



# **ECONOMIC AND SOCIAL RIGHTS (ESR)**

## **RESEARCH POLICY BRIEF 2016/2017**

CREATING AN ENABLING ENVIRONMENT FOR THE REALISATION OF THE RIGHT  
TO ADEQUATE HOUSING FOR PERSONS WITH SPECIAL NEEDS: EXPEDITING THE  
SPECIAL NEEDS HOUSING POLICY AND PROGRAMME (SHNP, 2015)





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# LIST OF ACRONYMS AND ABBREVIATIONS

<b>CEDAW</b>	United Nations Convention on the Elimination of All Forms of Discrimination against Women
<b>CESCR</b>	United Nations Committee on Economic, Social and Cultural Rights
<b>CRPD</b>	United Nations Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organisation
<b>DA</b>	Democratic Alliance
<b>DCS</b>	Department of Correctional Services
<b>DHS</b>	Department of Human Settlements
<b>DoH</b>	Department of Health
<b>DPME</b>	Department of Planning, Monitoring and Evaluation
<b>DPW</b>	Department of Public Works
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>DSD</b>	Department of Social Development
<b>EC</b>	Eastern Cape
<b>Esidimeni / LE</b>	Life Esidimeni Health Care Centre
<b>ESR</b>	Economic and Social Rights
<b>GBV</b>	Gender-Based Violence
<b>GDoH</b>	Gauteng Provincial Department of Health
<b>GMMP</b>	Gauteng Mental Health Marathon Project
<b>GT</b>	Gauteng
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>KZN</b>	Kwazulu-Natal
<b>MCHU</b>	Mental Health Care User
<b>MEC</b>	Member of the Executive Council
<b>NACOSS</b>	National Coalition for Social Services
<b>NGO</b>	Non-Governmental Organisation
<b>NPO</b>	Non-Profit Organisation
<b>OHSC / Health Ombudsman</b>	Office of Health Standards Compliance
<b>PPT</b>	Project Preparation Trust
<b>SAHRC / Commission</b>	South African Human Rights Commission
<b>SALGA</b>	South African Local Government Association
<b>SEIAS</b>	Socio Economic Impact Assessment
<b>SHNP</b>	Special Housing Needs Policy and Programme, June 2015
<b>SIDI</b>	Southern Intellectual Disability Initiative
<b>SNH</b>	Special Needs Housing
<b>StatsSA</b>	Statistics South Africa
<b>STTOP</b>	Sector Task Team for Older Persons
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UWC</b>	Dullah Omar Institute, University of the Western Cape
<b>WC</b>	Western Cape
<b>WCDisability</b>	Western Cape Network on Disability

# EXECUTIVE SUMMARY

This research policy brief was completed in fulfilment of section 184(3) of the South African Constitution, which requires that the South African Human Rights Commission (SAHRC / Commission) monitor and assess the realisation of economic and social rights (ESR), in the country. The policy brief contains the findings and recommendations of a research project conducted between July 2016 and March 2017 on the provision of capital funding to build / renovate and extend facilities housing persons with special needs, towards the realisation of their constitutional right to adequate housing.

Between March and December 2016, 94 mental health care users / patients died in 16 non-governmental organisations (NGO) and 3 hospitals. Based on initial reports of the deaths, the Minister of Health requested that the Office of Health Standards Compliance (OHSC) / Health Ombudsman to investigate '[t]he circumstances surrounding the deaths of mentally ill patients: Gauteng Province and advise on the way forward'. Among many others, a most concerning finding was the inadequacy of NGOs to provide for the special needs of persons with mental disabilities. The Health Ombudsman also found that none of the 27 NGOs to which patients were transferred operated under valid licenses, that most NGOs lacked appropriate infrastructure, and that some were in the process of renovating buildings while patients were being transferred while others discontinued the building / renovating of facilities even though such renovations were identified as necessary for the transfer of patients into those facilities. A recurring issue in the Health Ombudsman's report was the insufficiency of funding transferred by the Gauteng Provincial Department of Health (GDoH) to NGOs to deliver housing that caters for the special needs of patients and the operational costs (financed with state subsidies) that are associated with effectively running a facility of this nature.

The argument in respect of insufficient and inadequate infrastructure and insufficient government assistance to develop and build housing, may be extended to the provision of housing for other categories of special needs. Although the state has taken steps to provide housing to vulnerable persons, particularly for persons with disabilities and the aged, a range of other vulnerable persons who require special needs housing (SNH) struggle to access state assistance. SNH is any form of housing for individuals, who due to their specific vulnerabilities, require adjustments to their housing or who are unable to live independently and require care in state funded or state assisted housing. It refers to housing provided for individuals who due to various vulnerabilities and / or special needs have limited or no capacity to fulfil their rights of access to housing. Categories of special need include and are not limited to: persons with physical, intellectual and psychiatric disabilities, the elderly, victims of domestic abuse, orphans, homeless, persons under substance rehabilitation and parolees, ex-offenders and juvenile offenders.

Challenges in accessing state-assisted housing for persons with special needs are mainly due to a lack of provision for capital funding for SNH in the national housing policy, and other relevant policies. The result of inadequate provision has been that NGOs and non-profit organisations (NPO) who are primarily responding to the need for SNH and who are severely hamstrung by a lack of financial resources are unable to access state assistance / capital funding to build new infrastructure. The unfortunate result of this gap in the national policy framework is that society's most vulnerable, those who are unable to independently see to their own wellbeing, are left destitute and unable to access their right to housing.

In trying to meet this policy gap, the Department of Human Settlements (DHS) developed a policy on SNH: the *Special Housing Needs Policy and Programme (SHNP)*, June 2015. Despite the desperate need for a policy that provides clear direction on the provision of housing to special needs persons, to date, the SHNP has not yet been finalised and therefore has not been implemented.

The purpose of this research policy brief is:

- a) To highlight the plight of persons with special needs regarding their specific housing needs. In this regard, this policy brief investigated the need for a national policy that provides for capital funding to build facilities for persons with special needs. Subsequently, the policy brief assessed the extent to which the draft SHNP responds to this gap and further, the extent to which it inculcates a human-rights based approach.
- b) Having established the need, the research brief sought to advocate for the speedy finalisation of this much needed policy and its subsequent implementation. Consequently, the research project sought to understand the reasons for the delay in the finalisation and implementation of the SHNP.
- c) The ultimate goal of the policy brief is to provide recommendations, to government, about possible steps that can be taken to ensure that persons with special needs are able to exercise their right to adequate housing.

A qualitative methodology was applied in the research study and tools of data collection included face-to-face and telephonic interviews with relevant government departments, experts on SNH and academia, and a literature review. Based on thematic analysis of the information collected, the Commission made the following key recommendations:

**In the short term:**

- a) A clear and unequivocal national policy framework on the provision of SNH is paramount.
- b) To this end, the South African Human Rights Commission (SAHRC) recommends that the DHS must assume primary responsibility for the implementation of the SHNP, and work towards the speedy finalisation thereof.
- c) The DHS must submit to the SAHRC a reasonable timeline reflecting a requisite sense of urgency by which this policy development process will come to finalisation, at a minimum, within three months of receipt of this research policy brief.
- d) The national DHS must issue a directive that would enable all provinces to utilise the institutional subsidy to access capital grants to build new or extend/renovate existing infrastructure. The SAHRC recommends that the DHS issue such a directive, within six months of receipt of this research policy brief.
- e) Officials, who have experience, from provinces that have already implemented a variation of the institutional subsidy may be seconded to provinces that have no experience in implementing this policy, on a temporary basis.

**In the medium and long-term:**

- a) The DHS, in consultation with oversight departments, must develop and submit to the SAHRC a detailed implementation plan. The implementation plans must set specific timelines, measureable targets and who / which unit within departments will be responsible

for implementation and can be held accountable for successes or failures in this regard. The SAHRC must receive the implementation plan within year of the date of finalisation (approved by cabinet).

- a) The National Treasury must allocate budget, starting in the financial year immediately following finalisation of the SHNP, to the DHS who the SAHRC recommends should be primarily responsible for implementing the SHNP and thus, the disbursement of funds to successful applicants. National departments must ensure that their provincial and local (where applicable) counterparts receive the required budget allocation for effective implementation. How the proportion of the budget that will be allocated to provincial and local municipalities will be determined must be included in the implementation plans.
- b) The leading department and oversight authorities must in their implementation plans, clearly outline how provinces and municipalities will be trained to implement this policy, noting specific methodologies, timelines and how they will measure the extent of skills transferred during workshops.
- c) Training and workshops on the SHNP must also be extended to CSOs, particularly as NGOs / NPOs will initiate the application process and they are the intended beneficiaries of the SHNP.
- d) To ensure effective interdepartmental cooperation, communication and commitment – at national, provincial and local levels, the DHS must establish a focal person / desk that would be responsible for coordinating the plans and activities of the various different departments involved in the implementation of the SHNP.
- e) Each provincial head of the DHS on this policy must conduct or commission a provincial situational analysis to assess the need in regards to SNH, and consequently, where best to intervene. Funding and resources must be made available for this purpose.
- f) The Departments of Social Development (DSD), Health (DoH) and Correctional Services (DCS) must provide ongoing monitoring, management and oversight of funded NPOs. Existing policies, and norms and standards that set out the principles, roles and responsibilities of the departments in relation to facilities must be reviewed to ensure that it caters for all the vulnerable groups and different housing typologies, as identified in the SHNP, that are relevant to a department. The methodology to conduct said reviews must be submitted, to the Commission, as a part of the implementation plan.
- g) Evidence of such a review must be submitted to the SAHRC within one year following the finalisation of the implementation.



# 1. INTRODUCTION

In 2016, South Africa experienced a tragedy in the mental health and disability sector. Between March and December 2016, 94 mental health care users / patients died in 16 non-governmental organisations (NGO) and 3 hospitals, and this number may continue to rise as more deaths become known.<sup>1</sup> These tragic events were precipitated by a decision of the Gauteng provincial Department of Health (GDoH), in line with its de-institutionalisation policy and cost containment initiative, to terminate the contract of its service provider – Life Esidimeni Health Care Centre (Esidimeni / LE). Until this fateful decision was made, the GDoH had outsourced the care of mentally ill patients to Esidimeni, who for all intents and purposes had been adequately equipped and resourced to provide this special service to vulnerable<sup>2</sup> persons. The GDoH formally terminated its contract with Esidimeni on 31st March 2016 after which the contract was extended for another three months – until 30th June 2016. From April 2015 to March 2016, a total of 160 chronic mentally ill patients were transferred from Esidimeni to hospitals and NGOs. This number rose exponentially reaching an estimated 1 371 chronic mentally ill patients being transferred, within the three months covering 1st April to 30th June 2016. Given the high speed and ‘rush’ with which the transfer process was conducted by the GDoH, the process became known as the Gauteng Mental Health Marathon Project (GMMP). The GMMP was a process characterised by poor and flawed decision-making; inadequate planning and poor implementation, violations of the human rights of mentally ill patients, and ultimately, the preventable and unnecessary loss of lives of those who were most in need of the care and concern of persons responsible for their wellbeing.<sup>3</sup>

In September 2016, having noted a report on the loss of lives – which was heavily under-reported at the time (36) by the Member of the Executive Council (MEC) for Health – the Minister of Health requested that the Office of Health Standards Compliance (OHSC) / Health Ombudsman to investigate ‘[t]he circumstances surrounding the deaths of mentally ill patients: Gauteng Province and advise on the way forward’.<sup>4</sup> In addition to other findings, a prominent and concerning finding was the inadequacy of NGOs to provide for the special needs of persons with mental disabilities. The Health Ombudsman found that not a single one of the 27 NGOs to which patients were transferred operated under valid licenses. Furthermore, most NGOs did not have appropriate infrastructure in place<sup>5</sup>, some were in the process of renovating buildings while patients were being transferred while others discontinued the building / renovation of facilities – which was supposed to be done following recommendations by the GDoH in cases where site visits were conducted to assess the readiness of NGOs to receive patients. Finally, a recurring issue throughout the Health Ombudsman’s report was the insufficiency of funding transferred by the GDoH to NGOs to deliver housing that caters for the special needs of patients and the operational costs (financed with state subsidies) that are associated with effectively running a facility of this nature.<sup>6</sup> Emerging NGOs were more likely to be the culprits, lacking adequate infrastructure and competencies, and according to the Health Ombudsman:

... were mysteriously and poorly selected, poorly prepared, ‘not ready’, their staff was not trained, not qualified and was unable to distinguish between the highly specialized non-stop professional care requirements of ‘assisted’ Mental Health Care User (MCHU) from LE and a business opportunity;

<sup>1</sup> M W Makgoba ‘The Report into the Circumstances Surrounding the Deaths of Mentally Ill Patients: Gauteng Province. No Guns: 94+ Silent Deaths and Still Counting’ (December 2016), <<http://pmg-assets.s3-website-eu-west-1.amazonaws.com/170215finalreport.pdf>>.

<sup>2</sup> For the purpose of this policy brief, ‘vulnerable’ is defined as inclusive of all persons that fit one or more of the categories of special needs listed in section 5 of this policy brief. ‘Vulnerable’ and ‘special needs’ are there used interchangeably.

<sup>3</sup> Note 1 above.

<sup>4</sup> The Health Minister also appointed the Minister’s Ministerial Advisory Committee on Mental Health to visit and assess conditions at NGOs and intervene where needed to prevent further deaths. Note 1 above, 3.

<sup>5</sup> For instance, the Health Ombud found that Bophelong Suurman, Mosego, Precious Angels, Rebafenyi 1, 2 and 3, Thekganang, Solutions care, Areyeng, Lapeng and Sebosa Ren lacked suitable infrastructure and were unfit to house mentally ill patients. Note 1 above, 19.

<sup>6</sup> Note 1 above, 8, 10, 35 and 47.

there were often mismatches between MCHU functionality with NGO fitness for purpose.<sup>7</sup>

The assertion above suggests that having perceived a lack of suitably available residential facilities to house this group of vulnerable people, these NGOs sprung up from out of nowhere and capitalised on the government's desire to save on costs and consequently, expeditiously hand over the care of persons with special needs under the guise of de-institutionalisation. It must be noted that the problem here does not lie with the rationale supporting de-institutionalisation, but rather that for this process to be implemented effectively and result in its well-intentioned outcomes for persons currently residing in institutions, it will be imperative that the DoH, at national and provincial level, ensure that adequate provision is made for the establishment of in-community facilities that effectively responds to, especially, the housing and daily needs of chronic mentally ill patients. The Health Ombudsman confirmed this need and recommended that sufficient budget should be allocated to the implementation of the de-institutionalisation process.<sup>8</sup>

The argument in respect of insufficient and inadequate infrastructure and insufficient government assistance to develop and build housing, can be extended to the provision of housing for other categories of special needs. Although the state has taken steps to provide housing to vulnerable persons, particularly for persons with disabilities and the aged, a range of other vulnerable persons who require special needs housing (SNH) struggle to access state assistance. Accordingly, the United Nations Special Rapporteur on Housing, following a state visit to South Africa in 2007, lamented the absence of a specific housing programme that would address the needs of persons with special needs, and further noted the "critical lack of coordinated countrywide" housing and support for people with special needs, marginalised people, women, children and the elderly.<sup>9</sup>

This is mainly due to a lack of provision for capital funding for SNH in the national housing policy, and other relevant policies. The result of inadequate provision has been that NGOs and non-profit organisations (NPO) who are primarily responding to the need for SNH and who are severely hamstrung by a lack of financial resources are unable to access state assistance / capital funding to build new infrastructure. The unfortunate result of this gap in the national policy framework is that South Africa's vulnerable, those who are unable to independently see to their own wellbeing, are left destitute and unable to access their right to housing.

In trying to meet this policy gap, the DHS developed a policy on SNH: the *Special Housing Needs Policy and Programme (SHNP)*, June 2015. This policy document was the culmination of almost two decades of advocacy by civil society and a consultative policy development process, led by the DHS. Despite the desperate need for a policy that provides clear direction on the provision of housing to special needs persons, to date, the SHNP has not yet been finalised and therefore it is not yet being implemented.

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7 Note 1 above, 2.

8 Note 1 above, 8, 10, 35 and 47.

9 Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari: Addendum: Mission to South Africa, UN Doc A/HRC/7/16/Add.3 (2008)

## 2. OBJECTIVE OF THE RESEARCH POLICY BRIEF

The purpose of this research policy brief is firstly, to highlight the plight of persons with special needs regarding their specific housing needs. In this regard, this policy brief investigated the need for a national policy that provides for capital funding to build facilities for persons with special needs. Subsequently, the policy brief assessed the extent to which the draft SHNP responds to this gap and further, the extent to which it inculcates a human-rights based approach. Secondly, having established the need, the research brief sought to advocate for the speedy finalisation of this much needed policy and its subsequent implementation. Consequently, the research project sought to understand the reasons for the delay in the finalisation and implementation of the SHNP. Finally, the ultimate goal of the policy brief is to provide recommendations, to government, about possible steps that can be taken to ensure that persons with special needs are able to exercise their right to adequate housing. In completing this research policy brief, the Commission's objectives were to:

- a) Determine the extent, to which the organs of State have respected, protected, promoted and fulfilled the right to adequate housing.
- b) Determine the reasonableness of measures, including legislation, policies and programmes adopted by organs of State to ensure the realisation of the right.
- c) Make recommendations that will ensure the protection, development and attainment of the right to housing.

The methodology utilised in this research study was qualitative in nature and the methods applied to collect information to complete the policy brief included:

- a) Face-to-face and telephonic interviews with relevant government departments (the DHS, DSD, and the DoH), expert interviews<sup>10</sup> with organisations involved in the development of the SHNP and academia<sup>11</sup>. All interviews were recorded and transcribed, following which thematic analysis was utilised to analyse the content of transcripts.
- b) A literature review. The literature review included an analysis of sources such as the SHNP, government reports / outputs regarding special needs housing, journal articles, reports and research briefs, in addition to reliable internet information.

This section provided an explanation of the purpose and objectives of this research policy brief. In section 3 below, the mandate and Constitutional obligations of the Commission is discussed. Section 4 describes the current context in relation to SNH. Section 5 provides insight into the work of the SAHRC in relation to SNH, to date. Section 6 includes an overview of the Constitutional and legal framework guiding SNH while in section 6 the existing policy and programmes in relation to SNH is considered. Section 7 comprises a review of the SHNP including an assessment of how the SHNP is aligned to a human rights-based approach. Section 8 considers concerns around the delay in finalising this policy. Finally, in section 9, recommendations are made to relevant government departments in regard to the SHNP.

<sup>10</sup> 1. Interviewees were selected through 'snowballing' based on the following criteria:

- a. The interviewee formed part of the task team (see number 2 below),
- b. The interviewee had intimate knowledge of the SHNP formulation process,
- c. The interviewee was well-informed about the content of the SHNP, such that s/he would be able to provide an expert opinion, and
- d. The interviewee had been working in the SHN sector for an extended period of time (all interviewees were working in the sector for more than 5 years, some up to 20 years).

2. The DHS and DSD established a task team to assist with the development of the SHNP. CSOs formed an integral part of this task team. It was therefore important to interview CSOs such that we could establish a comprehensive and balanced view.

3. All interviewees met at least three of the four criteria listed above and were credible sources of information.

<sup>11</sup> See ANNEXURE A for a list of interviewees.

# 3. MANDATE OF THE SAHRC

The Commission is a Constitutional body governed by section 184 of the Constitution of the Republic of South Africa, 1996 (Constitution).<sup>12</sup> The SAHRC has a Constitutional mandate to monitor and assess the extent to which organs of state respect, protect, promote and fulfil the advancement of human rights. Section 184 (3) of the Constitution places a specific obligation on the Commission to monitor and assess the realisation of economic and social rights. It requires that:

Each year the Human Rights Commission must require relevant organs of 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.<sup>13</sup>

Historically, the SAHRC analysed the information collected from government departments to develop and deliver an annual Economic and Social Rights (ESR) / S184 (3) report. However, this year, rather than completing a report, the Commission will deliver research policy briefs, on selected ESR. Specifically, this research policy brief deals with the right to adequate housing, with a specific focus on the provision of capital funding to develop, build and establish communal residential facilities for persons with special needs.

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<sup>12</sup> Constitution of the Republic of South Africa, 1996

<sup>13</sup> Ibid 101.

# 4. SPECIAL NEEDS HOUSING IN CONTEXT

The democratic dispensation identified the right to housing as an important priority in the pursuit of meeting the most basic needs of every South African. As with many other social and economic entitlements, discriminatory and exclusionary policies and programmes of the apartheid regime resulted in the majority of the population being disproportionately deprived of access to housing. In 1994, the housing backlog was estimated to be around 1.2 million houses. Since then, the South African government has made tremendous strides in addressing the housing backlog. According to the State's 20 Year Review Report, by 2014, approximately 2.8 million state-subsidised houses and in excess of 875 000 serviced sites were delivered, benefitting around 12.5 million people.<sup>14</sup> Noting these substantial achievements, the United Nations Special Rapporteur on Housing lauded the measures put in place by the government to ensure access to housing and an adequate living standard for all South Africans.<sup>15</sup> Notwithstanding the successes in housing delivery, the South African housing sector is beset with challenges, most notably, a severe housing shortage, a sizable backlog in housing provision and severe overcrowding.<sup>16</sup> For instance, in 2015, the DHS reported that the current housing backlog is estimated to be at 2.3 million and will likely take about 16 years to eradicate.<sup>17</sup> Furthermore, rapid urbanisation has led to the proliferation of informal settlements and consequently, overcrowding in urban areas. This assertion is best illustrated by the number of households residing in informal areas and backyard dwellings across the country. Census data indicates that, in 2011, 1.38 million households lived in an informal dwelling or a shack that is not located in a backyard while in 2001, 1.11 million households lived in informal settlements while more than 700,000 households lived in both.<sup>18</sup>

Although the government has made various commitments to prioritise the needs of vulnerable people in housing delivery, vulnerable persons and those with special needs, including women, people living with Human Immunodeficiency Virus/Acquired immune deficiency syndrome (HIV/AIDS), the elderly, children, people with disabilities and poor people still face many obstacles in accessing housing.<sup>19</sup> Statistics South Africa (StatsSA), in their report on the 'Social profile of vulnerable groups in South Africa, 2002-2011', assessed the situation of children, the youth, the elderly, and women over time.<sup>20</sup> In relation to access to housing, StatsSA reported that, in 2012, 11 per cent of child-headed households, 9 per cent of children, 23.5 per cent of youth-headed households (15 - 34 years), 11.2 per cent of youth (15 - 34 years), 11 per cent of female-headed households, 9.1 per cent of females, 4.3 per cent of elderly-headed households and 3.3 per cent of the elderly resided in informal dwellings.<sup>21</sup> StatsSA further noted numerous adversities that persons residing in informal settlements are subjected to, such as that they are less likely to have access to basic services such as water and sanitation and / or that they are more likely to reside on the periphery of established townships, and far from social amenities. Evidently, the current national housing framework is failing to meet the demand of these vulnerable groups as identified by StatsSA, notwithstanding the range of other vulnerable persons - with a range of specific

14 Department of Planning Monitoring and Evaluation (DPME) '20 Year Review. South Africa 1994 - 2014' (March 2014), <<http://www.dpme.gov.za/news/Documents/20%20Year%20Review.pdf>>.

15 Note 9 above, 10.

16 L. Chenwi 'Taking those with special housing needs from the doldrums of neglect: A call for a comprehensive and coherent policy on special needs housing' (2007) 11 Law Democracy and Development 1.

17 Department of Human Settlements (DHS) 'Presentation to South African Human Rights Commission Hearing on: National Housing Programme: Housing Assistance in Emergency Circumstances', 23 February 2015.

18 Statistics South Africa (StatsSA). 'Census 2011' (2012), <<http://www.statssa.gov.za/publications/P03014/P030142011.pdf>>.

19 Note 9 above, 2.

20 a. In 2012 (52.7 million), children comprised 36% of total the total population, the youth: 37%, the elderly: 7.7%, and women, 52%. Statistics South Africa (StatsSA) 'Social Profile of Vulnerable Groups in South Africa, 2002-2012' (2013), <<http://www.statssa.gov.za/publications/Report-03-19-00/Report-03-19-002012.pdf>>.

b. StatsSA noted that they were unable to assess the situation of persons with disabilities due to inconsistency in the accuracy of the methodology utilised to measure this aspect, Ibid.

21 a. Ibid.

b. StatsSA defined an informal dwelling as 'a makeshift structure not erected according to approved architectural plans, for example shacks or shanties in informal settlements or in backyards', Ibid, xii.

special needs – and their housing situation, that are excluded from this definition and consequently, the situational analysis.

In accordance, the SHNP recognises that there is currently a special housing needs facility backlog, based on reports of long waiting lists (for example, organisations accommodating and caring for persons with physical and intellectual disabilities, older persons and victims of domestic violence) made by NPOs providing care and accommodation to persons with special needs.<sup>22</sup> The SHNP defines special housing needs as,

...housing opportunities for persons who for a variety of reasons are unable to live independently in normal housing or require assistance in terms of a safe, supportive and protected living environment and who therefore need some level of care or protection be it on a permanent or temporary basis.<sup>23</sup>

SNH is therefore any form of housing for individuals, who due to their specific vulnerabilities, require adjustments to their housing or who are unable to live independently and require care in state funded or state assisted housing. It refers to housing provided for individuals who due to various vulnerabilities and / or special needs have limited or no capacity to fulfil their rights of access to housing. Categories of special need include and are not limited to:

- i. Those with physical disabilities
- ii. Those with intellectual and psychiatric disabilities
- iii. The old and infirm
- iv. Victims of domestic abuse and family violence
- v. Orphans and vulnerable children
- vi. The seriously ill, i.e. persons living with HIV/AIDS
- vii. The homeless
- viii. Those under substance rehabilitation
- ix. Parolees, ex-offenders and juvenile offenders.

With regards to special needs housing, a distinction is made between *individual housing* and *group housing*. The former is housing for individuals with special needs who are poor and can live independently – for some, if necessary adaptation(s) to their houses is done – i.e. persons with disabilities, the aged, child-headed households, and etcetera. The latter is housing for persons with special needs, who are poor and who have specific vulnerabilities that render them unable to live independently. Such persons require group care provided by registered and approved NPOs. Examples of SNH include: foster care homes, accommodation for older persons, residential care and assisted independent accommodation for people with disabilities, hospices, centres for abused women and children and shelters for homeless people. This policy brief is primarily concerned with the provision of SNH to persons who are unable to live independently, as per the definition of special housing needs included in the SHNP.

Notwithstanding the contributions made by the DSD, the DoH and the NGO/ NPO sector to provide housing to persons with special needs, many vulnerable persons are unable to access

<sup>22</sup> Department of Human Settlements (DHS) & Department of Social Development (DSD) 'National Special Housing Needs Policy and Programmes (June 2015), 6.

<sup>23</sup> Ibid, 7.

special needs housing, due to both insufficient availability of suitable facilities and unaffordability of spaces within existing facilities. The potential implications of the former were profoundly illustrated in the Esidimeni case. In recognition of the challenges related to insufficient budgets to address infrastructure needs, the Health Ombudsman, made specific recommendations to the GDoH<sup>24</sup> regarding assistance in terms of finances, and the management and functioning of NGOs that provide services to mentally ill patients, some of which include:<sup>25</sup>

- i. If deinstitutionalisation of MHCUs is to be implemented in South Africa, it has to be done with the provision of structured community mental health care services, as recommended by the MH Policy and articulated by Prof Freeman's document, with the **adequate planning and allocation of designated resources**;
- ii. Specialist run community/ psychiatric services, as described in the MH Policy, must be included in the proposed NHI **structure and funding** in order to address the needs of people with severe psychiatric disability/ who require specialist level care close to their homes;
- iii. GDoH must develop a capacity programme for all newly established NGOs.

It will be important for the SAHRC to monitor progress in relation to the implementation of these recommendations. However, these recommendations relate only to the provision of SNH by NGOS / NPOs in the Health sector. This policy brief argues that in addition to the specific reforms required in the Health sector – as recommended by the Health Ombudsman – the need for SNH is cross-cutting and therefore a national policy framework remains imperative to address this need.

Insufficient availability of state-assisted housing is further evidenced by research into the 'policy, funding and practice' of shelters owned by both NPOs and the DSD.<sup>26</sup> Lopes showed that despite the high prevalence of domestic violence, there are not enough shelters to keep up with the demand and that many shelters are forced to turn desperate women and children away due to a lack of space and inadequate infrastructure to accommodate them.<sup>27</sup> Consequently, interviews with Civil Society Organisations (CSO) indicated that due to the high costs of accommodation in facilities and insufficient availability of housing that cater for older persons, persons with mental disabilities, and persons requiring substance abuse rehabilitation, poor and vulnerable persons are unable to access such services.<sup>28</sup>

In addition, urgent consideration of a national comprehensive SNH policy is made imperative by a number of economic and social factors. These include factors such as high levels of inequality and poverty, the prevalence of substance abuse, gender-based violence (GBV), which significantly increases societal vulnerabilities and therefore the need for SNH.<sup>29</sup> Other factors include the large number of child-headed families as a result of the HIV/AIDS pandemic.

As noted earlier, a major concern with regards to SNH is the lack of provision for capital funding, in government policy that can be used to build institutions that would address this need. For the most part, SNH is provided by the non-profit (NPOs) and NGO sectors, while selected state departments provide funding to run the homes. NPOs lack adequate state assistance and funding,

<sup>24</sup> Schedule 4 of the South African Constitution defines the right to health services as a concurrent competence between the national and provincial Health departments. Note 12 above, 143.

<sup>25</sup> (My emphasis), Note 1 above, 55.

<sup>26</sup> C Lopes 'Shelters Housing Women Who Have Experienced Abuse: Policy, Funding and Practice' (2013) Policy Brief updated October 2013. <[https://za.boell.org/sites/default/files/downloads/Policybrief\\_reports\\_sheltershousingabusedwomen\\_updatedOct2013.pdf](https://za.boell.org/sites/default/files/downloads/Policybrief_reports_sheltershousingabusedwomen_updatedOct2013.pdf)>.

<sup>27</sup> The DSD is the lead department in the national Victim Empowerment Programme (VEP), and is mainly responsible for coordination of these services – whether the services are directly provided by the DSD or is outsourced to service providers. The VEP makes provision for shelters for victims of abuse and the DSD has primary responsibility in this regard. The author reported that, Sisters Incorporated noted that between April and June 2013, they were unable to accommodate 35 women and 33 children experiencing domestic violence as they were filled to capacity. A shelter in the Free State similarly reported that they had to turn away 27 women and 15 children, during the same time. In addition, existing shelters are unable to accommodate whole families. Shelters generally do not accommodate boys over a certain age. Women are therefore required to leave their children in a children's home or someone else's care. The separation of families further add to the trauma that victims experience, thus illustrating the need for facilities that cater for the entire family. Note 26 above, 1.

<sup>28</sup> For instance, SAHRC Interviews on the Special Housing Needs Policy and Programme, June 2015 with the Southern Intellectual Disability Initiative (SIDI), 30 January 2017, Planact, 31 January 2017 and the Sector Task Team for Older Persons (STTOP), 14 December 2016.

<sup>29</sup> DG Murray Trust (DGMT) 'Towards a more inclusive Special Needs Group Housing Programme in South Africa: Addressing a Situation of Crisis' Learning Brief 43 (May 2013), <<http://dgmt.co.za/files/2015/06/LearningBrief-43-final-090613.pdf>>.

particularly for capital costs to build new facilities or to renovate existing facilities. Organisations that provide services relating to SNH mainly access funding from the DSD. Critically, the funding provided by the DSD is generally used to cover the operational management of such organisations. Historically, the NPO sector relied heavily on private and corporate funding to build new or renovate existing infrastructure. However, accessing donor funding – particularly, from international funders – has

become increasingly difficult following the global financial crises and the gradual withdrawal of international funders from South Africa.<sup>30</sup>

The continued absence of a national policy framework on SNH has created a vacuum as there is no national framework to guide the provision of capital funding for the establishment of SNH. The existing policies do not address the matter holistically, but rather in a piecemeal fashion.<sup>31</sup> As a result, there is a need for the state to uphold its Constitutional responsibility and create a national comprehensive policy which will be used at provincial level to address the matter.

In light of this concern, and instructions from the DHS Minister and Members of the Executive Council (MINMEC), the DHS produced a draft policy on SNH: the *Special Housing Needs Policy and Programme (SHNP)*, in June 2015.<sup>32</sup> The SHNP, driven by the DHS, was developed in consultation with civil society, the oversight departments, including the Departments of Social Development, Health, and Correctional Services (DCS), and the National Treasury. However, to date, the SHNP has not been approved by cabinet and therefore is not yet in the implementation phase. In December 2015, the Minister of the DHS stated that the SHNP has been finalised and that a comprehensive socio economic impact assessment (SEIAS), conducted by the national DHS and approved by the Department of Planning, Monitoring and Evaluation (DPME), will be concluded.<sup>33</sup> Further steps included consultation with provincial DHS Members of the Executive Councils and the South African Local Government Association (SALGA), early in 2016. The Minister indicated that the policy will be implemented following conclusion of the consultation process and once all necessary approvals were obtained. However, almost one year later, the SHNP is still under consideration by the relevant government departments, with little progress having been made in relation to the finalisation and implementation of the policy.

The main stumbling block to finalisation of the SHNP seems to be government's concerns around which department's mandate most appropriately covers the provision of SNH. These matters are discussed in detail in section 8.

<sup>30</sup> NGO Pulse. 'The South African Nonprofit Sector: Struggling to Survive, Needing to Thrive'. 9 April, 2013. <<http://www.ngopulse.org/article/south-african-nonprofit-sector-struggling-survive-needing-thrive>>.

<sup>31</sup> The gaps in existing policies are discussed in more detail in section 6 of this policy brief.

<sup>32</sup> Note 22 above.

<sup>33</sup> This was in response to a parliamentary question, posed by the Democratic Alliance (DA) in December 2015, about the status of the SHNP, progress made on implementation thereof and the consultation processes in developing the policy.



# 5. THE SAHRC'S WORK ON SPECIAL NEEDS HOUSING<sup>34</sup>

The SAHRC has demonstrated its commitment to advancing the realisation of housing rights of persons with special needs, more especially, through its work on the rights of, *inter alia*, persons with disabilities, the elderly, children and women. In its 7<sup>th</sup> ESR report 2006-2009, the Commission highlighted the need for housing projects to take into account the special needs of vulnerable groups such as people with disabilities, orphans and vulnerable children.<sup>35</sup> In February 2015, the SAHRC hosted a two-day hearing on *Access to Housing, Local Governance and Service Delivery*. The objective of the hearing was to gain a better understanding of the challenges faced by rights-bearers and rights-holders in relation to the right to adequate housing and housing delivery. Essentially, the Commission sought to make practical recommendations to the Government on how to improve its ability to efficiently deliver housing. The Commission made recommendations on various issues including, the legal and policy framework; budget, planning, monitoring and evaluation; cooperative governance, local government, security of tenure and evictions; private property owners and private contractors, and community participation and protest action. Specifically, in relation to special needs housing, the SAHRC recommended that

'provincial governments [must] ensure that monitoring tools are updated and refined on an annual basis to ensure that the housing demand is understood and accounted for, and the quality of services being provided does not violate rights; such monitoring tools should seek to incorporate gender indicators to ensure that housing and basic service delivery takes account of special needs of different groups'.<sup>36</sup>

More recently, towards the end of Human Rights month (March 2017), the SAHRC, in collaboration with the WC provincial Departments of Human Settlements and Social Development announced the respective parties' commitment to plans to advance the realisation of human rights, particularly the right to adequate housing for persons with disabilities and special needs.<sup>37</sup> The announcement came as a consequence of meetings held between the provincial departments and the SAHRC regarding plans and efforts that are aimed at ensuring that vulnerable persons are able to access their human rights. The WC DSD noted that an important aspect of implementation, in this regard, will be the role of the DSD in a consultative process between the DSD and 245 funded NPOs that deliver housing-related services to people with disabilities. The WC DSD also stated that it had allocated R 3 million for the 2017/18, financial year, to fund a 'comprehensive sectoral engagement process' that will involve all its funded NPO partners. The provincial DHS MEC, summarised the rationale and importance of this initiative by stating that '[e]lderly and people with disabilities must be prioritised by the government. It is high time we [provincial government departments] formalise a working relationship and structure a plan we must follow to assist people with disabilities.'<sup>38</sup>

<sup>34</sup> The information provided in this section is not exhaustive of the Commission's work in this area. Refer to the SAHRC's website for additional information: <http://www.sahrc.org.za/index.php/publications>.

<sup>35</sup> South African Human Rights Commission (SAHRC) *7<sup>th</sup> Economic and Social Rights Report 2006 – 2009 (2009)*, <<http://www.sahrc.org.za/home/21/files/Economic%20and%20Social%20Rights%20Report.pdf>>.

<sup>36</sup> South African Human Rights Commission (SAHRC) *Report on Access to Housing, Local Governance and Service Delivery, 23 – 25 February 2015 (2015)*, <<https://www.sahrc.org.za/home/21/files/Access%20to%20Housing%202015.pdf>>.

<sup>37</sup> a. This announcement was made at a media briefing that was held on 30 March 2017.

b. 'Western Cape, SAHRC join forces to improve disabled people's lives' *The Citizen* (30 March 2017).

<sup>38</sup> *Ibid.*

# 6. THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

There is an indisputable obligation on the state to provide housing to society's most vulnerable, particularly persons with special needs. The right to adequate housing is enshrined in international legal instruments to which South Africa is a State Party and the South African Constitution. Furthermore, selected national legislation make specific reference to the provision of special needs housing. In this section, key legislation pertaining to state assisted housing for special needs is discussed.

## 6.1. International Legal Framework

The right to adequate housing is well-recognised in various international human rights instruments. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>39</sup> establishes protections for the right of everyone to an adequate standard of living and the right to housing. In General Comment 4, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) explicates article 11(1) in relation to the right to housing while General Comment 7<sup>40</sup>, of the CESCR, expounds on forced evictions. Specifically, General Comment 4 provides amongst its entitlements that the special needs of the vulnerable groups should be taken into account during policy considerations.<sup>41</sup> The CESCR, in General Comment 4, further notes the importance of the term 'adequacy' in relation to housing and identifies various aspects to be considered in this regard. These aspects include: legal security of tenure; accessibility; affordability; habitability; location; availability of services, materials, facilities and infrastructure and finally, cultural adequacy.<sup>42</sup> The inclusion of these factors as component parts of "adequacy" in addition to '...the extreme diversity of accommodation and housing needs and the different housing typologies', underscores the difficulties with defining what exactly constitutes 'adequate housing'.<sup>43</sup> Nonetheless, South Africa reaffirmed its commitment to the advancement of ESR, including housing rights, when it ratified the ICESCR in January 2015.<sup>44</sup> Accordingly, establishing an enabling environment, more especially for persons with different vulnerabilities – at the domestic level – will be paramount to the fulfilment of the rights enshrined in the ICESCR.

In addition, the right to adequate housing is part of the right to an adequate standard of living, recognised by the Universal Declaration of Human Rights (UDHR).<sup>45</sup> Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD)<sup>46</sup> recognises the rights of persons with disabilities to housing. Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>47</sup> recognises the right of rural women to adequate living conditions in relation to housing (and other) rights while CEDAW General Recommendation 27<sup>48</sup> concerns the protection of rights of older women and requires States to ensure access to adequate housing for this group.

39 a. International Covenant on Economic, Social and Cultural Rights (1966)

b. South Africa signed the Covenant in 1994.

40 Committee on Economic, Social and Cultural Rights, General Comment 7: The right to adequate housing (Art.11.1): Forced Evictions, (1998)

41 Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing, (1991)

42 Ibid.

43 H Dawson & D McLaren 'Monitoring the right of access to adequate housing in South Africa An analysis of the policy effort, resource allocation and expenditure and enjoyment of the right to housing' (2014), <[http://spii.org.za/wp-content/uploads/2014/09/Working-Paper-8\\_Monitoring-the-right-to-adequate-housing-in-SA.pdf](http://spii.org.za/wp-content/uploads/2014/09/Working-Paper-8_Monitoring-the-right-to-adequate-housing-in-SA.pdf)>.

44 a. South Africa signed this treaty in 1994.

b. The extent to which the SHNP responds to the elements of "adequate housing" is considered in section 7 of this policy brief.

45 Universal Declaration of Human Rights (1948)

46 Convention on the Rights of Persons with Disabilities (2006)

47 Convention on the Elimination of All Forms of Discrimination against Women (1980)

48 Committee on the Elimination of Discrimination Against Women, General recommendation 27: Older women and protection of their human rights, (2010)

## 6.2. The Constitution

The right to adequate housing is a fundamental ESR, the realisation of which is crucial to the enjoyment of other human rights. It cannot be reduced to the right to a roof and four walls, but should rather be understood in broad terms as the right of every person to have access to a home and community, to enjoy physical and mental health, and to live in safety, peace, and dignity. Section 26 of the Constitution<sup>49</sup> provides that the state must take reasonable and other legislative measures to progressively provide everyone with access to adequate housing. Other sections that have relevance to special needs housing, include section 28(1) (the right to shelter for children), section 9 (the right to equality) and section 10 (human dignity).<sup>50</sup> The category refers to everyone and implies that the state is duty bound to establish an approach to housing that addresses special needs as well.<sup>51</sup> Consequently, it is a Constitutional obligation to create a national comprehensive SNH policy, as failure would mean a deviation from the principles enunciated in housing rights Constitutional jurisprudence such as the *Grootboom*<sup>52</sup> case and the Constitutional imperative to take reasonable *legislative and other measures* to realise the right.

The Constitutional Court in the case of *Government of the Republic of South Africa and Others v Grootboom & Others 2001*, held the State's positive obligation under section 26 of the Constitution was primarily to adopt and implement a reasonable policy, within its available resources, which would ensure access to adequate housing over time.<sup>53</sup> The bulk of the *Grootboom* judgment is devoted to defining the concept of reasonableness. The Court held that to qualify as "reasonable", State housing policy must:

- a) be comprehensive, coherent and effective;<sup>54</sup>
- b) have sufficient regard for the social economic and historical context of widespread deprivation;<sup>55</sup>
- c) have sufficient regard for the availability of the State's resources;<sup>56</sup>
- d) make short, medium and long term provision for housing needs;<sup>57</sup>
- e) give special attention to the needs of the poorest and most vulnerable;<sup>58</sup>
- f) be aimed at lowering administrative, operational and financial barriers over time;<sup>59</sup>
- g) allocate responsibilities and tasks clearly to all three spheres of government;<sup>60</sup>
- h) be implemented reasonably, adequately resourced and free of bureaucratic inefficiency or onerous regulations;<sup>61</sup>
- i) respond with care and concern to the needs of the most desperate;<sup>62</sup> and
- j) achieve more than a mere statistical advance in the numbers of people accessing housing, by demonstrating that the needs of the most vulnerable are catered for.<sup>63</sup>

## 6.3. The National Housing Code, 2009

The National Housing Code (the Housing Code) does not make specific provision for special needs housing. According to Project Preparation Trust (PPT): the Housing Code also 'does not

49 Note 12 above, 12.

50 Note 12 above.

51 Note 16 above, 6.

52 *Government of the Republic of South Africa and Others v Grootboom & Others 2001 (1) SA 46 (CC).*

53 *Ibid*, paragraph 35.

54 *Ibid*, paragraph 40.

55 *Ibid*, paragraph 43.

56 *Ibid*, paragraph 46.

57 *Ibid*, paragraph 43.

58 *Ibid*, paragraph 42.

59 *Ibid*, paragraph 45.

60 *Ibid*, paragraph 39.

61 *Ibid*, paragraph 42.

62 *Ibid*, paragraph 44.

63 *Ibid*, paragraph 44.

provide space for provinces to do so either. As a result provinces are reluctant to develop their own policies, while the provincial Department of Human Settlements (DHS) has adapted existing housing delivery mechanisms to approve projects.<sup>64</sup>

### **6.3. The Housing Act 107 of 1997**

The Housing Act requires that all spheres of government provide for the special needs of vulnerable groups in all housing policies and programmes. The Housing Act states that, '[n]ational, provincial and local spheres of government must...promote the meeting of special housing needs, including, but not limited to, the needs of the disabled'.<sup>65</sup> The Housing Act also broadly mentions housing for people with special needs. Section 2(1)(a) of the Housing Act establishes the 'general principles applicable to housing development' and creates an obligation on the government 'to give priority to the needs of the poor in respect of housing development'; to 'promote the meeting of special housing needs, including but not limited to, the needs of the disabled'; and to promote 'the housing needs of marginalised women and other groups disadvantaged by unfair discrimination'.<sup>66</sup>

### **6.4. The Social Housing Act 16 of 2008**

The Social Housing Act prescribes that priority must be given to low and medium income households in social housing development and obliges the government and social housing institutions to ensure that their '...respective housing programmes are responsive to local housing demands and that special priority must be given to the needs of women, children, child-headed households, persons with disabilities and the elderly'.<sup>67</sup>

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<sup>64</sup> Community Law Centre & Centre for Disability Law & Policy, 'Workshop Report: Special Needs Housing Policy Framework in South Africa' (June 2012), 8 cited in Werksmans Attorneys, 'Special Needs Group Housing Policy: Investigation of Obligations, Powers and Functions of Certain Government Departments in Relation to the Provision of Capital Funding for Special Needs Group Housing' (March 2015), <<http://www.werksmans.com/wp-content/uploads/2015/03/Final-Executive-Summary-SNGH-Review.pdf>>.

<sup>65</sup> The Housing Act, paragraph 2(1)(e)(viii).

<sup>66</sup> *Ibid.*

<sup>67</sup> The Social Housing Act.

# 7. GAPS IN EXISTING POLICY AND PROGRAMMES

As indicated, the national housing policy framework does not currently make provision for capital grant funding to NPOs that provide housing to persons with special needs. However, the National Housing Code, 2009 makes provision for an institutional subsidy, a variation of which has been utilised by selected provinces to access capital funding for the provision of SNH.<sup>68</sup> The objective of the Institutional Housing Subsidy Programme is to provide capital grants to social housing institutions which construct and manage affordable rental units. The Programme also provides for the sale of units by the social housing institution after at least four years have lapsed.<sup>69</sup> Three provincial Human Settlements departments (Kwazulu-Natal (KZN), Eastern Cape (EC) and Gauteng (GT)) have SNH policies in place, which have successfully been utilised by the NPO sector to access funding for infrastructure build. However, the remaining provinces do not have similar policies or programmes in place, thus unfairly limiting access to SNH in these provinces. This disjuncture in the application of housing policy across provinces negatively impacts on the right to equality of persons with special needs in provinces where there is no policy on SNH. Due to provincial DHS' (provinces that do not have a policy on capital funding for SNH) interpretation of the national housing policy, these individuals may be unable to access state assisted housing, to the same degree that their counterparts in KZN, the EC and GT are able to do so. Additionally, there is uncertainty about the appropriateness of using the institutional subsidy mechanism as a means to access state funding to build infrastructure for SNH.

<sup>68</sup> National Department of Human Settlements (DHS) 'National Housing Policy and Subsidy Programmes. The Simplified Guide to the National Housing Code, 2009' (February 2010), <http://policyresearch.limpopo.gov.za/bitstream/handle/123456789/1084/National%2520Housing%2520Policy%2520and%2520Subsidy%2520Programmes.pdf?sequence=1>, 10.

<sup>69</sup> Ibid 10.

# 8. THE SHNP

CSOs have been advocating for a national policy framework that makes provision for capital funding to NPOs for SNH from as early as 1995.<sup>70</sup> In order to highlight the plight of SNH, the sector has made numerous submissions to the National Departments of Human Settlements, Social Development and Health, in 2005, 2008 and 2013. In 2012, the Portfolio Committee on Human Settlements requested the DHS to investigate the issue of SNH and develop a policy. In the same year, the DSD Minister and MINMEC also determined that the issue of SNH should be examined. In 2013, the DHS MINMEC (in response to a Western Cape (WC) DHS submission) decided that a research and policy development process, regarding SNH, should be undertaken. The outcome of this process was the development of the SHNP – considered in more depth in the section below.

## 8.1. Basic Tenets of the SHNP

The SHNP recognises that NPOs, in the main, provide ‘accommodation / housing’ and related services to special needs persons and that these organisations therefore require a source of capital funding to provide facilities. However, presently, no national housing programme exist through which NPOs can access capital funding for special needs housing. The SHNP therefore aims to fill this vacuum in the government’s national housing programme. The main objective of the SHNP is to provide capital grants to approved and registered NPOs ‘for the acquisition/development of new and/or the extension of and/or upgrading/ refurbishment of existing special housing needs facilities for persons/households with special housing needs’.<sup>71</sup> In addition to the initial capital grant, the SHNP makes provision for a ‘Once-off Maintenance Grant’, available after the first five years of operation, but which must be applied for within the first eight years from the date of operation.

The SHNP further sets out the minimum requirements for an NPO to apply for the capital grant, eligibility requirements of target beneficiaries and funding arrangements. The policy describes the funding model, costs and specifications, with a list of housing typologies, including foster care homes, safe homes, child and youth care centres, foster care homes, shelters for victims of abuse, emergency shelter, homes for people with disabilities, homes for older persons, mental health living homes, hospices, halfway house of parolees, substance abuse treatment centres, homeless shelters, etc that will be funded through the capital grant. It further gives a detailed description of the project funding application and approval processes which NPOs applying for the grant must utilise and the institutional arrangements, whereby the responsibilities of the government departments involved in implementing the SHNP is delineated.

## 8.2. An Assessment of the SHNP against a Human Rights-Based Approach

Noting the varied situations and circumstances of individuals and households, the different typologies applicable and the importance of location, the Constitutional Court in the *Grootboom* judgment expressed the near impossibility of defining the normative content of adequate housing.<sup>72</sup> Nevertheless, as mentioned in section 5 of this brief, the Court held that the State has an obligation to develop and implement a ‘reasonable policy’, and further outlined the components of such

<sup>70</sup> SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the Project Preparation Trust (PPT): KZN, 9 February 2017.

<sup>71</sup> Note 22 above, 8.

<sup>72</sup> Note 5252 above.

a policy (refer to section 5 of this brief). In addition, at its most basic level, a human rights-based approach to policy and programme formulation must be borne on the principles of engagement and transparency.<sup>73</sup> Furthermore, adherence to requirements such as meaningful public participation, the inclusion of vulnerable persons, transparent decision-making, sufficient access to information; accountability and continuous monitoring, appropriate complaints or grievance mechanisms and non-discrimination, is essential. Accordingly, the extent to which the SHNP meet the requirements of a human-rights based approach and may be considered a reasonable policy measure, are discussed.

Firstly, the *Grootboom* judgment requires that a reasonable policy prioritises the needs of the poorest and most vulnerable – specifically beyond mere statistical advance in the numbers of housing provision, that it responds with care and concern to the needs of the most desperate, and that government adequately considers the social economic and historical context of widespread deprivation.<sup>74</sup> The most fundamental aspect of the SHNP is that it seeks to respond to the housing needs of vulnerable and marginalised persons. Both NPOs and government departments interviewed noted that the State has a responsibility to create an enabling environment for persons with special needs to access the right to housing. Although the DHS supports the intent of the SHNP, the department noted that it already has a SNH policy that addresses housing in terms of the Constitution, legislation, roles and responsibilities and accountability, in place.<sup>75</sup> This assertion is primarily based on the interpretation of the DHS' mandate, regardless of to which sector, as providing individual and not institutionalised / group housing. During interviews, Planact noted their organisation's involvement in a project aimed at providing housing for persons with disabilities, implemented by the Tshwane Municipality.<sup>76</sup> The respondent emphasised their support for housing programmes that address this need, but noted that during implementation they encountered various challenges that they had not anticipated prior to commencement of the project. It was further remarked that policy assumes a normal situation and provides set prescripts on how services ought to be delivered within such a context. However, in some instances, policy does not adequately respond to the realities on the ground. For instance, in relation to housing for persons with disabilities and orphans, insecurity of tenure remains a concern. Planact reported that families of persons with disabilities often move into the allocated house and effectively capture the space for themselves, leaving the actual beneficiary unable to enjoy the full benefits of owning a house and in some cases, even precipitating the beneficiary's exit from the house.

In addition, the Dullah Omar Institute remarked that although the DHS makes provision for 10 per cent of housing opportunities, in any housing development project, to be allocated to persons with disabilities, in practice, this allocation is not always reached or prioritised.<sup>77</sup> Furthermore, given the big demand for state-assisted housing, it is quite possible that the needs of persons with disabilities are neglected in standard state-subsidised housing programmes. In such instances, SNH may become an alternative to persons who are unable to benefit from existing housing programmes.

According to the DSD, an important objective of the SHNP is to target persons that are historically disadvantaged.<sup>78</sup> The department explained that existing facilities tend to be predominantly in former 'white areas'<sup>79</sup> and given that the SHNP will provide funding to emerging NPOs to establish facilities in predominantly black areas, people who are previously disadvantaged and consequently,

73 South African Human Rights Commission (SAHRC) 'Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014' (2014), <[https://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20\(2\).pdf](https://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20(2).pdf)>.

74 Note 52 above.

75 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DHS, 20 February 2017.

76 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with Planact, 31 January 2017.

77 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the Dullah Omar Institute, University of the Western Cape (UWC), 26 January 2017.

78 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DSD, 9 February 2017.

79 Mainly populated by white persons.

still experience deprivation, special housing needs may be met. In relation to its oversight function, the DSD, intends to be more stringent and 'hands-on' in the manner in which it supports emerging NPOs. The analysis above illustrates that the SHNP prioritises the needs of vulnerable and most desperate persons, it gives due regard to the historical context of deprivation, and is therefore considered reasonable with regards to these principles. Finally, CSOs, in particular, lamented the fact that it has taken over two decades to develop, finalise and implement a national policy framework on SNH that makes provision for society's most marginalised and vulnerable. These sentiments underscore the importance of providing clear direction, at national level, about how the State will provide access to housing for persons with special needs and consequently, the absolute necessity to expeditiously finalise the SHNP.

Secondly, a reasonable policy must be comprehensive, coherent and effective, it should clearly allocate responsibilities and tasks to all three spheres of government and be implemented reasonably, adequately resourced and free of bureaucratic inefficiency or onerous regulations.<sup>80</sup> Overall, the SHNP provide a clear, comprehensive and effective response to the gap in existing policy on special needs housing; it responds directly to the lack of provision for capital funding to build residential facilities for people with special needs by providing a national policy framework to guide the delivery of SNH. If implemented correctly, the SHNP will go a long way in meeting the specific housing needs of persons with special needs.

The SHNP, articulates the roles and responsibilities of the DHS, DSD, DoH, DCS and corresponding provincial departments, regional offices, NPOs and of other entities such as traditional leaders, the Departments of Rural Development and Land Reform (DRDLR), and Public Works (DPW) and Transnet.<sup>81</sup> The majority of NPOs interviewed opined that given the cross-cutting nature of special needs and different vulnerabilities, effective intergovernmental cooperation the need for SNH will be an important factor in the successful implementation of the SHNP. Consequently, the SHNP adequately recognises this need and makes sufficient provision for this aspect. However, concerns were raised around the involvement of different levels of government, across the implementing departments.<sup>82</sup>

According to the SHNP, the DHS and DSD will cooperate at provincial level, but while the provincial DHS can grant final approval of funding applications, the provincial DSD must refer the application to the national DSD for final approval.<sup>83</sup> This allocation of responsibilities may present an institutional stumbling block. The NACOSS indicated that despite noting concerns in this regard, during the policy-making process, the DSD was adamant that this responsibility should remain that of the national DSD. The NPO proposed that the national DSD should consider aligning similar roles and responsibilities with that of other implementing departments and that the DSD should therefore devolve the responsibility of final approval to the provincial DSD. The Southern Intellectual Disability Initiative (SIDI), similarly, expressed concern about the project funding application and approval processes, describing it as too complex, particularly for emerging NPOs and overly bureaucratic, for both applicants / NPOs and government departments.<sup>84</sup> The NPO argued that the SHNP is too complicated because it requires too many steps through numerous different departments and levels of government. As a result, the SHNP favours established NPOs who have staff and capacity to navigate through the complex application procedure. The respondent stated that,

When you are crossing five departmental boundaries I think you have set up a series

<sup>80</sup> Note 52 above.

<sup>81</sup> Note 22 above, 36-43.

<sup>82</sup> The provision of housing is a concurrent function, and as such, the national DHS will maintain and provide guidance on the SHNP while provincial DHS and municipalities will be responsible for implementation. The DSD and the DoH, on the other hand, have identified national and provincial departments as the implementing agents while national and provincial commissioners of regional offices of the DCS are assigned responsibilities, in terms of the SHNP.

<sup>83</sup> SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the National Coalition for Social Services (NACOSS), 14 December 2016.

<sup>84</sup> SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the Southern Intellectual Disability Initiative (SIDI), 30 January 2017.



of obstacles that is going to slow this process down to a glacial pace, because it is difficult to understand the policy, and when it is difficult to understand, my experience of government is what happens, people do nothing or they just refer it back or they ask for additional documentation, or they refer it higher up the chain.<sup>85</sup>

Such bureaucratic inefficiencies will likely result in lengthy delays in the finalisation of applications and ultimately, non-delivery of the SHNP in certain instances. The SIDI also commented that the

unintended consequences of well-intentioned policy may be detrimental: “If the policy [SHNP] were to be approved as in its current or amended form you would have a system that is so complicated and so bureaucratic that it would be almost set up for failure.”<sup>86</sup> To address this problem, the SIDI proposed that the SHNP should be revised such that the responsibility for implementation is solely that of the DSD, while the DHS, DoH and DCS’s only responsibility should be to transfer funds to the DSD, for implementation.

The SHNP makes it incumbent on the DHS and oversight departments to provide information and guidance to provincial departments and municipalities (the latter in the case of the DHS), to provide training and to capacitate officials in respect of the policy, in order to ensure its effective implementation. The DoH and DCS are further obliged to provide ‘other implementation assistance to their provincial departments as required’ while the DSD, in addition to its policy development (national) and implementation (provincial) level functions, has a specific responsibility to conduct awareness, training and empowering NPOs in respect of the Programme.<sup>87</sup>

The division of functions, roles and responsibilities, between government levels, are critical in light of the Esidimeni tragedy and the Health Ombudsman’s recommendation in relation to concurrent functions between the three government spheres and how that is given effect, in practice. In this regard, the Health Ombudsman recommended that,

- a) Legislation that provides for the right to health services as a concurrent function ought to be reviewed and that “...the findings and lessons of this investigation merits such a review. Furthermore, projects of high impact on the quality and reputation of the national health system and whose outcomes undermine human dignity, human well-being and human life must not be permitted nor be undertaken without the expressed permission of the National Health Minister or his/her nominee.”
- b) Projects such as the GMMP must not in future be undertaken without a clear policy framework, without guidelines and without oversight mechanisms and permission from the National Health Minister; where such policy framework exists, the National Health Minister must ensure proper oversight and compliance.

The Health Ombudsman has suggested that the OHSC’s ability to grant certificates of compliance to clinics and hospitals should be extended to residential facilities, for people with special needs.<sup>88</sup> However, given the current scale of facilities for MHCU (more than 100 in Gauteng alone) and envisaged increases – based on the DoH’s de-institutionalisation objective and consequent increased community mental health services approach, it may also be necessary to first provide resources to the OHSC to provide this type of oversight.<sup>89</sup> The above underscores the importance of effective oversight (national of provincial government) and the need to ensure transparent

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85 Ibid.

86 Ibid.

87 Note 22 above, 38.

88 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DoH, 2 March 2017.

89 Ibid.

decision-making, that appropriate accountability mechanisms are in place and the necessity to continuously monitor the implementation of policies, not least the SHNP. Lessons must be learned from the Esidimeni tragedy, particularly as the ultimate objective is similar to that of the SHNP: to make provision for housing of people with special needs who are unable to live independently and meet their own needs. Consequently, this policy brief proposes that institutional arrangements as described in the SHNP are coherent and although it may come across as too bureaucratic and onerous, it reflects an awareness of inter-departmental capabilities in relation to correct policy interpretation and subsequent decision-making, at different government levels.

# 9. CURRENT DEVELOPMENTS ON THE FINALISATION OF THE SHNP

As mentioned earlier, in March 2014, the DHS and DSD embarked on a joint research and policy development project to assess where NPOs can most appropriately access funding for SNH. The purpose of the research and policy development process was to determine which of the two departments is best placed, given its mandate and related obligations and responsibilities, to provide capital funding for SNH. After completion of this investigative process, the departments obtained a legal opinion from Werksmans Attorneys.<sup>90</sup> In their report entitled: Special Needs Group Housing Policy: Investigation of Obligations, Powers and Functions of Certain Government Departments in Relation to the Provision of Capital Funding for Special Needs Group Housing, Werksmans Attorneys outlined the specific obligations, powers and functions of relevant government departments with regards to the provision of capital funding for SNH. Through an extensive review of existing legislation, the attorneys provided a legal opinion on the extent to which existing legislation adequately provides for SNH, and thus places an obligation on the relevant implementing department to provide capital funding for the establishment of SNH.<sup>91</sup> The main findings and recommendations of the legal opinion are that:

- a) The DHS has a clear obligation to prioritise the provision of housing for persons with special needs.<sup>92</sup> Furthermore, legislation such as the Housing Act and the Housing White Paper requires that the DHS's policies and programmes show constant awareness of special needs housing.
- b) Various oversight departments have noted their expectation that the DHS should provide capital funding to build facilities. In particular, the 'South African Policy for Older Persons (March 2005) noted that DHS failed to provide 'sheltered housing' for older persons and that the DSD has neither the capacity nor the funding to build such housing'.
- c) Various pieces of legislation place mandates on oversight departments in respect of SNH, and the availability / or lack thereof has practical implications for the implementation of same. Furthermore, [s]pecial needs group housing facilities are social services but simultaneously also housing programmes which should accordingly fall under the scope of the national housing framework.
- d) Although legislation makes sufficient provision for the outsourcing of services for SNH to NPOs, it fails to adequately provide for the provision of capital funding for the development, building and establishment of infrastructure, provided by such NPOs, which shows 'a clear and significant gap in the current legislation'.
- e) Werksmans Attorney's recommended that oversight departments should provide, operational and / or programme funding while the DHS should assist with capital funding for the development of SNH through national policy or a policy directive.
- f) The mandate and obligation to provide capital funding to build SNGP lies with the DHS and in order to give effect to this, the DHS must develop a national policy or issue a policy directive stating how capital funding can be provided for this purpose.

<sup>90</sup> Werksmans Attorneys, Special Needs Group Housing Policy: Investigation of Obligations, Powers and Functions of Certain Government Departments in Relation to the Provision of Capital Funding for Special Needs Group Housing, 3 March 2015. [Online: 8 December 2016] Available at: <http://www.werksmans.com/wp-content/uploads/2015/03/Final-Executive-Summary-SNH-Review.pdf>.

<sup>91</sup> Ibid.

<sup>92</sup> Including persons with disabilities, marginalised women and discriminated groups, older persons, homeless persons and mental health patients.

Accordingly, the SHNP was developed based on the premise that the primary responsibility to deliver SNH lies within the mandate of the DHS.<sup>93</sup> According to the DSD's submission, the SHNP is still in draft form and a review of Werksmans Attorney's legal opinion is required prior to engagement with the relevant ministers, in order to finalise the SHNP.<sup>94</sup>

Notwithstanding the outcomes of Werksmans' legal opinion, it appears that the DHS is of the opinion that the primary responsibility to provide housing to persons with special needs, especially as it is institutionalised special care, falls within the mandate of the DSD.<sup>95</sup> This assertion is based on the notion that the DHS, according to their interpretation of section 26 of the Constitution, is responsible for housing provision for individuals and households. The SHNP presents a social intervention for vulnerable persons that involves an entire spectrum of social services, including accommodation, maintenance, and the operation of a set of social services – most of which lie beyond the scope of the DHS's policy prescripts, but fall directly within the DSD's policy to provide comprehensive social services.<sup>96</sup> For instance, an important consideration for the DHS is the long-term implications of providing capital funding to NPOs, i.e. once the DHS has disbursed funds to a successful applicant / NPO, where does the responsibility for ongoing monitoring, management, oversight and maintenance of these facilities lie. The DHS is therefore concerned about the sustainability of projects benefitting from the SHNP and the extent to which the department is able to manage and maintain this aspect of service delivery over time. The SHNP assigns responsibilities specifically in relation to the funding application process and the provision of operational funding (this relates especially to the DSD) to oversight departments. However, the SHNP does not assign responsibilities in relation to the monitoring of the long-term operation of funded NPOs. Instead, oversight departments are required to annually collect information on the status of funded facilities and the number of target beneficiaries receiving assistance.<sup>97</sup>

In light of the Esidimeni events, the SAHRC is similarly concerned about the long-term operations of facilities housing persons with special needs. However, the SAHRC is of the opinion that it is not impossible for the DSD and other oversight departments to manage the long-term sustainability of projects, while the DHS provide funding as per the SHNP to these departments. It is therefore recommended that the long-term, ongoing monitoring, management and oversight of funded NPOs be the responsibility of the DSD and other oversight departments. Presently, these departments have existing policies and norms and standards in place that specifically relate to the operational aspects and long-term oversight of facilities. What is required is a strengthening of the oversight mechanisms that national departments utilise to monitor policy interpretation and implementation of provincial departments.

Secondly, according to the DHS, a distinction must be made between *housing* and *accommodation*, suggesting that the different concepts imply distinct responsibilities for implementing departments. It appears that the DHS interprets its responsibility as providing *housing* to individuals while the provision of *accommodation* for people with special needs is interpreted as the responsibility of the DSD. Interestingly, the SHNP uses these terms interchangeably<sup>98</sup>, suggesting that a distinct interpretation of the two terms may be superficial. In this regard, the DSD stated that although there is a fine line between housing and accommodation, the provision of SNH is a housing issue; whether one refers to accommodation or housing, the purpose of a house is to provide accommodation.<sup>99</sup>

93 a) SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DSD, 9 February 2017.

b) The DHS and DSD convened a national workshop in March 2015 where a draft policy (the SHNP) was developed.

94 Department of Social Development (DSD) 'Request for a Review by State Law Advisors on Legal Opinion Obtained on Special Needs Group Housing Programme', Letter dated: 22 June 2016. File nr. 64877/1. Documentation received from the DSD.

95 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DHS, 20 February 2017.

96 Ibid.

97 Note 22 above, 36 - 41.

98 Note 22 above, 5.

99 SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DSD, 9 February 2017.

General Comment 4 of the CESCR makes reference to ‘accommodation’ only once, and this is in relation to legal security of tenure, noting that tenure may take the form of rental (public and private) accommodation and that everyone has a right to a degree of tenure security.<sup>100</sup> An interpretation of the language used, suggests that the distinction between housing and accommodation is based on the premise that housing refers to permanent residence and ownership of the structure / house while accommodation implies temporary residency and does not require ownership on the part of beneficiary. There are therefore concerns around the tenure of security of persons with special needs, being housed in financed NPOs, who are ultimately, the intended beneficiaries of the SHNP.

Furthermore, the National Housing Code identifies tenure security as a fundamental principle of housing policy. Conversely, the SHNP indicates that ownership of infrastructure purchased through the capital grant will remain that of the successful applicant / NPO and residents / beneficiaries will largely be renting rather than owning living spaces in facilities. However, the value of SNH is in the fact that facilities will be available for generations, particularly given increasing vulnerabilities and need for assisted care by service providers. Furthermore, research has shown that generally, individuals making use of SNH reside in these facilities for many years and others their entire lifetime. Consequently, it may be argued that a good degree of tenure security is implied upon a person’s initial move into such facilities.

It is the view of the SAHRC that the DHS ought to have primary responsibility for the implementation of the SHNP, with oversight departments, providing implementation support as outlined in the SHNP. The specific responsibilities of oversight departments are outlined in the section on institutional arrangements, in the SHNP.<sup>101</sup> It is the view of the SAHRC that these responsibilities were appropriately assigned and that oversight departments should therefore assume their respective responsibilities, once the SHNP is finalised. This research project has shown that what is of critical importance is that funds are allocated and that capacity to implement the policy is provided to the leading department, the DHS. Although the DSD provides funding to build residential facilities, the department does not currently have the large-scale budget allocation required or the capacity<sup>102</sup> to implement a policy of this nature. Accordingly, a report on an audit of residential facilities for older persons provided by the DSD illustrated that the DSD does not have the requisite funds to provide funding for capital build and further recommends that assistance to provide funding to NPOs for basic infrastructure could be sourced from the DHS or the DPW.<sup>103</sup> Therefore, implementing the SHNP would come with great difficulty if such a responsibility is deferred to the DSD, without budget allocation from the National Treasury or the provision of additional capacity to implement the SHNP. Contrary to the indications of expert interviews, the DHS noted that should the SHNP be finalised in its current format, placing the obligation to provide funding on the DHS would require a budget allocation from the National Treasury to implement this policy.<sup>104</sup> Evidently, the provision of additional financial resources and capacity will be essential for the effective implementation of this policy, regardless of who the leading department is.

Although the abovementioned concerns are valid, the unfortunate result of the delays in finalising and implementing the SHNP is that scores of persons with special needs are unable to access housing. Should the DHS be identified as the department responsible for the delivery of SNH, the policy could be finalised as is and implementation could commence as indicated by the Minister of Human Settlements in her response to the Democratic Alliance’s (DA) parliamentary question.<sup>105</sup>

<sup>100</sup> Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing, (1991), paragraph 1.

<sup>101</sup> Note 22 above, section 3.10, 36.

<sup>102</sup> The DSD noted that it has Infrastructure Delivery Units in all nine provinces, but the current staff component within those Units is insufficient to manage the department’s current infrastructure delivery plans. Although a review of these Units are underway - with a view to providing additional capacity - additional technical capacity is still critical for the effective implementation of the SHNP.

<sup>103</sup> Umhlaba Development Services. Research Project Commissioned by the Department of Social Development. ‘An Audit of Residential Facilities’ (April 2010), <<https://social.un.org/age-ing-working-group/documents/FINAL%20REPORT%20DSD%20Audit%20of%20Residential%20Facilities%20April2010.pdf>>.

<sup>104</sup> SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the DHS, 20 February 2017.

<sup>105</sup> Questions to the Minister. NW4210. 18 December 2015, Gana Mr. SM to ask the Minister of Human Settlements. <<https://pmg.org.za/committee-question/2091/>>.

It is therefore proposed that to mitigate against any further delays during the policy finalisation process, the DHS must commit specific timelines by which the SHNP will be finalised, implementation plans will be completed, institutional arrangements appropriately constituted and the SHNP implemented.

Moreover, once finalised, all relevant implementing departments will require time to put the necessary institutional mechanisms in place and this will likely result in further delays in the implementation of the SHNP. Consequently, an adequate state response to the plight of persons with special needs will therefore be to put measures – that would ensure access – in place, in the short-term, the medium-term and the long-term. In the short-term, it would be wise to utilise existing structures and mechanisms that have proven viable to ensure access to funding for SNH. Given the successful application of the institutional subsidy in provinces such as KZN and the EC, extending the option of using this mechanism to other provinces will yield quick gains. Provinces already have a budget allocation to use this mechanism, it is unlikely that additional staff need to be appointed, and provinces who have used the mechanism can train and transfer knowledge around best practice models with provinces that do not currently apply the institutional subsidy with regards to SNH delivery. In order to facilitate this process, the national DHS will be required to issue a directive to provincial DHS enabling them to use the institutional subsidy for the provision of SNH, without fear of reproach from the national DHS or adverse findings from the Auditor General on the use of this mechanism. In the medium-term, the department identified as the mandate-holder for SNH should put in place the necessary institutional mechanisms, and if necessary, conduct pilot projects and based on the outcomes, revise implementation plans, such that implementation over the long-term may be more effective.

# 10. RECOMMENDATIONS

## **In the short term:**

- a) This research policy brief finds that a clear national policy framework on the provision of SNH is needed.
- b) To this end, the SAHRC recommends that the DHS must assume primary responsibility for the implementation of the SHNP, and work towards speedy finalisation of the SHNP.
- c) The DHS must submit to the SAHRC a reasonable timeline that displays a sense of urgency, by which this policy development process will come to finalisation, within six months of receipt of this research policy brief.
- d) The DHS must put measures in place, in the short-term, as well as in the medium-term and the long-term, to ensure persons with special needs are able to access assisted housing, while concerns around the mandate and functions of relevant departments are being dealt with. In the short-term, it would be wise to utilise existing structures and mechanisms that have proven viable to ensure access to funding for SNH. In this regard, the national DHS should issue a directive that would enable all provinces to utilise the institutional subsidy to access capital grants to build new or extend / renovate existing infrastructure. The SAHRC recommends that the DHS issue such a directive, within three months of receipt of this research policy brief.
- e) Officials, who have experience, from provinces that have already implemented a variation of the institutional subsidy may be seconded to provinces that have no experience in implementing this policy, on a temporary basis.

## **In the medium and long-term:**

- b) The DHS, in consultation with oversight departments, must develop and submit to the SAHRC a detailed implementation plan. The implementation plans must set specific timelines, measureable targets and who / which unit within departments will be responsible for implementation and can be held accountable for successes or failures in this regard. The SAHRC must receive the implementation plan within year of the date of finalisation (approved by cabinet).
- c) The provision of additional financial resources and capacity will be essential for the effective implementation of this policy. The National Treasury must allocate budget, starting in the financial year immediately following finalisation of the SHNP, to the DHS who the SAHRC recommends should be primarily responsible for implementing the SHNP and thus, the disbursement of funds to successful applicants. National departments must ensure that their provincial and local (where applicable) counterparts receive the required budget allocation for effective implementation. How the proportion of the budget that will be allocated to provincial and local municipalities will be determined must be included in the implementation plans.
- d) Adequate training and capacity building must be provided to implementing officials, particularly those at provincial and local government. A concerted effort must be made to ensure that all implementers, are fully aware of their responsibilities and limitations as set

out in the section on institutional arrangements in the SHNP. The leading department and oversight authorities must in their implementation plans, clearly outline how provinces and municipalities will be trained to implement this policy, noting specific methodologies, timelines and how they will measure the extent of skills transferred during workshops.

- e) Training and workshops on the SHNP must also be extended to CSOs, particularly as NGOs / NPOs will initiate the application process and they are the intended beneficiaries of this policy.
- f) To ensure effective interdepartmental cooperation, communication and commitment - at national, provincial and local levels, the DHS must establish a focal person / desk that would be responsible for coordinating the plans and activities of the various different departments involved in the implementation of the SHNP.
- g) Each provincial head of the DHS on this policy must conduct or commission a provincial situational analysis to assess the need in regards to SNH, and consequently, where best to intervene. Funding and resources must be made available for this purpose.
- h) The DSD, DoH and DCS must provide ongoing monitoring, management and oversight of funded NPOs. Existing policies, and norms and standards that set out the principles, roles and responsibilities of the departments in relation to facilities must be reviewed to ensure that it caters for all the vulnerable groups and different housing typologies, as identified in the SHNP, that are relevant to a department. The methodology to conduct the reviews must be submitted, to the Commission, as a part of the implementation plan.
- i) Evidence of such a review must be submitted to the SAHRC within one year following the finalisation of the implementation.



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SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the Southern Intellectual Disability Initiative (SIDI), 30 January 2017.

SAHRC Interview on the Special Housing Needs Policy and Programme, June 2015 with the Western Cape Network on Disability (WCDisability), 6 February 2017.

# ANNEXURE A

<b>Interviewees</b>	
<b>Date of Interview</b>	<b>Government Department / Organisations / Academia</b>
<b>Government Department</b>	
9 February 2017	National Department of Social Development (DSD)
a. 10 February 2017 b. 2 March 2017	National Department of Health (DoH)
20 February 2017	National Department of Human Settlements (DHS)
<b>Organisations / Academia</b>	
9 December 2016	Project Preparation Trust: Kwazulu-Natal (PPT: KZN)
14 December 2016	Sector Task Team for Older Persons (STTOP)
14 December 2016	National Coalition for Social Services (NACOSS)
26 January 2017	Dullah Omar Institute, University of the Western Cape (UWC)
30 January 2017	Southern Intellectual Disability Initiative (SIDI)
31 January 2017	Planact
6 February 2017	Western Cape Network on Disability (WCDisability)





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**human**  
**rights**  
**commission**

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