaba, 22 September 2005, Cape Town International Convention Centre, Cape Town: [www.housing.gov.za/](http://www.housing.gov.za/).

Minister Lindiwe Sisulu, 2005b, Speech prepared for the opening of the IAHS World Congress on Housing, 27 September 2005.

Ministry of Housing, 'Housing the poor requires innovative thinking, design and planning', *ANC Today*, 5(339), 30 September 2005.

*Pretoria News*, 'Have more children – and secure a state home?', 26 September 2005.

Socio-Economic Rights Project, Community Law Centre (UWC), the Centre for Rural Legal Studies, Legal Resources Centre (Cape Town), Surplus Peoples Project (SPP), Development Action Group (DAG) and the African Gender Institute (UCT), 1997, *Joint Submission on the Housing Bill*.

Urban Sector Network, 1998, *Housing Policy and Delivery*, Local Government Training Programme, Unit 1.

Van der Walt L, 2004, 'Informal settlements in South Africa's New Housing Plan: Breaking New Ground?' Paper presented at the workshop 'The Perpetuating Challenge of Informal Settlements', 8–10 November 2004, University of the Witwatersrand, Johannesburg.

### **Website**

Department of Housing: [www.housing.gov.za](http://www.housing.gov.za).