



THE RIGHT TO ADEQUATE HOUSING FACTSHEET



The right to adequate housing is an important basic human right which is recognised in the Constitution and international human rights instruments. Housing provides shelter from the elements, a place to eat, sleep, relax and raise a family. The right to adequate housing ensures that people enjoy physical and mental health and live in a safe place in peace and dignity. Human rights are indivisible and interdependent, so the right to adequate housing cannot be separated from the other rights such as sanitation, water, education, and healthcare.

The right to housing is also inextricably linked to broader developments in the economy, labour markets, migration, demographic and other trends, which affect access to housing. Failure to realise these rights and provide socio-economic goods and amenities in turn compromise the progressive realisation of the right to housing.

Historic Background

Under apartheid, housing segregation was mandated by law, which meant that non-whites could not live in white designated areas but had to live in designated non-white townships or in impoverished rural areas known as Bantustans or homelands. Very little housing was provided for Africans, with difficult legal tenure requirements in urban areas being conditional on urban employment and on long leasehold or rental tenure, but thus were never allowed to own homes.

This led to an increase in overcrowding in the black townships and a mushrooming of backyard dwellers. The political reforms of 1983 introduced black local authorities and allowed for the sale of some homes rented by African persons from the state. Local authorities in the township then became the site of boycotts and protest politics as they attempted to raise revenue from an impoverished black population. By the end of the 1980s, townships were in a crisis as the housing situation was characterised by severe and inadequate infrastructure and service delivery backlogs; a refusal to pay for basic services;

a breakdown in governance; inner city decadence and a mushrooming of informal settlements.

The dawn of democracy in 1994 saw the new government's focus shifting to transformation and improved service delivery for all, through the introduction of integrated development plans (IDPs) to enable local government to deal with service delivery programmes. The intention was that IDPs would result in sustainable new housing settlements located close to job opportunities, social services and economic development nodes. Informal settlements have been a contentious issue, with some of them located on land unsuitable for development but close to livelihood opportunities.

The perpetuation of apartheid geography and spatial planning remains a concern. The National Development Plan (NDP) recognises that South Africa is yet to achieve its NDPs objectives of breaking down apartheid spatial geography through land reform, more compact cities, decent public transport and the development of industries and services that use local resources and/or meet local needs. Urban areas remain divided along racial and class lines, which not only reinforce colonial and apartheid legacies, but denies spatial justice to the vast majority of our country's population

What does the Constitution say?

The right to housing is enshrined in section 26 of the Constitution, which states that:

- 1) Everyone has a right to have access to adequate housing.
- 2) The state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.
- 3) No one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The Constitution outlines further protection by establishing the rights of children to basic shelter; entrenching property rights and providing that no one may be deprived of property except in terms of the law.



International recognition of the right to adequate housing

The Constitution provides that when interpreting the Bill of Rights, a court, tribunal, or forum must consider international law; and may consider foreign law. It is for this reason that the international perspective on housing is reflected in South African national legislation and Constitutional Court judgments.

Internationally, the right to adequate housing and protection from evictions, is enshrined in article 25 of the Universal Declaration of Human Rights (UDR) as well as Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The provisions in these respective instruments recognise the inter-connectedness of social-economic needs and emphasise that housing delivery must be planned to ensure that communities can access social services and economic opportunities.

Furthermore the Convention on the Rights of the Child (CRC) imposes the obligation on state parties to assist parents with providing adequate housing for their children. The International Convention of

Civil and Political Rights (ICCPR) guarantees that everyone is equal before the law and all parties to a dispute are entitled to a fair and public hearing by a competent and impartial judge or tribunal. The African Charter on Human and People's Rights (ACHPR) recognises the dignity of everyone, stating that everyone is equal before the law and has an equal right to protection of the law.

Responsibility of the State / Government

Section 26 of the Constitution of the Republic of South Africa, mandates the state to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right to adequate housing. To give effect to this obligation the state has enacted various pieces of legislation including the Housing Act 107 of 1997 (which came into effect on 1 April 1998) which provides:

- I. The national government, acting through the Minister, must after consultation with every Member of the Executive Committee (MEC) and the national organisations, representing municipalities, establish and facilitate a sustainable national housing development process.
- II. Every provincial government through its MEC, must after consultation with the provincial organisations representing municipalities, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of the national housing policy.
- III. Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable steps within a framework of national and provincial housing legislation and policy, ensure that the inhabitants of its area of jurisdiction, have access to adequate housing on a progressive basis.

To ensure the progressive realisation of this right, the government in 1998 introduced the reconstruction and development programme (RDP). The RDP (which has subsequently been replaced by the Breaking New Ground (BNG) policy), is an integrated coherent socio-economic policy framework that seeks to mobilise everyone and mobilise the country's resources towards the final eradication of an apartheid style of housing system in favour of an all-inclusive, non-racial housing programme.

The current status of housing in South Africa

The right to adequate housing is recognised as a socio-economic right. What constitutes adequate housing is outlined in the Housing Act 107 of 1997, the BNG 2004 policy, and the National Housing Code 2009 (NHC), which provide for the facilitation of a sustainable housing development process. The NHC specifies the minimum size of houses as 40 square meters of floor area with:

- a) Two bedrooms
- b) A separate bathroom with a toilet, a shower and a hand basin
- c) A combined living area and kitchen space with a wash basin
- d) A ready board electrical installation, where electricity supply is available.

The state has committed to reversing and eradicating the apartheid spatial geography legacy. To this end, the National Department of Human Settlements has developed a Master Spatial Plan (MSP) aimed at achieving a creative balance between spatial equity, economic competitiveness, and environmental sustainability to overcome the legacy of apartheid. The MSP states that all spatial development programmes should incorporate the following aspects:

- Spatial justice (e.g. integration)
- Spatial sustainability (e.g. location, access to employment opportunities)

- Spatial resilience (e.g. mixed use, incremental development)
- Spatial quality (e.g. diversity and choice)
- Spatial efficiency (e.g. optimal use of limited resources) and good administration under the guidance of Spatial Planning and Land use Management Act (SPLUMA Act)

The 2004 Breaking New Ground (BNG) comprehensive government policy for housing delivery, builds on existing legislation and policies and emphasises the need to accelerate housing delivery. It recognises the need to build houses and sustainable communities in areas located within range of access to employment opportunities, schools and provided with basic infrastructure. It further encourages partnerships between government and the private sector, particularly with regard to providing housing finance and an increase in construction capacity of the historically marginalized communities. Recognising that informal settlements were a way of life for many South Africans in the past, BNG also calls for the integration of informal settlements into mainstream society by alleviating the challenges of spatial, social and economic exclusion.

Outcome 8 of the NDP as it relates to human settlements and household life, requires that there be an all-inclusive national plan for housing development and delivery. This includes a revision



of housing finance schemes and addresses social, spatial and economic inequalities. The 2014 – 2019 Department Human Settlement’s Medium Term Strategic Framework (MTSF) addresses the requirements of the NDP, by ensuring that poor households have adequate housing in better environments; supporting the development of a residential property market that is functional and equitable and enhancing institutional capacity improvements so as to address spatial integrating targeting.

Despite the BNG policy, a number of challenges continue to hamper the provision of housing. These relate to questionable quality and workmanship of the houses constructed by the government, as 14.5% of beneficiaries reported weak walls and 13.9% indicated weak roofs requiring rectification resulting in wasteful and fruitless expenditure. The relative poor quality of RDP houses is currently being addressed by requiring any person involved in home building to be registered with the National Home Builders Registration Council (NHBRC). Thus every construction company must be registered with the NHBRC in order to apply for government tenders. The NHBRC is also now the responsible agency for identifying contractors and ensuring that sub-standard / shoddy work is rectified at the contractors own cost in line with the Preferential Procurement Policy Framework Act (PPPFA). Any contractor that fails to rectify these deficiencies can be blacklisted

on the National Treasury database from obtaining future government tenders.

The government is also incrementally upgrading informal settlements through the Upgrading Informal Settlements Programme (UISP) and protecting people from arbitrary eviction. The Emergency Housing Policy (EHP) applies when people are evicted or threatened with imminent eviction from land or from unsafe building, or situations, where pro-active steps ought to be taken, to prevent such consequences. This was confirmed in the matter of **Residents of Joe Slovo Community v Thubelisha Home (CCT 22/08) ZACC 16; 2009 (9) BCLR 847** where the Constitutional Court ruled that the State was obliged to provide temporary shelter for people who have been evicted or face imminent eviction and were unable to find shelter, as the absolute priority must be the principle of upholding of human dignity.

According to the policy, emergency housing may be:

- a) Temporary on-site assistance
- b) Relocation to a permanent location with assistance on a temporary basis
- c) Temporary assistance through resettlement to an existing developed area, and
- d) Assistance with relocation to temporary settlement area to be relocated again, once a permanent housing solution is possible.

In **Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg vs City of Johannesburg and others (CCT 24/07) ZACC 1; (2008) SA 208 (5) BCLR 475** the Constitutional Court also clarified the need for consultation and meaningful engagement with occupiers before conducting evictions. While prioritising the rights of vulnerable groups and those facing potential eviction, all parties in the engagement must act with reasonableness and no party may act in an intransigent manner or make non-negotiable, unreasonable demands.



Facts about the right to housing

- According to the Department of Human Settlements records, 4.3 million houses and housing opportunities have been delivered since 1994.
- According to the 2014 general household survey by Statistics South Africa, 15.3% of South African households were living in RDP dwellings.
- The number of households that received government housing subsidies increased from 5.5% in 2002 to 15.3% in 2014
- The criteria to qualify for a housing subsidy, priority is given to vulnerable groups such as women, children, persons with disabilities and pensioners.

Who can apply for an RDP/BNG house?

- 1) South African citizens over the age of 21 can apply for a low cost house
- 2) Married couples and partners can apply together as well as single parents with dependants
- 3) The joint income of the household should not exceed R3500
- 4) Only one subsidy per applicant is applicable
- 5) If you already own a house under a separate scheme such as home loan from a bank you cannot apply for an RDP/BNG house

Where can I apply?

Applications can be done at your local municipality's housing office programme.

What are my responsibilities as a beneficiary?

- Once you get your house, you should inspect it for flaws like cracks or leaks. If there are any defects, you should report these in writing to your municipality within 6 months of occupying the house.
- Before you may renovate or extend the house allocated to you, written permission must be obtained from your local housing authority at the same office where you applied for your house.
- You may not rent out or sell your house within the first 8 years of receiving it from the state should you wish to do so, you must offer it to the MEC first.

What are my rights as a beneficiary?

- Once you have applied for an RDP house, you have the right of access to information on the process of allocation.
- The Promotion of Access to Information Act allows you to obtain information from your local housing authority regarding the status of your application. You may ask to view your details on the waiting list at your local housing office at any time.
- Should you have any reason to suspect fraud or corruption by a public official you should contact the Department of Human Settlements, The Special Anti-Corruption and Fraud Unit, the Presidential Hotline, Public Protector of South Africa, the Public Service Commission or the South African Human Rights Commission.



The Role of the South African Human Rights Commission

The South African Human Rights Commission is an independent institution created in terms of Chapter 9 of the Constitution of the Republic of South Africa mandated to promote, protect, monitor and advance human rights, including economic and social rights.

Section 184 (3) of the Constitution provides that:

- Each year the Commission must require relevant organs of the state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.

In terms of its mandate the Commission must determine the extent to which organs of

state have respected, protected, promoted and fulfilled human rights; determine the reasonableness of measures taken including legislation by laws, policies and programmes adopted by organs of state to ensure the realisation of human rights in the country and make recommendations that will ensure the protection, development and attainment of human rights.

Furthermore the Commission has a mandate to monitor and advance human rights. This includes advancement of economic and social rights so that everyone in South Africa, particularly the poor, vulnerable and marginalized in society may enjoy the full benefits of democracy.

Should you feel that your right to adequate housing or any of your rights as protected by the Bill of Rights is violated or infringed you can contact the Commission. The Commission's services are free.



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