

CENTRE ON
HOUSING
RIGHTS AND
EVICTIONS

N2 GATEWAY PROJECT: HOUSING RIGHTS VIOLATIONS AS 'DEVELOPMENT' IN SOUTH AFRICA



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COHRE 2009

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HOUSING RIGHTS
AND EVICTIONS**



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Shacks on Symphony Way in Delft

1. INTRODUCTION

On 10th June 2009 the Constitutional Court of South Africa handed down its final judgement in the Residents of Joe Slovo Community, Western Cape vs. Thubelisha Homes and Others (hereinafter Joe Slovo) case.¹ The order constituted five judgments delivered by five of the nine member panel of Justices.² Each judgement, however, arrived at the same conclusion – that the 20 000 Joe Slovo residents would have to relocate to Delft to make way for the N2 Gateway project. Described as the “largest judicially sanctioned eviction in post-apartheid South Africa”,³ the Constitutional Court’s decision will undoubtedly impact the housing rights of not only Joe Slovo residents, but also those of hundreds of thousands of urban poor all over South Africa.

¹ Judgment of the Constitutional Court of South Africa in *Residents of Joe Slovo Community, Western Cape vs. Thubelisha Homes, Minister for Housing and Minister for Local Government and Housing, Western Cape*, Case CCT 22/08 decided on 10 June 2009.

² There were nine judges hearing the matter, with eight participating in the judgment. The other three judges concurred with their preferred written judgment.

³ Sandra Liebenberg, *Joe Slovo eviction: Vulnerable community feels the law from the top down*, Business Day, 22/06/09. <http://www.businessday.co.za/articles/Content.aspx?id=73812>

The N2 Gateway housing development is a pilot project of the "Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements" (BNG), approved by South Africa's Cabinet in September 2004. Regarded as a departure from housing delivery initiatives under the erstwhile 'Reconstruction and Development Plan' (RDP), the N2 Gateway project is aimed at providing a mix of higher density subsidised rental housing units, subsidised full ownership or 'BNG' houses and credit-linked 'bond houses'. The project, aimed at reducing the massive housing backlog in Cape Town, began as a joint initiative of the three tiers of government – the National Department of Housing, the Western Cape Provincial Department of Local Government and Housing and the City of Cape Town. While construction spans several sites, a large part of the N2 Gateway project is located along the ten kilometre stretch on N2 freeway between Bhunga Avenue interchange near Langa and Vanguard Drive near Bonteheuwel, on land known as the Joe Slovo informal settlement, as well as in Delft which is 34km north east of Cape Town, and bordering on Belhar, Blue Downs and Site C, Khayelitsha. The N2 Gateway project is aimed at delivering 22 000 rental and ownership units. As originally planned, 70% of the beneficiaries of housing constructed at Joe Slovo would be residents of the Joe Slovo informal settlement and 30% would be backyard shackdwellers ('backyarders') of neighbouring Langa.

Referred to as the "trail blazer for national housing initiatives"⁴ the N2 Gateway project aims to make available a range of higher density housing options to residents of informal settlements along the N2 freeway. According to the N2 Gateway Business Plan Draft:

The N2 project is the lead pilot. The project is based on the understanding that the challenge of informal settlements must be approached from a pragmatic perspective related to complex settlement dynamics, deepening poverty, rising inequality and the continued spatial marginalisation of the poor. It is for this reason that the N2 project – in line with national policy – perceives informal settlements as not merely a 'housing problem', requiring a housing solution, but rather as a manifestation of structural social change, the resolution of which requires creativity and innovation on institutional, programmatic, financial and project management levels.⁵

Despite its lofty aims and ideals, however, the N2 Gateway project has been steeped in controversy and riddled with problems of both planning and implementation, resulting in slow delivery of houses, poor construction, protests, rent boycotts and forced evictions.⁶ N2 Gateway has therefore often been described as a "vanity project" that serves the interests of the government over those of the communities it claims to serve.⁷ The project has also been linked with South Africa's preparations for hosting the 2010 FIFA World Cup tournament. Many believe that the N2 Gateway project has been fast-tracked to meet the tourism and 'city beautification' plans often linked with the hosting of mega-events. In fact, the Briefing Document on the N2 Gateway Project produced by the National Department of Housing, the Western Cape Department of Housing and the City of Cape Town in 2004, states, that while the

⁴ City of Cape Town, *N2 Gateway Launch: City's Integrated Human Settlements Plan has many milestones*, 17 May 2005. <http://www.capecity.gov.za/eng/pubs/news/2005/may/104880>

⁵ JS Associates Architects and Urban Planners (2005) *Investigation into Settlement Typologies for the Cape Town N2 Gateway Pilot Project*, in association with the Urban Design Branch City of Cape Town 2005 in Development Action Group, *Sustainable medium-density housing: A Resource Book*, Tonkin A, 2008.

⁶ See for example, Ella Smook, "Report slams running of N2 Gateway project", *IOL* (1 May 2009). http://www.iol.co.za/index.php?set_id=1&click_id=&art_id=vn20090501122744839C560015; "Scopa halts hearing on Cape housing project", *IOL* (7 July 2009). http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=nw20090707125739882C380385

⁷ *IOL*, Dominique Herman, *N2 Gateway's 'wisdom' questioned*, 9 October 2007 http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20071009033921989C325026

project has been selected as it serves an area suffering from inadequate living conditions including lack of access to basic services and unemployment, it has also been prioritised in light of its high visibility on the gateway corridor linking the Cape Town International Airport to the main city.⁸

Given the fanfare around its launch, it is hardly surprising that the N2 Gateway project has also been a site for politicking and inter-party rivalry. In the 2006 local government elections, the ruling African National Congress' (ANC) main opposition in the Western Cape, the Democratic Alliance (DA), was the largest single party claiming 90 out of the 210 seats on the city council, with the ANC winning 81 seats. Helen Zille of the DA replaced Nomaindia Mfeketo of the ANC as City of Cape Town Executive Mayor in March 2006 and formed a multi-party government which took a narrow one-seat majority in the council. The Mayor openly criticised Phase 1 of the N2 Gateway project for cost overruns, allocation of flats and the slow rate of construction pointing out that N2 Gateway so far provided housing for one in every 300 families. Reflecting on the situation, the Mayor said that the Province had left her with a "poisoned chalice."⁹

In response, the Minister of Housing suspended the City's involvement in the management of the N2 Gateway project. In 2006, the Minister appointed Thubelisha Homes, a section 21 company, as the managing and implementing agency.¹⁰ On 12 June 2006, the Housing MINMEC, a forum of the Minister of Housing and the Provincial Ministers, announced that local government partner, the City of Cape Town was being removed from the project. The explanation given by the National Department of Housing was that then Mayor, Helen Zille, had unfortunately chosen to communicate her concerns about the project to the media, and that housing was a provincial and national competency "where municipalities have no mandate of building houses, except if they are accredited."¹¹ The City of Cape Town was subsequently responsible only for maintenance of sites and provision of general infrastructure including water, electricity and sewerage facilities.

When the N2 Gateway project was launched in September 2004, Joe Slovo residents were given to understand that the land occupied by the settlement would be used to build housing opportunities, 70% of which would be made available to them and 30% to backyard dwellers from Langa. With the construction of Phase 1 of the project, which consisted of 705 subsidised rental units, and Phase 2, which consisted of 35 credit-linked bond houses, it became clear that the number of houses being built were too few and were unaffordable to the promised 70% of Joe Slovo residents. It thus also became clear that the only N2 Gateway housing opportunities to be afforded to Joe Slovo residents would not be at the prime location that the informal settlement is, but located 15 kilometres away in Delft.

⁸ National Department of Housing, the Western Cape Department of Housing and the City of Cape Town, *Briefing Document for the N2 Gateway Project*, Cape Town, 2004 in Caroline Newton, *The Reverse Side of the Medal: About the 2010 FIFA World Cup and the Beautification of the N2 in Cape Town*, Urban Forum, Volume 20, Number 1, February 2009.

⁹ IOL, *Province left me poisoned chalice – Zille*, 3 May 2006

http://www.int.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20060503023602241C507115

¹⁰ The South African Companies Act provides for "an association not for gain in terms of Section 21". Such an organisation is commonly called a Section 21 company. Thubelisha was established in 1996 as a 'Special Purpose Vehicle', and was given its current expanded mandate by the Minister in 2006. There is confusion about exactly what kind of company Thubelisha is (it is now technically insolvent), as it is described as a public company established by the government to undertake several of its housing functions as a national public entity and agency.

¹¹ Department of Housing Media Release, 12 June 2006.

<http://www.housing.gov.za/content/Media%20Desk/Media%20Alerts/12%20June%202006.htm>

The realisation that they would be relocated to Delft to make way for the N2 Gateway project raised serious concerns among community members regarding the relocation and its implications. For more than two years, the Joe Slovo community led by the Joe Slovo Task Team among other community associations has been at the forefront of ensuring that voices of all those affected are not drowned in the euphoria created by the various housing authorities around the N2 Gateway project. They have been engaged in a long and arduous struggle with the national, provincial and municipal housing authorities to resist eviction and subsequent relocation to far-off Delft which undoubtedly will impact their livelihood options and increase their cost of living. After several attempts at dialogue through petitions and protests, Joe Slovo residents were eventually dragged to court when the National Department of Housing and the Provincial Department of Local Government and Housing along with Thubelisha Homes, sought and obtained an eviction order from the Western Cape High Court. Joe Slovo residents appealed against this order to the Constitutional Court and the matter was eventually decided on 10 June 2009.

The key issues before the Constitutional Court included whether Joe Slovo residents were "unlawful occupants" within the meaning of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE) Act, whether it was just and equitable for the national and provincial authorities to seek an eviction order, and whether the state had acted reasonably within section 26 of South Africa's Constitution in seeking the eviction order. While these may appear as technical legal issues, at the heart of the matter were efforts on the part of Joe Slovo residents to advocate for the fulfilment of their right to adequate housing. The residents raised critical issues concerning the location of Delft on the peripheries of the city and its impact on their rights to work, education and healthcare among other human rights. Their petition also pointed out that housing provided in the temporary relocation areas (TRAs) did not constitute adequate housing as per internationally recognised standards. In addition, their petition demonstrated that the various housing authorities involved in the project had failed to meaningfully engage with persons to be affected by the relocation, a key requirement prior to eviction according to both international and domestic law and practice.

COHRE's fact-finding mission to Joe Slovo and Delft in November 2008 brought out that the issues raised by Joe Slovo residents in their appeal in the Constitutional Court and earlier, remained. All those interviewed complained that there had been little effort by the various housing authorities to consult or engage with them on issues concerning eviction and relocation. Those who had been relocated to Delft in 2005 continued to suffer because of the lack of adequate housing including basic services, shrinking job opportunities and higher transport costs due to increased distance from the city centre thus confirming the fears of Joe Slovo residents. COHRE's research also highlighted a huge gap in the demand for temporary relocation units to house the 20,000 Joe Slovo residents and the number of units and land available. It was clear in November 2008 that while the national and provincial authorities pressed on with their demand for eviction, in fact, they were severely under prepared to adequately house all those who would be affected by the eviction they sought.

Recognising the gaps in the planning and implementation of the N2 Gateway project, the Constitutional Court instructed the authorities to engage with the affected people on the process and timeline for eviction and relocation. The Court also set standards for the type of temporary housing units to be provided at Delft and most significantly laid down that 70% of the low cost housing in the Joe Slovo area must be allocated to the evicted persons and 30% to the backyard dwellers from Langa. While the above conditions may appear to mitigate the impacts of the eviction and relocation, there is concern that these measures may be a case of doing too little too late. For instance, while the various housing authorities are to ensure that 70% of subsidised

housing to be built at Joe Slovo is allocated to current or former Joe Slovo residents, this only applies to what will be built under Phase 3 of the project. The 70% allocation has not applied to Phases 1 and 2, and it is unclear how many Joe Slovo residents will actually be able to remain given that they will be allocated 1,050 houses of the apparently 1,500 to be built, and there are currently over 4,500 households living at Joe Slovo. Similarly, with eviction and relocation to Delft firmly decided there are doubts on how meaningful the consultations with affected communities who remain will be, and whether they will be reduced to a matter of procedure.

The N2 Gateway project has been mired in controversy and complications. Various concerns raised both by the people of Joe Slovo and Delft in the context of the project epitomise South Africa's housing crisis which is marked by a huge housing backlog and lack of transparency with regard to the housing waiting lists, compounded by a continuing top down approach to housing delivery. Engagement and consultation with communities is increasingly viewed as a formality that needs to be completed while implementing the project rather than a necessary prerequisite for ensuring that the project truly caters to the needs of the community in question and is respectful of their human rights.

The following report is based on research conducted by COHRE for the *amicus curiae* submission in the Joe Slovo case and a fact-finding mission conducted in November 2008, during which COHRE staff interviewed community members in Joe Slovo and Delft, officials of the City and Provincial housing departments and activists and legal experts following the N2 Gateway case. The report is an attempt to draw together and document the various aspects of the N2 Gateway project from a housing rights perspective. While recognising the multi-layered nature of this case, the report seeks to highlight the very fundamental housing rights issues that lie at the core of the matter with a view to ensure that basic housing rights are not subsumed by the need to balance "competing considerations".¹²

¹² Sachs J, Judgment of the Constitutional Court of South Africa, para. 332 in *Residents of Joe Slovo Community, Western Cape vs. Thubelisha Homes, Minister for Housing and Minister for Local Government and Housing, Western Cape*, Case CCT 22/08 decided on 10 June 2009

2. HOUSING LAW AND POLICY IN SOUTH AFRICA¹³

Housing in South Africa is marked by extreme inequalities divided along lines of class and race. A large part of the racial segregation that can still be seen in South Africa can be attributed to various laws and practices in the apartheid era such as the Group Areas Act of 1950. The implementation of this law resulted in massive evictions of people based on race to segregated townships on the periphery of cities. Those pushed to the urban margins invariably included black Africans and Indians. Relocation to townships away from the city centre impacted livelihood options and increased transport costs for many of South Africa's urban poor. Africans were barred from occupying any residential spaces in the city and could legally only live in workers' hostels and servants quarters. By the 1980s however, the growth of shacks in open spaces was rapidly increasing due to a variety of reasons including migration to the urban labour markets by Africans attempting to flee acute rural poverty. Faced with the lack of accessible and well-located social housing, migrant workers, as also seen in the Joe Slovo case, often cleared bush land to set up shack settlements. Typically, these settlements were demolished by municipal authorities on a regular basis and when allowed to remain, were poorly served lacking even the most basic civic amenities. Despite these conditions rural-urban migration continued to grow resulting in a rapid growth of shack settlements.

At the end of the apartheid era in 1994, the urban housing backlog was estimated at 1.5 million, with an increase of 178 000 households per year.¹⁴ Faced with this acute crisis, the new democratic government had committed itself to building one million houses in 5 years. Recognition of the right to adequate housing and the several legislations and policies post 1994 were thus attempts at rectifying the imbalances in the housing scenario inherited from the apartheid era.

The Constitution of South Africa

The right to adequate housing and prevention from arbitrary eviction is enshrined in South Africa's Constitution.

Sections 26 of the South African Constitution states that:

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

In addition to the Constitutional guarantee, several laws have also been enacted with a view to fulfilling the right to adequate housing and providing protections against the practice of forced evictions. These laws include:

- The Extension of Security of Tenure Act No 62 of 1997;

¹³ For a detailed discussion on the issue see COHRE, *Business as Usual? Housing Rights and Slum Eradication in Durban, South Africa*, October 2008

http://www.cohre.org/store/attachments/081007%20Business%20as%20Usual_final.print.pdf

¹⁴ Ibid p. 72

- The Interim Protection of Informal Land Rights Act No 31 of 1996; and
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (PIE Act)¹⁵

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998¹⁶

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (PIE Act) has been used in several cases involving a challenge to eviction by residents of informal settlements and inner city 'slum buildings'. The PIE Act is intended to provide procedural safeguards to vulnerable groups who are unlawfully occupying land, and who may not have anywhere else to live. The PIE Act applies to all occupiers of land without 'the express or tacit consent of the owner or the person in charge'. The PIE Act essentially renders illegal the eviction of an unlawful occupier, unless the eviction is authorised by an order of the court and complies with a number of procedural requirements. These include 'written and effective notice' of the eviction proceedings on the unlawful occupier and the local municipality not less than 14 days before a court hearing of the eviction proceedings. This notice must set out the grounds on which the eviction is being sought, as well as the date and time at which the eviction proceedings will be heard. It must also inform the unlawful occupier of her right to appear before the court, defend the case, or apply for legal aid.

The Act requires that a court must consider the rights and needs of certain vulnerable groups of unlawful occupiers, including the elderly, children, women-headed households and the disabled. If the unlawful occupier(s) have been in occupation of the property for longer than six months, the Act requires that the court must consider whether land is available, or can reasonably be made available, by the owner or the local municipality to which the unlawful occupier(s) can be relocated. If the court is satisfied that all the relevant circumstances have been considered, and that the unlawful occupier has raised no valid defence against the eviction, then it may grant an eviction order. The order must determine a 'just and equitable' date on which the unlawful occupier must vacate the land in question, and the date on which the eviction order may be carried out if the unlawful occupier(s) does not vacate the land. Section 6 of the PIE Act empowers any organ of state to institute proceedings to evict an unlawful occupier where either:

- its consent is required for the erection of a structure on the land in question, and an unlawful occupier has erected a structure without obtaining the appropriate consent; or
- it is in the public interest to do so. The Act defines public interest explicitly to include the interests of health and safety of those occupying land and/or the general public.

In the case of an eviction application made by an organ of state, before granting an eviction order, a court must consider:

- the circumstances under which the unlawful occupier occupied the land and erected the building or structure in question;
- the period the unlawful occupier and his or her family have resided on the land in question; and
- the availability to the unlawful occupier of suitable alternative accommodation or land.

¹⁵ Ibid., p. 36.

¹⁶ Ibid., p. 37 and 38.

Section 6 thus balances the need, on the one hand, to allow municipalities to manage land and building stock and to ensure the maintenance of a basic level of health and safety in their jurisdiction, and on the other hand, the need to protect all those living in informal settlements from repeated or arbitrary eviction without the provision of alternative accommodation or land.

The Housing Act No 107 of 1997¹⁷

The Housing Act No 107 of 1997 and, later the National Housing Code (promulgated in 2000 under section 4 of the Housing Act, and revised in 2007), set out the roles and responsibilities of the three tiers of government. The Act requires national government to formulate housing policy and monitor implementation through the promulgation of the National Housing Code and the establishment and maintenance of a national housing data bank and information system. The Housing Act paved the way for the greater involvement of local government in housing development.

The National Housing Subsidy Scheme¹⁸

In order to operationalise its commitment to build one million houses, South Africa introduced the National Housing Subsidy Scheme (HSS), which makes capital subsidies for housing available to low-income households. The maximum subsidy currently available is R28 279 and is calculated on the cost of a 'minimum standard house'. There is also a savings requirement, which makes receipt of even a full housing subsidy conditional on a mandatory beneficiary contribution of at least R2 479. Only aged or disabled beneficiaries with an income of less than R800 per month are exempted from this requirement.

The exact form of these houses varies according to provincial standards, but the national Department of Housing's minimum norms and standards require 30 square metres of floor space and the provision of water through, at least, a standpipe in the yard. Subsidies are provided on a sliding scale principle according to the level of household income. For instance, people earning between R2 500 and R3 500 have been entitled to R8 600; those earning between R1 500 and R2 500 qualify for a subsidy of R15 700; and those earning less than R1 500 can receive a subsidy of R25 800. Apart from the income requirements, beneficiaries must be married, co-habiting or have at least one proven financial dependant; lawful residents of South Africa; and 21 years or older.

While the HSS was used to finance the construction of over 1.5 million households across South Africa between 1994 and 2003, the backlog continued to grow. The system of housing delivery was criticised both for the rate of delivery, the quality of housing and their location. New townships were, in fact, often built on land first acquired or zoned for township development under apartheid and which was therefore not suitable for most of the urban poor in terms of livelihood opportunities and social services.

¹⁷ Ibid., p. 74.

¹⁸ Ibid., p. 73.



Newly painted BNG houses in Delft

Breaking New Ground

"Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements" (BNG) was formulated to respond to the various gaps and criticisms of the earlier approach to low-income housing development. The plan was approved by Cabinet in September 2004. The document begins by noting that "despite scale delivery...the size of the backlog has increased," and that the "number of households living in shacks in informal settlements and backyards increased from 1.45 million in 1996 to 1.84 million in 2001, an increase of 26%, which is far greater than the 11% increase in population over the same period."¹⁹

The BNG policy seeks to address various problems associated with housing under the RDP paradigm, which included a slow down in delivery, peripheral location of housing which conformed to apartheid segregation, and the absence of simultaneous development of transport and other infrastructure at relocation sites.²⁰ To rectify these and many other shortcomings of the earlier programmes, BNG includes plans to integrate peripheral housing developments into cities as well as to ensure that future housing development occurs on well-located land. The policy also acknowledges that current inhabitants of areas undergoing urban renewal "are often excluded as a result of the construction of dwelling units that they cannot afford" and attempts to address this by encouraging the development of social housing (affordable rental housing), while also increasing affordability, or 'effective demand,' through new housing finance initiatives.²¹

¹⁹ National Department of Housing, "Breaking New Ground" A Comprehensive Plan for the Development of Sustainable Human Settlements (September 2004), Part A, section 2.

²⁰ COHRE, *Business as Usual? Housing Rights and Slum Eradication in Durban, South Africa*, October 2008 http://www.cohre.org/store/attachments/081007%20Business%20as%20Usual_final.print.pdf

²¹ *Ibid.*, p. 83.

As noted in BNG, "The acquisition of land to enhance the location of human settlements constitutes a fundamental and decisive intervention in the Apartheid human space economy."²² It put in place a number of practical measures to achieve this. These included plans to achieve the integration of peripheral housing developments into cities, and plans to ensure that future housing developments were on well located land through the transfer of state land and provision for acquisition of land from private individuals at market value. It also sought to introduce policy mechanisms to promote the densification of urban areas.

The policy also includes a new funding mechanism "to support upgrading on an area-wide as opposed to an individual basis." The new funding instrument for informal settlement upgrading was thus organised around area-based subsidies, according to the actual cost of upgrading an entire settlement community rather than through the previous model of standardised and individualised capital subsidies allocated per household. No beneficiary qualification criteria or beneficiary contribution (e.g. saving) apply to this subsidy. The policy also provided for communities to engage with municipalities around strategies to identify and to meet their housing needs.²³

Although an outcome of BNG, the N2 Gateway project deviates from many of the guiding principles laid down by the policy. For instance, BNG encourages phased *in-situ* upgrading as it would maintain community networks, minimise disruption and enhance community participation in all aspects of the development solution.²⁴ Experience with the planning and execution of the N2 Gateway project, particularly in the Joe Slovo area however shows that contrary to BNG, rolling upgrades were prioritised over in-situ upgrading, community participation in the development solution was non-existent and little care has been taken to ensure that housing for the urban poor is on well located land.

²² Ibid., National Department of Housing, "Breaking New Ground" A Comprehensive Plan for the Development of Sustainable Human Settlements (September 2004), Part B, section 3.4.

²³ Ibid., Part B, section 4.1.

²⁴ Ibid., Part B, section 4.1.

3. THE N2 GATEWAY IMPASSE

The Joe Slovo informal settlement along the N2 freeway in Cape Town was established in the early 1990s. Its location and proximity to employment opportunities in nearby Epping, Pinelands and Cape Town's central business district made it a prime location for migrants, as rigid apartheid spatial planning began to crumble. Some of the earliest residents of Joe Slovo recount clearing the land and bush in the area to build their homes while facing repeated intimidation and attempts at shack demolitions by the City of Cape Town.²⁵ Gradually, in the late 1990s as the settlement grew, so did access to basic services and amenities. Prior to 2002, the settlement however, had very limited amenities that included 15 standpipes, 300 container toilets and very basic cleaning services. In 2002, the City of Cape Town undertook an upgrading exercise providing a range of municipal services including water, private toilets, refuse removal, drainage and electricity. By 2003 there were 5451 dwelling units on 30 hectares of land.²⁶



Joe Slovo settlement along the N2 freeway

Residents of Joe Slovo first learnt about the N2 Gateway project in September 2004, when it was announced in the newspapers along with a pictorial depiction of the plans, which included three and four storied block of flats where their settlement stood. Construction related to the project started on 21 December 2004.²⁷ In order to construct Phase 1 of the project, scores of Joe Slovo

²⁵ Heads of Argument on Behalf of Applicants' Represented by Mr Penze's Committee in *Various Occupants v Thubelisha Homes and Others* CCT 22/08 (10 July 2008), para. 16.

²⁶ City of Cape Town IDP 2004/2005 in Development Action Group (DAG), "Draft: Evaluation of the Response to the Joe Slovo Fire of 15 January 2005", 15 December 2005, p. 13.

²⁷ DAG, "Living on the Edge: A Study of the Delft Temporary Relocation Area", Cape Town, March 2007, p. 5.

residents living in the area were removed from their original dwellings and relocated to open spaces between shacks within the settlement. According to testimonies collected by COHRE, Councillor Gophe, the local ward councillor promised permanent homes in Phase 1 to those who were displaced. Residents also claimed that the then Executive Mayor Councillor Mfeketo also gave a similar assurance to the displaced. Although both Councillor Gophe and Executive Mayor Mfeketo have denied making any such promises, it is clear that there was widespread understanding that the displaced persons would be allocated Phase 1 housing as a matter of priority.

On 15 January 2005 a massive fire struck the settlement, which gutted thousands of shacks and left 996 families from Joe Slovo and 3704 families from the Langa hostels area homeless.²⁸ Families displaced by the fire were, however, not permitted to rebuild their shacks, and the plans for the construction of temporary relocation areas (TRAs) were speeded up with the number of units greatly increased. Following the fire, and as pointed out in a report by the Development Action Group (DAG), the government fast-tracked the relocation of Joe Slovo residents to TRAs in Delft. This was a departure from the earlier plan where a rolling upgrading process was intended for Joe Slovo, with 400 TRA units in nearby Epping to accommodate residents who would need to be temporarily relocated for relatively short periods of time as the project proceeded.²⁹

However, Delft was not the first choice for relocation. Immediately after the fire, nine sites in Langa and two in Epping were identified for accommodating all displaced households. The Mayor announced that all those displaced by the fire would move into "temporary 'non-flammable' housing units scattered around Langa and Epping... Most of the land (where people are to be settled) is owned by the city but where this is not the case we'll be negotiating with Intersite (government parastatal Transnet's property division) and private land owners."³⁰ On 26 January 2005, the Provincial Minister of Local Government and Housing officially announced that the Joe Slovo area would form the first phase of the N2 Gateway Project and that 3 000 houses would be built by June 2005.³¹

A number of associations including the Epping Industrialists Association and Pinelands Residents Association raised strong objections to the use of the proposed Epping sites. As a result of the objections, it became clear that the City would have to engage in legal battles if the sites in Epping and Langa were to be used for the construction of TRAs. Only the unused Intersite site was available. The plans to use the other eight Langa sites and two Epping sites were officially announced as being 'on hold' on 1 March 2005 in a briefing to the Provincial Government's Standing Committee on Governance.³²

Ultimately, after considering 17 different sites for the location of TRAs, the cemetery site in Delft 7-9 development was regarded as the best option (in addition to the Langa site), and a call for proposals went out on 15 March 2005. The Delft site proved to be hugely unpopular right from the beginning as it was located at a great distance from the city centre and other economic opportunities and lacked well-developed transport links, particularly a railway system.³³ Indeed, DAG's evaluation report on the response to the Joe Slovo fire noted that while the well-located Langa TRA was convenient and popular (outsiders were buying up the temporary houses at high

²⁸ *Ibid.*, p. 6.

²⁹ *Ibid.*

³⁰ *Ibid.*, p. 7.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, p. 8.

prices), the Delft TRA on the other hand was very unpopular due to its distance from schools, clinics and pension payout points; lack of transport links; and the resultant loss of family and friends support networks that the move precipitated.³⁴ Regardless, the various housing authorities decided that 500 households would be accommodated in a TRA at Langa, and 4 000 households would be accommodated in the Delft TRA.

Completion of N2 Gateway Phase 1

In mid-2006, Phase 1 of the N2 Gateway Project, consisting of 705 three-storey rental units built on land adjacent to the existing Joe Slovo informal settlement, was completed. One thousand families were moved from Joe Slovo to Delft to make way for the construction of Phase 1. Once the units were completed, the allocation process began and an "aggressive communications and media advertising campaign" was undertaken to "invite interested people who live within this radius to submit their names."³⁵ At first backyard shack dwellers from Langa, Gugulethu, Bonteheuwel, Bokmakierie and Nyanga were to be provided with application forms and invited to apply to be considered to rent or buy the units, with the Western Cape Department of Local Government and Housing overseeing the processing of applications. However, in a subsequent statement by the Department of Housing, Joe Slovo residents were also included in this category.³⁶

Residents of Joe Slovo pointed out that Councillor Gophe had informed them that accommodation in the flats would be available at rentals ranging from R150 for single units to R300 for double units. These rates were acceptable to most residents. However, on completion of Phase 1 of the project rentals were increased to R600 for single units and R1050 for double units – rates which were clearly out of range for many of those living in Joe Slovo.³⁷ The increased rents have been attributed to the higher costs of construction associated with higher density housing. As pointed out by DAG, subsidies used for social housing are three times higher than those used in contractor built RDP housing, thus pushing rentals higher.³⁸ According to the Legal Resources Centre (LRC), which represented Joe Slovo residents in both the Western Cape High Court and Constitutional Court cases, ultimately very few Joe Slovo residents were able to access houses built in Phase 1 of the N2 Gateway project.³⁹

By early 2007 questions were being raised over different aspects of Phase 1 of the project. In March 2007 some Democratic Alliance (DA) members called for an enquiry into the allocation process as luxury cars were seen parked outside the housing development indicating that the houses had been allocated to those in a much higher income bracket than intended. "A DA visit suggests that those in real need of state housing have been pushed out of the queue for N2 Gateway houses by the less needy," said MP Butch Steyn.⁴⁰ In an interview with COHRE in November 2008, then Councillor Dan Plato, Mayoral Committee Member for Housing in the City of Cape Town, reiterated the presence of luxury cars and the suspicion that the Phase 1 had

³⁴ Ibid., p. 25.

³⁵ Department of Housing Media Release, "Marks the beginning of phase two of the N2 Gateway Pilot Project", 7 June 2006. <http://www.info.gov.za/speeches/2006/06061211151004.htm>

³⁶ 22 June 2006 <http://www.info.gov.za/speeches/2006/06062916151003.htm>

³⁷ Heads of Argument on Behalf of Applicants' Represented by Mr Penze's Committee in *Various Occupants v Thubelisha Homes and Others* CCT 22/08 (10 July 2008).

³⁸ DAG, *Sustainable medium-density housing: A Resource Book*, Tonkin A, 2008.

³⁹ Interview with Steve Kahanowitz, Legal Resources Centre, Cape Town, November 2008.

⁴⁰ SABC, *DA wants probe into Gateway housing allocations: Housing developments in the Western Cape*, 4 March 2007.

<http://www.sabcnews.com/politics/government/0.2172.144806.00.html>

indeed been allocated to wealthy people. According to him, it was because of the City's intention to make N2 housing available to lower income groups that they were pushed out of the project management.

Questions were also being raised by residents of Phase 1 regarding the quality of housing provided, high rents and the lack of an adequate response to their complaints from the project managers, Thubelisha Homes. In July 2007, several residents of Phase 1 marched to Parliament to protest against high rents and the refusal of Thubelisha to respond to their complaints of structural defects in the flats. Protestors demanded that Thubelisha should take urgent steps to repair the various problems with the rental units including seepage through walls and leaking roofs, that the rents be scaled down to affordable levels and that residents are given an option of renting the flats with the aim of ultimately owning them. Prince Xhanti Sigcawu, General Manager of Thubelisha, however responded by saying that those who had defaulted on their rents would be evicted.⁴¹

In November 2008, COHRE met with several residents of Phase 1 of the N2 Gateway project including Luthando Ndambambi representing the N2 Gateway Tenants Committee. Several tenants recalled their excitement and happiness when they were first asked to file applications for flats in Phase 1 of the N2 Gateway project. They explained that their housing conditions as nearby backyard shackdwellers during that period were so desperate that they rushed to file their applications. They were informed that the rent (R165 -700) per month would vary according to the size of the units. However, it later became clear that the original rates were available to only the first five or six families who signed up for flats. For the rest, the rents were dramatically increased. When the matter of increased rents was taken up with Thubelisha, the company responded by saying that the rates were fixed and applicants were free to take the offer or leave it and there would be no negotiations.

Summing up, tenants that COHRE researchers met pointed out that the major problems with Phase 1 was that there was a huge gap between what was promised to them and the reality, and that Thubelisha did not see itself as accountable to the tenants. At the time of signing up for the units, prospective tenants were told they would have to pay R1050 for flats with three rooms. On allocation however, they realised that the flats included one large room and one very small one. Soon after moving into their new flats residents noticed that in many cases the ceilings leaked and there was seepage along some walls. COHRE researchers noted that by November 2008 several homes had mould on the walls and some residents complained that their furniture and belongings had been damaged due to the constant damp conditions inside the houses. Although provincial MEC Richard Dyanti had assured the Tenants Committee that they would be compensated for the damage, no concrete steps had been taken in this direction. The prevalence of mould coupled with poor ventilation in the houses poses serious health concerns for many of the residents. Women interviewed by COHRE researchers raised concerns regarding the prevalence of mould and dampness in the houses and its impact on the health of their children. Some of the women interviewed also pointed that Phase 1 flats were not secure. According to them, Thubelisha had not taken sufficient care to ensure that each flat had a unique lock and therefore in several cases keys could easily be interchanged between flats making several residents, particularly women feel insecure.

The Tenants Committee also pointed out that there was no clarity on the responsible authority for their complaints. They had raised their concerns with Councillor Gophe, but to no avail, and several attempts at reaching Thubelisha had also failed. Frustrated with the lack of response and

⁴¹ IOL, *No rent, No Roof*, Mzolisi Witbooi, 20 July 2007.

the continuing problems with their homes, in June 2007 the Tenants Committee announced a rent boycott. Subsequently, some tenants had been issued bills with arrears amounting to R11 000, although no person from Thubelisha had made any attempt to meet with or speak to the tenants about their grievances. The boycott therefore continues to date, as does the impasse and lack of an adequate response from the authorities.

Most recently, on 30 June 2009, tenants of N2 Gateway Phase 1 flats marched to the office of Premier Helen Zille to demand radical changes in the project's management and normalisation of rents. The march was carried out with the support of the Western Cape Anti-Eviction Campaign, Abahlali baseMjondolo of the Western Cape and residents of Joe Slovo informal settlement. A media release issued on behalf of all persons affected by the N2 Gateway project by the Western Cape Anti-Evictions Campaign criticised the top-down management of the project and demanded increased community participation in the management of the project.⁴²

With the various housing authorities now focusing on clearing the Joe Slovo settlement to begin construction of Phase 2 of the N2 Gateway project, it remains to be seen when and in what manner concerns of Phase 1 will be addressed.

Launch of N2 Gateway Phase 2

Despite the obvious dissatisfaction with the execution of Phase 1 of the N2 Gateway project and its failure to accommodate a sufficient number of residents from the Joe Slovo settlement, Phase 2 was launched in June 2006. It was also announced at this time that Phase 2 would be run entirely by the national government service provider, Thubelisha, and that the government structures that had been previously overseeing and managing Phase 1 would be pulled back.

Phase 2 of the N2 Gateway project involved an agreement between the national and provincial governments, Thubelisha and First National Bank (FNB) to build 3000 bonded houses in Joe Slovo and Delft costing between R150,000 to R250,000. Access to these houses would be through FNB bonds available to applicants earning between R3,500 to R7,500 per month. As has been pointed by several Joe Slovo residents, including members of the Joe Slovo Task Team, the average income in the Joe Slovo informal settlement is not more than R1,500 per month. Thus it was increasingly clear that Phase 2 housing in Joe Slovo would also be out of reach for most residents. To enable work to begin in Joe Slovo, 1400 'temporary units' located in TRAs in Delft 7-9 were being constructed to "temporarily relocate the existing residents of Joe Slovo."⁴³ In Delft Symphony, a project planning to deliver 6,240 houses for ownership and 600 rental units was announced, while in Delft 7-9 another similar project set to deliver 4,500 houses for ownership and almost 800 rental units was also announced.

With the announcement of Phase 2 of N2 Gateway, and that permanent housing in Joe Slovo would consist of credit-linked 'bond' houses, it became clear that few residents of the Joe Slovo settlement would be able to access this housing and that a vast majority would have to move to Delft where affordable housing would be made available as part of Phase 3 of the project. This coupled with the experience of housing allocation in Phase 1 eroded any confidence that Joe Slovo residents might have had in the intentions of the project proponents in providing them

⁴² Western Cape Anti-Eviction Campaign Press Release on behalf of the N2 Gateway Phase 1 Flats (also known as Joe Slovo Phase 1), 27 June 2009. <http://antieviction.org.za/2009/06/27/n2-gateway-flats-to-march-on-zille-to-demand-community-management-and-acceptable-rents-tuesday/>

⁴³ Department of Housing Media Release, "Marks the beginning of phase two of the N2 Gateway Pilot Project", 7 June 2006. <http://www.info.gov.za/speeches/2006/06061211151004.htm>

with affordable, well- located and adequate housing. According to research conducted by COHRE, the various authorities failed to engage in any meaningful consultation with affected members of the Joe Slovo community and when information was made available to community members it was in the form of decisions that the various housing authorities had already made with no room for negotiations.⁴⁴



Credit-linked bond houses under construction as part of Phase 2 of the N2 Gateway project

Frustrated with the top-down approach to development, on 3 August 2007 residents of Joe Slovo informal settlement marched on Parliament to protest their planned forced removal to Delft to make way for Phase 2 of the project. They claimed that there had been no negotiations with the community and that government was treating them “like animals.” The Joe Slovo Task Team stated that all children living in the informal settlement attended local schools in Langa, where there were also clinics and employment opportunities for people who relied on piece work in the surrounding suburbs or nearby city centre. The lack of schools in Delft and the increased expense of transport and lack of a rail network were raised as major concerns for Joe Slovo residents who faced the threat of forced removal to Delft. The Task Team criticised the government for dumping them “in a slum called Delft” more than 30km on the outskirts of the city.⁴⁵ During the protest, they presented a list of demands to a government housing official, which included an end to removals to Delft; the provision of houses close to urban centres, and a say in the development of the Joe Slovo area. Housing Minister Lindiwe Sisulu was given seven

⁴⁴ Interview with Mzwanele Zulu and Tshawe Mapasa of the Joe Slovo Task Team, 16 November 2008.

⁴⁵ “Shack Dwellers in Cape Town march to Parliament against their imminent forced removal”, Cape Town Anti-War Coalition Press Statement (3 August 2007).
<http://www.archive.org/details/JoeSlovoMarchAgainstForcedRemovalsInCapeTown>

days to respond to the demands or protesters would blockade the N2 highway with burning tyres and rubbish.⁴⁶

Minister Sisulu responded to the demands of the protesters through a statement saying that while she understood peoples' anxieties, this had to be balanced with eradicating slums that were both a blight on democracy and unsuitable for human development. Speaking about the protesters, she said that they did not seem to realise that many people waiting patiently for housing in Cape Town, who presently live in the most shocking conditions, do not qualify to receive subsidised houses. "Some have an income above that qualifying for the houses subsidy. Others have received subsidised homes in other provinces. We need decent and affordable housing stock for rental or purchase. And we are putting it into practice on the N2 Gateway project" she stated.⁴⁷

Faced with inadequate and indirect responses to concerns raised in the protest of 3 August, over 2000 residents of Joe Slovo barricaded parts of the N2 freeway adjacent to their homes on 10 September 2007. The protest took a violent turn as residents clashed with members of the South African Police Services (SAPS), who fired rubber bullets at the crowd and injured more than 30 residents, who had to be taken to hospital for treatment. An N2 Gateway Phase 2 show house under construction next to the informal settlement was allegedly vandalised by protesters. Eight protesters were charged with inciting public violence.

Following the protest, Minister Sisulu denied that forced removals of Joe Slovo residents would take place, but announced that she was going to pursue "legal solutions" to compel Joe Slovo residents to relocate to Delft to make way for housing developments, and allegedly stated that those protesters who had blocked the freeway would "be removed completely from all housing waiting lists" if they continued demonstrations and refused to cooperate with government.⁴⁸ A statement by the Department of Housing reiterated that Thubelisha, as the project manager of the N2 Gateway project, was responsible for interacting with residents and that the Ministry had "the fullest confidence in their handling of it...their consultation with communities is ongoing, at the cost of delaying construction of the project."⁴⁹ The minister stated that she had instructed her department and the N2 Gateway project developers, Thubelisha, to investigate legal avenues to compel residents of informal settlements to make way for housing developments.⁵⁰

⁴⁶ Andisiwe Makinana and Sandiso Phaliso, "Sisulu slams Joe Slovo residents", IOL (6 August 2007).

http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20070806125209239C596275

⁴⁷ IOL, *Sisulu slams Joe Slovo residents*, Andisiwe Makinana and Sandiso Phaliso, 6 August 2007

http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20070806125209239C596275

⁴⁸ Quinton Mtyala, "Halt protest or lose out, warns minister", IOL (11 September 2007).

http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20070911032307914C333313

⁴⁹ Department of Housing, 10 September 2007. <http://www.info.gov.za/speeches/2007/07091115151002.htm>

⁵⁰ IOL, *No forced removals on my agenda says Sisulu*, 12 September 2007.

http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=nw20070912222022707C942944

The Legal Battle

On 20 September 2007, the Minister of Housing together with provincial Housing MEC and Thubelisha Homes secured an interim eviction order against the residents of Joe Slovo from the Cape High Court. As thousands of Joe Slovo residents submitted their applications for objections against the eviction order, the case was finally postponed for hearing on 12 December 2007. The residents argued against the eviction, pointing out that they had the tacit consent of the City of Cape Town to occupy Joe Slovo and therefore could not be considered "unlawful occupiers" under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 ('PIE Act'). Joe Slovo residents also argued that they had a legitimate expectation that allocation of houses constructed in Joe Slovo under the N2 Gateway project would be according to the 70:30 ratio, whereby 70% would be allocated to residents of Joe Slovo and 30% to the backyard dwellers of Langa. Experience of Phase 1, where very few of the houses were allocated to Joe Slovo residents, and plans for Phase 2 (which included credit-linked bond houses that would be unaffordable to residents of Joe Slovo), suggested a clear violation of this legitimate expectation.



Joe Slovo residents' march to the Western Cape High Court on March 10 2008

On 10 March 2008, the Cape High Court ruled in favour of the government. According to Judge President Hlophe, residents of Joe Slovo had no legitimate expectation or any right to remain in Joe Slovo. "The right is of right to adequate housing and not the right to remain in the locality of their choice, namely Joe Slovo" he said.⁵¹ The Court thus allowed the eviction of Joe Slovo

⁵¹ High Court of South Africa, Cape of Good Hope Provincial Division, *Thubelisha Homes and Others vs. Various Occupants and others*, Final Judgment, Case Number 13109/07

residents and their subsequent relocation to Delft as “more than adequate temporary accommodation was being provided at the state's expense”. Hlophe stated that this accommodation would be merely temporary, “until such time as the restructuring, soil treatment, and building of permanent housing in Phase 2 and Phase 3 of Joe Slovo have been completed in terms of the government's housing policy, the N2 Gateway Housing Project and in line with the state's obligation to provide housing within its available resources.”⁵² The order directed that relocation to Delft, would take place in phases beginning on 17 March 2008. Referring to the judgment as significant for the entire nation, Department of Housing Director-General, Itumeleng Kotsoane noted that many residents of Joe Slovo informal settlement would return to free houses in an integrated human settlement where they would live alongside people of different means and backgrounds.⁵³

Soon after the judgment was handed down by the Cape High Court, Joe Slovo residents represented by the Joe Slovo Task Team announced that they would appeal against the Cape High Court decision directly to South Africa's Constitutional Court (bypassing the Supreme Court of Appeal). With assistance from Cape Town's Legal Resources Centre (LRC), Joe Slovo residents filed an appeal against the High Court judgment in the Constitutional Court on 3 April 2008. COHRE and the Community Law Centre (CLC), based at the University of the Western Cape, joined the proceedings as *amici curiae*, with the Centre for Applied Legal Studies (CALS) as legal representation. The *amici* submitted, amongst other more technical arguments, that the mass eviction and relocation of Joe Slovo residents to Delft - at a great distance from the city centre, economic opportunities, places of work and education, and social networks - would severely disadvantage an already vulnerable community.

The Constitutional Court heard arguments on 21 August 2008 and delivered a final order allowing the eviction on conditions of meaningful engagement and just allocation of housing on 10 June 2009.

The Constitutional Court Judgment

The Constitutional Court of South Africa unanimously found that the respondents, Thubelisha, Minister of Housing and the Western Cape Minister of Local Government and Housing, had acted in accordance with section 26 of the Constitution, and that granting an eviction order was reasonable given the circumstances and sufficiently took into consideration questions of 'justice and equity.' The Court ordered a staggered relocation of residents to Delft over ten months, in accordance with the timetable provided by the government. Five different judgments were prepared by Justices Yacoob, Moseneke, Ngcobo, O'Regan and Sachs, which described their individual reasoning for endorsing the order.⁵⁴

The main judgment, written by Justice Yacoob, describes how in this particular case “it is necessary for this Court to grasp the mettle and determine when and in what circumstances relocation on this massive scale is constitutionally appropriate.”⁵⁵ It is clear that the Court grappled with this question, and indeed O'Regan, Moseneke and Sachs were highly critical of

⁵² Ibid.

⁵³ BuaNews, *Judge orders Joe Slovo residents to relocate*, Gabi Khumalo, 10 March 2008.

<http://www.buanews.gov.za/view.php?ID=08031016151001&coll=buanew08>

⁵⁴ There were nine judges hearing the matter, with eight participating in the judgment. The other three judges concurred with their preferred written judgment.

⁵⁵ Judgment in *Residents of Joe Slovo Community v. Thubelisha Homes and Others* CCT 22/08, para. 18.

certain aspects of the project and appeared loathe to order the mass eviction; however, they came to the conclusion that given the fact that this is an eviction in order to facilitate the provision of low-income accommodation, and given how far along the project is, the solution is to ensure that an eviction "with regard to humane consideration" is undertaken. Hence, while the Constitutional Court's order is similar to that of the Cape High Court, which ordered the eviction of Joe Slovo residents,⁵⁶ there are three important qualifying or mitigating aspects included in order to render the eviction 'just and equitable'.

Firstly, the order stipulates that 70% of houses built in Phase 3 of N2 Gateway must be allocated to current or former (those who relocated to Delft previously) Joe Slovo residents who apply and qualify for a housing subsidy. Secondly, the Court ordered that every Joe Slovo resident relocated to Delft must be given a temporary residential unit (TRU), and specified the quality and nature of the TRUs including size, composition, amenities and provision of transport. Finally, the Court ordered that an ongoing process of engagement must take place between residents and state parties concerning the relocation, in relation to the date and timetable of relocation (if different from that provided by the respondents) and "any other relevant matter upon which they agree to engage."⁵⁷ Other issues raised in the judgment include the need for government to provide information to relocated residents about their current position on the housing waiting list in relation to permanent housing, as well as providing assistance with the completion of application forms for housing subsidies.

Two key matters before the Court, to which much of the judgments are devoted, are whether Joe Slovo residents are 'unlawful occupiers' in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 (PIE Act), which meant they could be evicted as per section 6 of that Act, or whether the residents had tacit consent to occupy the land and were thus lawful occupiers of the land, and thus could not be evicted in terms of the PIE Act. Each of the five Justices dealt with these issues in a slightly different manner, with Justice Yacoob finding that they did not have tacit consent and were thus unlawful, despite the fact that the City of Cape Town had provided services to the settlement over the years. The other Justices accepted that at one time Joe Slovo residents were indeed lawfully occupying the land, however by the time the eviction order was sought consent had been withdrawn and they were then unlawful occupiers, who stood to be evicted in terms of the PIE Act.

Responses from the Joe Slovo community to the judgment were mixed. Regardless of their interpretation of the judgement, however, people continue to be unwilling to relocate to Delft. With few options remaining, some Joe Slovo residents began to move their shacks to neighbouring Langa and other established areas, in preparation for the ordered relocation (and in order to avoid it). According to the Joe Slovo Task Team, while residents did not necessarily want to frustrate government's efforts to relocate people to TRUs, Delft as a site is out of the question.⁵⁸ Residents once again raised the lack of livelihood opportunities and transport links at Delft, as well as size of the TRUs being inadequate for large families, as reasons for their refusal to relocate.

⁵⁶ See the Cape High Court judgment in *Thubelisha Homes and Others v Various Occupants and Others* Case No: 13189/07 (delivered on 10 March 2008). http://www.lrc.org.za/images/stories/court_texts/thubelishahc.pdf

⁵⁷ *Ibid.*, para. 5.

⁵⁸ Nwabisa Msutwana-Stemela, "Joe Slovo residents defy move to Delft", *Cape Argus*, 21 June 2009. http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20090621060617662C222426

The judgement was met with mixed responses from legal academics and activists, with the main debates revolving around how the Court interpreted the withdrawal of consent to occupy the land; the lack of meaningful engagement during the design and implementation of the project; and the Court's effective condoning of a misconceived 'vanity project'. While the Legal Resources Centre (LRC), which represented Joe Slovo residents, positively acknowledged safeguards put in place by the Court to protect the housing needs of the residents, it stated that "a worrying aspect of the Court's decision is the extent to which it watered down the legal concept of withdrawal of consent to occupy. The residents, at no point, received any concrete correspondence or document from the state advising them that consent to live on the site had been withdrawn."⁵⁹ The LRC further admitted that "the most ideal outcome for the residents would have been a refusal by the Court to grant the eviction order and provide, instead, that *in situ* (without eviction) upgrading should take place."⁶⁰

According to Sandra Liebenberg, professor of human rights law at Stellenbosch University, despite the three significant legal and practical victories won by the residents, "the willingness to effectively condone the inadequate consultation processes raises serious concerns." She also stated that "meaningful participation is not only an expression of the dignity of citizens, but is indispensable to ensuring that the design and implementation of programmes to realise socioeconomic rights are effective and sustainable."⁶¹ Pierre de Vos, professor of constitutional governance at the University of Cape Town, while acknowledging the Court's "genuine concern for the plight of Joe Slovo residents", opined that "the judgment remains perplexing though, because it condones a forced eviction of a large group of settled residents and endorses a government vanity project that seems to run counter to the government's own housing policy which states that informal settlements should be eradicated through *in situ* upgrading where possible."⁶² He criticised the narrow and formalistic way in which the Court dealt with the questions of consent and occupation and the implication this has for future situations that involve people living informally on state land for long periods of time. According to him, it appeared that the Court was essentially of the view that "As long as the state has a plan for the upgrading of the area - even if at first blush the plan is heartless and the state officials dishonest - the court will allow the evictions if certain conditions are met."⁶³ Indeed, the overly deferential attitude that the Court took towards the State is particularly worrying, given that N2 Gateway is a prime example of a government project that should have been more strongly condemned by the Court.

Auditor-General's Report

In early May 2009, while the judgment of the Constitutional Court was pending, the Auditor-General of South Africa, released a report on the special audit on N2 Gateway. The report raised several concerns regarding the planning, implementation and budgeting of the project. It is

⁵⁹ "Residents of Joe Slovo lose and win in the Constitutional Court", Legal Resources Centre (LRC) press release, 16 June 2009. <http://www.lrc.org.za/press-releases/1008-2009-06-16-residents-of-joe-slovo-lose-and-win-in-the-constitutional-court-lrc>

⁶⁰ Ibid.

⁶¹ Sandra Liebenberg, "Vulnerable community feels the law from the top down", *Business Day* (22 June 2009). <http://www.businessday.co.za/articles/Content.aspx?id=73812>

⁶² Pierre de Vos, "A (partial) victory for Joe Slovo residents" (10 June 2009). <http://constitutionallyspeaking.co.za/?p=1112>

⁶³ Pierre de Vos, "Joe Slovo case: the good, the bad and the (mostly) unstated", 14 June 2009. <http://constitutionallyspeaking.co.za/?p=1122>

significant that even though the report was completed in July 2008, it was made public and tabled in Parliament almost a year later, and after the Constitutional Court had heard all arguments in the Joe Slovo case.

Most of the concerns and procedural and substantive lacunae in the execution of the project noted in this report not only lend support to allegations of mismanagement of the project, but also point out non-compliance with policy requirements thus having a deep impact on the housing rights of all those affected.

The report notes that apart from the fact the N2 Gateway project commenced even before the Social Housing Bill was enacted into legislation by the South African Parliament, the specific roles and functions allocated to the different spheres of government, as per the Housing Act No 107 of 1997, were not adhered to. Further, the roles and responsibilities set out in the initial Memorandum of Understanding (MoU) between spheres of government were not clearly defined and were inconsistent even within the MoU. As a result, there was lack of clarity regarding responsible bodies for the various aspects of the project.⁶⁴ The report points out that the instances of non-compliance with roles and responsibilities occurred regarding the following aspects listed in the Housing Act and the MoU:

- (i) Administering the housing process in a transparent, accountable and equitable manner, based on the principles of good governance;
- (ii) Determining national policy;
- (iii) Identifying and designating land for housing development;
- (iv) Driving community participation and support;
- (v) Funding the housing programmes;
- (vi) Compiling a detailed project implementation plan indicating cash flow, agreed project milestones and progress payments;
- (vii) Ensuring that the project is conducted in accordance with national legislation and policies;
- (viii) Signing contracts with the project manager and the various implementing consortia.⁶⁵

It is evident from the Auditor-General's report on N2 Gateway that the project was pushed through without due process and compliance with certain pre-project requirements. These include the finalisation of the business plan, completion of geo-technical surveys, identification and securing of required land and finalisation of the list of beneficiaries.⁶⁶ The report also notes that the typology of houses constructed as part of the N2 Gateway project changed after the project commenced, thus having a severe impact on the timeframe for completion of the project as well as affordability of the units constructed. In fact, according to the report, "fruitless and wasteful expenditure" had taken place due to lack of proper planning and budgeting. By May 2007, while only 5% of the housing units planned had been constructed, 21% of the budget had been expended. The Auditor-General's report also raised questions regarding the procurement and tender process in the project. It noted that the initial project manager was appointed despite being ranked number six and despite not preparing costing in compliance with the terms and conditions of the request for proposal, lacking sufficient in-house and specialist expertise to

⁶⁴ Auditor-General of South Africa, *Report of the Auditor General on the Special Audit of the N2 Gateway Project at the National Department of Housing*, 2008, para 6.2.1(a). <http://www.pmg.org.za/files/docs/N2gatewayreport.pdf>

⁶⁵ *Ibid.*, para 6.2.1(b).

⁶⁶ *Ibid.*, para 6.3.1.

perform various project management functions, and was furthermore paid project management fees exceeding the norm and which were not performance based.

With regard to Phase 1 of the project, the report notes several shortcomings including the following:

- (i) The certificate of completion for the building contract issued by the principal agent was erroneously issued;
- (ii) Compliance with registration and inspection procedures ranging from the National Building Regulations to the National Home Builders' Registration Council (NHBRC), construction regulations, inspections by local authorities and professionals and occupation certificates, could not be verified;
- (iii) Fourteen instances were identified where "as built" specifications did not comply with minimum specifications for social housing;
- (iv) Nine instances of deviations from contract specifications were identified;
- (v) The large public storm-water canal constituted a foul health hazard;
- (vi) Site inspections revealed numerous cracks in the walls and floors, peeling paint, doors that were not fitted properly, loose fittings and uncovered drain pipes and blocked drains.⁶⁷

In June 2009, following the release of the report on N2 Gateway, a parliamentary hearing was held where the standing committee on public accounts (Scopa) interrogated government officials on the mismanagement and financial irregularities in the project, as well as on reasons for the City of Cape Town's withdrawal from the project in 2006. Director-General in the National Department of Human Settlements⁶⁸ Itumeleng Kotsoane admitted that political influence had been the cause of much of the project's failings, and indicated that a revised agreement between the three tiers of government would be ready in two months.⁶⁹

Occupation of N2 Gateway Houses and Forced Evictions in Delft

While Joe Slovo residents continued to oppose relocation to Delft, in December 2007 developments at Delft once again brought to the fore the lack of consultation and community participation that plagued the N2 Gateway project from the very start.

As mentioned earlier, Delft in Cape Flats is among the several sites selected for N2 Gateway housing construction. Initially 6,240 BNG houses and 600 rental units were to be built in Delft Symphony, and 4,500 BNG houses and 800 rental units in Delft 7-9.⁷⁰ In November 2007, it was announced that an additional 2,000 rental and affordable bonded units for people who did not qualify for the full subsidy were to be built at Delft 3-5.⁷¹ Of the total number of houses built in Delft as a part of the N2 Gateway project, 70% would be allocated to former residents of

⁶⁷ Ibid., para 6.9.1 (a).

⁶⁸ Following the 2009 national election, the National Department of Housing was renamed the National Department of Human Settlements.

⁶⁹ Anel Lewis, "MPs probe N2 Gateway problems", *IOL*, 8 July 2009.

http://www.iol.co.za/index.php?set_id=1&click_id=124&art_id=vn20090708010028781C271759

⁷⁰ "Public meeting addressed by MEC Dyantyi at Langa", 22 June 2006.

<http://www.info.gov.za/speeches/2006/06062916151003.htm>

⁷¹ Department of Housing Media Release, "N2 Gateway: 1 000 home handover in Delft", 28 November 2007.

<http://www.info.gov.za/speeches/2007/07112815151002.htm>

informal settlements living in TRAs (including Joe Slovo), and 30% to residents of backyard shacks in the broader Delft area.⁷² This ratio was highly contested at the outset of the project, with the City of Cape Town viewing it as grossly unfair and preferring an inversion of this allocation split, succeeding in negotiating it down from 80:20 to 70:30.⁷³ In a damning speech on the project in March 2008, then Mayor Zille described how a 50:50 split would be far more fair and representative. Accusations of the project being used as a political tool for electoral gains were levelled against the ANC.

Regardless of the political skirmishes around the project, there was little doubt that in impoverished Delft and surrounding areas, there are many backyard shackdwellers who have been on the City's housing waiting lists for years (some for over a decade), hoping for a permanent home to be allocated to them. Increasing rents and inadequate conditions in the backyard shacks had driven many backyard dwellers in Delft to desperation and as many of them waited for more than 15 years, to be provided with a subsidised house. Several of the backyarders had been evicted more than once due to their inability to pay rising rents, and were living in precarious and exploitative conditions. Frustrated with the pace of the housing delivery system in Cape Town and what they perceived as the unfair allocation of houses to those from outside the area when the needs of local residents remained unfulfilled, more than 1,600 backyarders from Delft and surrounding areas, led by DA Councillor Frank Martin, occupied unfinished N2 Gateway houses meant for Joe Slovo residents in December 2007. According to the occupiers, the houses were originally promised to them but were later re-allocated to those standing to be evicted from the Joe Slovo informal settlement.

Thubelisha and the Western Cape Provincial Minister of Local Government and Housing approached the Cape High Court for an eviction order soon after the occupation. Although the application was initially rejected, on 6 February 2008 the province and Thubelisha succeeded in obtaining an eviction order, with Judge van Zyl stating that while he was aware of the housing backlog in Cape Town, he could not condone people taking the law into their own hands. On 19 February 2008, the City of Cape Town together with the South African Police Service (SAPS) carried out the violent eviction from the unfinished N2 Gateway houses.⁷⁴ Police used rubber bullets and stun grenades without issuing warnings against those resisting the eviction, and some occupiers were shot at close range. Women, children and elderly people were not spared and many got trampled upon. According to one of the evicted women, a police officer kicked her with a steel-toed boot when she fell down after being hit in the side with a rubber bullet. An estimated twenty people, including three children, had to be hospitalised due to injuries sustained during the eviction.⁷⁵

Having left their backyard shacks and subsequently been evicted from the N2 Gateway houses, the occupiers of the N2 Gateway houses in Delft were rendered homeless and forced to live in dismal conditions. The South African Human Rights Commission (SAHRC) noted in a letter to Mayor Helen Zille and provincial MEC Richard Dyantyi that nearly 1000 people including

⁷² Department of Housing Media Release, "Building contractors return to Delft", 21 February 2008.

<http://www.info.gov.za/speeches/2008/08022115451002.htm>

⁷³ "Speech by Helen Zille Mayor of Cape Town, Special Council Meeting", 6 March 2008.

http://www.capetown.gov.za/en/mayor/Documents/Mayor%20Speeches/ZILLE-03-06-SPEECH-SPECIAL_COUNCIL_MEETING_ON_N2_GATEWAY.pdf

⁷⁴ "Police open fire in Delft", *IOL*, 19 February 2008.

http://www.iol.co.za:80/index.php?set_id=1&click_id=15&art_id=nw20080219120203118C739732

⁷⁵ Abahlali baseMjondolo, *Housing and Evictions in the N2 Gateway Project in Delft*, Kerry Chance, 8 May 2008.

<http://www.abahlali.org/taxonomy/term/36>; "Police open fire in Delft", *IOL*, 19 February 2008.

http://www.iol.co.za:80/index.php?set_id=1&click_id=15&art_id=nw20080219120203118C739732

women, children and the disabled were forced to live in “intolerable conditions”. Subsequently, the City of Cape Town provided standpipes for water and chemical toilets for the evictees, and eventually an estimated 500 evictees were accommodated in communal tents with plastic sheets for makeshift housing at a site known as Section 1 or ‘Silversands.’ The remaining evictees, aligned with the Western Cape Anti-Eviction Campaign (AEC), refused to accept the inadequate housing arrangements, and as a mark of protest constructed shacks along near-by Symphony Way, a major arterial route through Delft. The City also provided these families with chemical toilets and standpipes.



Shacks along Symphony Way

In June 2008, those living in Section 1 tented camp moved into the newly constructed Symphony Way TRA, known colloquially as ‘Blikkiesdorp.’⁷⁶ Those living along Symphony Way continued their protest by refusing anything short of permanent homes which they said were rightfully theirs. While some were forced because of the harsh living conditions on the road to relocate to the TRA, many refused to move to what they term ‘government shacks.’⁷⁷ By November 2008, there were about 100 families living in shacks along Symphony Way as a protest against the flawed housing delivery process that involved long waiting lists which they said were often set aside for short term political gains. One of the women COHRE interviewed at Symphony Way informed COHRE researchers that she had been waiting for a house for nine years. Describing the eviction of February 2008, she said that the forced eviction was very difficult on her children and it affected their wellbeing. Her eldest child refused to attend school for several days and she found it difficult to explain to her children why they had been thrown out of their home. With the example of all those living in the Tsunami TRA for four years without any clarity of when they would be allocated permanent housing the woman, like several others living along

⁷⁶ Blikkiesdorp is an Afrikaans term which translates loosely to ‘Tin Town’.

⁷⁷ Interview with Ashraf Cassiem, coordinator for the Western Cape Anti-Eviction Campaign and various Symphony Way occupiers, November 2008.

Symphony Way, was determined that she would not move to another 'hokkie' or shack. She would only move to a permanent home.⁷⁸

In March 2009, however, Symphony Way occupiers were informed that the City of Cape Town was planning to forcibly relocate them to neighbouring Blikkiesdorp. The protesters strongly opposed the relocation, pointing out that the Blikkiesdorp TRA could not be regarded as adequate housing. Residents of Symphony Way also voiced concerns regarding the high crime rate in Blikkiesdorp and the potential loss of social and community networks that have sustained the families through harsh conditions, particularly over the last year and a half.

COHRE's visit to Blikkiesdorp in November 2008 confirmed many of the concerns raised by Symphony Way occupiers. Blikkiesdorp, like other TRAs, was overcrowded and individual structures were found to be inadequate in size for large families. Constructed with thin tin and zinc sheets, the structures fail to provide adequate protection against extreme weather conditions. The TRA also lacked adequate water and sanitation facilities. Residents interviewed in Blikkiesdorp said that they had agreed to move to the TRA only because the tents provided by the City were freezing, lacked privacy and were generally inadequate. However, there was little doubt that life at the TRA is very difficult and residents had no information on how long they would have to contend with the high rate of crime, particularly rape and other gender specific crimes; lack of space and privacy; inadequate lighting, water and sanitation facilities, before they were granted their permanent homes.⁷⁹ If the Happy Valley TRA is an indicator, Blikkiesdorp residents could find themselves living in TRAs for twelve years with no permanent solution in sight.

In June 2009, protesting families on Symphony Way were given a reprieve by the Cape High Court against an application for eviction brought by the City of Cape Town acting on behalf of the Western Cape Provincial Government. Arguments in the matter were postponed to 3 September 2009. Once again, speaking on behalf of the protesting families of Symphony Way, Ashraf Casseim emphasised that the protesters were not opposed to relocation per se but maintained that any relocation henceforth would only be acceptable if it were to permanent houses and not the highly inadequate TRAs.

The occupation of unfinished N2 Gateway houses in Delft by backyarders from the area illustrates the complex nature of the housing crisis in South Africa that bears the mark of apartheid era segregation coupled with the somewhat illusory and endless waiting lists. Situations like the Delft occupation are a direct result of the lack of community participation in decision making processes especially with regard to housing delivery. It is clear that balancing competing claims and interests, whether between communities and governments or between two communities can only be achieved if transparency, accountability and community participation is guaranteed.

⁷⁸ Interview with COHRE, November 2008.

⁷⁹ Interviews with residents at Blikkiesdorp TRA, November 2008.

4. HOUSING RIGHTS VIOLATIONS AND THE N2 GATEWAY PROJECT

Although the key issues before the Constitutional Court focused predominantly on the technical legal aspects mentioned earlier, the Joe Slovo case was essentially an attempt by the community to highlight the impact of relocation on their right to adequate housing as well as other human rights including the right to work, education and healthcare.

The right to adequate housing is enshrined in Article 11.1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights (CESCR) mandated to monitor compliance with the ICESCR, has elaborated on the right to adequate housing in its General Comment No. 4 and its General Comment No. 7. According to General Comment 4, 'adequate housing' must include the following seven elements:

- Security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural Adequacy

In the context of the issues raised by Joe Slovo residents, it is important to note that the Committee on Economic, Social and Cultural Rights while agreeing with the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000, concurs in General Comment 4 on the right to adequate housing that adequate shelter means ... "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".⁸⁰ Further, according to General Comment 4 "Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites or in immediate proximity to pollution sources that threaten the right to health of the inhabitants".⁸¹

The Joe Slovo case exemplifies the interdependence of all human rights and that the non-fulfilment of even a single component of the right to adequate housing has a deep impact on affected people's ability to access other human rights. Location of housing if at a significant distance from job opportunities can often result in the loss of jobs, especially where the persons concerned work in the informal sector and are daily wage earners as is often the case in most slum communities. This in turn adversely impacts the ability of poor communities to access adequate food, health care and education. Increased distance from places of work and higher transport costs also often result in the lower nutritional intake amongst poor communities. Location of housing also has a deep impact on affected women's mobility. Often tasked with the primary responsibility for taking care of children and the elderly, women are forced to give up jobs and take up, at best, home-based income generating tasks which are among the most lowly paid. Increased distance from schools and therefore higher commuting costs can result in a sharp

⁸⁰ Committee on Economic, Social and Cultural Rights, *General Comment No.4; The right to adequate housing*, para 7 1991, Contained in document E/1992/23

⁸¹ *Ibid.*, para 8(f).

rise in the drop out rate from schools among children of poor communities, particularly girl children.



Location of the temporary relocation area that will house Joe Slovo evictees

Decreased Employment Opportunities and Increased Transport Costs

Judge President Hlophe of the Western Cape High Court, while sanctioning the eviction of Joe Slovo residents opined that residents of Joe Slovo had no legitimate expectation or any right to remain in Joe Slovo. "The right is of right to adequate housing and not the right to remain in the locality of their choice, namely Joe Slovo"⁸² Unfortunately Judge President Hlophe overlooked the fact that the right to adequate housing does in fact include location as a key component. Further the right is deemed to remain unfulfilled if housing does not take into consideration issues such as proximity to places of work, education and healthcare facilities.

The prime location enjoyed by the Joe Slovo settlement along the N2 freeway and its proximity to job opportunities in Cape Town's central business district as well as areas such as Epping, Pinelands and Langa has been the mainstay of the community since its early days. A large number of residents have found employment in these areas which are walking distance from their homes. While some have found work in offices and factories, others work as domestic help and vegetable and fruit sellers in Pinelands and Langa respectively. Largely engaged in the informal sector, constant and easy access to the job market is critical for most Joe Slovo residents.

⁸² High Court of South Africa, Cape of Good Hope Provincial Division, *Thubelisha Homes and Others vs. Various Occupants and others*, Final Judgement, Case Number 13109/07

As one of the residents of Joe Slovo stated, "...the problem with moving to Delft has its origins in the fact that I am not permanently employed... When my contract expires in April 2008 and if it is not renewed, or when I get prematurely dismissed, I will have to seek reemployment as soon as possible to meet the obligation I have to my nuclear family and extended family. I support my child, my wife, and 4 members of my extended family in the Eastern Cape. If I do not find work soon after the termination of my current employment, then six other people excluding myself will be affected. Residence in Joe Slovo gives me a better chance at re-employment than Delft".⁸³

Proximity to places of work and easy access to public transport including the rail link has meant that Joe Slovo residents spend relatively less on transport costs – an essential factor that makes their often poorly paid jobs somewhat viable. As pointed out by one resident, "...in 2001 I moved from the Eastern Cape in search of a job, and settled in Joe Slovo because of its proximity to the Epping Industrial area. Personally, I cannot move to Delft for practical reasons. I cannot afford the increase in transportation costs to Paarden Eiland which means I will most likely lose my job. And, put simply, it is easier to live in Joe Slovo because it is closer to services and jobs".⁸⁴

Similarly, one of the women residents of Joe Slovo stated, "My income and the costs of life are the key reasons why I do not want to be moved to Delft. The costs for transport would be so vast such that after the eviction I would not be able to buy food. I have also heard the crime in that area is high. A household like mine consisting of two females (me and my daughter) is very vulnerable".⁸⁵



Tsunami TRA in Delft

⁸³ Affidavit of Joe Slovo resident, Constitutional Court Appeal Record, p. 1007 in *Various Occupants and others vs. Thubelisha Homes and others*.

⁸⁴ *Ibid.*, p. 917.

⁸⁵ *Ibid.*, p. 962.

The experience of Joe Slovo residents who were relocated to Delft after the 2005 fire unfortunately confirms the fears of those who would soon be relocated. In February and March 2007, the Development Action Group (DAG) undertook a survey of 41 households which had been relocated to Delft. Among the most common difficulties faced by those relocated were the distance from job opportunities and the significantly increased transport costs. Of the sample studied by DAG, 68% were unhappy with the move to Delft. Those relocated suffered from a lack of access to the range of affordable public transport services they had in Langa. Not only was transport more expensive but it was also less frequent thus increasing commuting time.⁸⁶

Unfortunately little had changed for those living in Delft even in late 2008. While one of the women COHRE interviewed in the Tsunami TRA had finally found a job nearby as a baker, she said that she was among the lucky few – it was not as easy for several others. Other women COHRE interviewed complained that the lack of affordable transport continued to be a serious problem. According to them, while at Joe Slovo, they had access to a train pass that significantly reduced commuting costs, with the absence of a railway line linking Delft to the city centre, residents had to pay as much as R500 per month.

The prospect of being pushed 15 kilometres further from the city has also raised concerns regarding commuting time and its impact on family life. “Since I heard about our relocation to Delft I have been very concerned about my family, I work as a security guard in Hout Bay, and the added cost of transport I will incur if I will be in Delft will dramatically affect our standard of living. I will be leaving so early in the morning, and return so late, that I will not have time to spend with my family and children as they are growing up” said one of Joe Slovo’s residents.⁸⁷

Unfortunately, the Constitutional Court did not substantively comment on the issue of location and its impact on the right to adequate housing of those who would be evicted. While recognising that the relocation would cause hardship, the Court was satisfied with the assurance by state authorities that transport would be provided for school-going children and to those having to travel for work. The housing authorities however did not provide any details on the kind and frequency of transport that would be provided to relocated families in Delft. It is important to note that a similar arrangement was made by the City of Cape Town when families were relocated to Delft after the 2005 fire. Initially bus services were provided only for school children. This was later extended to adults but was discontinued in August 2005. The City of Cape Town continued the bus service for children till November 2005 after which the Provincial Department of Education took over the responsibility of transporting children to their schools in Langa.⁸⁸ Currently no bus services are provided by the City to adults living in the Delft TRAs.

Impact on Health, Education and Social Networks

Location of housing not only affects resident’s livelihood options, but also impacts their ability to access education and healthcare facilities. Relocation at Delft 15 kilometres further away from Joe Slovo and more than 30 kilometres from the city centre will increase the vulnerability of an already marginalised community to further human rights violations.

As a woman living in Joe Slovo pointed out in her affidavit, “Our newborn baby goes to the clinic in Langa. I also go to the same clinic to receive ARV treatment for HIV. Our house is

⁸⁶ DAG, “Living on the Edge: A Study of the Delft Temporary Relocation Area”, Cape Town, March 2007, p. 16.

⁸⁷ Affidavit of Joe Slovo resident, Constitutional Court Appeal Record, p. 924 in *Various Occupants and others vs. Thubelisha Homes and others*.

⁸⁸ DAG, “Living on the Edge: A Study of the Delft Temporary Relocation Area”, Cape Town, March 2007 p. 11

close to the market, where I work sometimes on days I do not work as a domestic worker. My daughter, my brother and my husband's sister all attend school nearby. My husband hopes to find work in Cape Town, which is closer from here than from Delft. Our house is so convenient for all these amenities."⁸⁹ During the course of COHRE's research it was amply clear that many Joe Slovo residents were also concerned about the availability of adequate health care services in Delft.

Similarly, an elderly woman COHRE interviewed in November 2008 mentioned the lack of adequate health care facilities at Delft as one of the reasons why she had refused relocation. The Bonteheuvel hospital was very close in case she needed treatment and she received her pension at the nearby church. Given that several residents of Joe Slovo did not have regular jobs, the wholesale food market in Langa ensured that there was cheap food and work available.⁹⁰

Located close to the city centre, Joe Slovo residents had so far enjoyed easy access to educational facilities for children as well as night schools for adults. Relocation to Delft would therefore also mean a disruption of children's education and limited easy access to vocational institutions for adults. As one of the women interviewed pointed out, educational facilities as well as healthcare facilities that her family accessed were not more than 15 minute walk from her home in Joe Slovo. She was concerned that relocation to Delft would result in a loss of easy access to various facilities and considerable time would be lost in enrolling her children into local schools. Paying for their transport so that they may attend their original schools would be impossible for her.⁹¹

In Chapter 13 of the Housing Code, dealing with the Upgrading of Informal Settlements Programme, the Department of Housing sets out its policy on relocations in the following terms:

"Residents living in informal settlements are often dependent on fragile networks to ensure their livelihood and survival. A guiding principle in the upgrading of these communities is the minimization of disruption and the preservation of community cohesion. The programme accordingly discourages the displacement of households, as this not only creates a relocation burden, but is often a source of conflict, a further dividing and fragmenting already vulnerable community. In certain limited circumstances, it may however be necessary to permanently relocate households living in hazardous circumstances or in the way of essential engineering or municipal infrastructure. In all such cases and where feasible and practicable, the relocation must take place at a location as close as possible to the existing settlement and within the context of a community approved relocation strategy that must be submitted with the final business plan for approval by the MEC."

The eviction of Joe Slovo residents and their relocation to Delft runs contrary to the principles articulated in Chapter 13 of the Housing Code, integral to the effective implementation of BNG. These fragile community networks not only support livelihoods but also provide security of person and property. As pointed out by one of the Joe Slovo residents interviewed, "Where we live now, I know people in the community. The community is safe because we know each other. We both leave for work at 6am each day; no one breaks into our house while at work because our neighbours are watching and know everyone. Delft is a new place, and we do not have a community there. I have visited Delft. Houses there are built from asbestos and are brittle. My

⁸⁹ Ibid., p.1039.

⁹⁰ Interview with COHRE, November 2008.

⁹¹ Affidavit of Joe Slovo resident, Constitutional Court Appeal Record, p. 1110 in *Various Occupants and others vs. Thubelisha Homes and others*.

things will not be safe inside. It is fine for rich people to live in a place without a community, because they can afford expensive security. We cannot. We need our community to be safe".⁹²



TRA site at Blikkiesdorp

Similarly, another resident while explaining his reasons for refusing to relocate to Delft remarked, "I like being part of this community, I do not want to be in a situation where I have to find a place in a new community, and have to deal with increased poverty at the same time. My house in Joe Slovo is secure, and my wife and children are safe here. I also have other relatives living in Joe Slovo, who are always ready and willing to assist me and my family if we need help. In Delft we will not have this ready support system. Moving to Delft will not help me improve my life – I will be taking a step backward".⁹³

Relocation often results in the uprooting of individuals and communities from familiar surroundings to unfamiliar terrains. In most cases of eviction and relocation, affected persons often belong to economically, socially and politically marginalised communities and hence the relocation if carried out with disregard to human rights standards and without a participatory needs assessment will almost always result in the further entrenching of patterns of marginality and exclusion. Joe Slovo residents are a part of Cape Town's urban poor communities many of whom are migrants from the Eastern Cape and other rural areas.

Lack of Adequate Consultation and Participation

Interactive consultation and informed participation form the bedrock of a democratic and human rights based approach to development planning. The right of affected communities to

⁹² Ibid., p. 954.

⁹³ Ibid., pp. 924 and 925.

participate in decision-making processes and to have full information at all stages of a development process must be guaranteed through micro and macro level mechanisms of consultation. For the consultations to be meaningful, affected communities must have full prior information and there must be scope for negotiation and modification of development plans based on the outcome of the consultations.

As the Vancouver Declaration on Human Settlements (Habitat I) lays down, all persons have the right and the duty to participate, individually and collectively, in the elaboration and implementation of policies and programmes of their human settlements.⁹⁴ The declaration also states that basic human dignity is the right of people, individually and collectively, to participate directly in shaping the policies and programmes affecting their lives. The process of choosing and carrying out a given course of action for human settlement improvement should be designed expressly to fulfil that right. Effective human settlement policies require a continuous co-operative relationship between a Government and its people at all levels. It is recommended that national Governments promote programmes that will encourage and assist local authorities to participate to a greater extent in national development.⁹⁵

Further, for evictions to be deemed legal, General Comment 7 of the United Nations Committee on Economic, Social and Cultural Rights requires, *inter alia* genuine consultations with affected people and reasonable and adequate notice prior to eviction. It also requires governments to explore all feasible alternatives to forced evictions in consultation with affected communities.⁹⁶

The UN Basic Principles and Guidelines on Development Based-Evictions and Displacement provide that all potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. The Basic Principles and Guidelines also emphasise that the entire resettlement process should be carried out with full participation of affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities.⁹⁷

As in the case of several other large development and infrastructure projects the world over, the N2 Gateway project has suffered from a serious lack of meaningful engagement between the various government authorities and the affected communities. Based on research conducted by COHRE and evidence and testimonies presented in the Constitutional Court case, it is clear that the lack of proper and meaningful engagement has resulted in a series of 'broken promises' by the authorities to the communities.⁹⁸ It is significant that the various authorities have failed to meaningfully engage with communities affected by the N2 Gateway project despite relevant policy pronouncements particularly the Breaking New Ground (BNG) policy emphasising the importance and requirement for community participation.

According to the BNG, upgrading of informal settlements is to be undertaken in a flexible manner in order to cater to local circumstances. Instead of upgrading initiatives on an individual

⁹⁴ Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements, (Habitat I) 1976, Section II.13.

⁹⁵ *Ibid.*, Section III 10.

⁹⁶ UN Committee on Economic, Social and Cultural Rights. While South Africa is a signatory to the ICESCR, it has yet to ratify it, despite considerable pressure on the Government to do so.

⁹⁷ *Ibid.*, para 56(i).

⁹⁸ See judgment in *Residents of Joe Slovo Community vs. Thubelisha Homes and Others* CCT 22/08 2009 ZACC 16 (10 June 2009), para, 167.

basis, the policy recommends support for area wide upgrading. This approach, it was felt, would maintain fragile community networks, minimise disruption and enhance community participation in all aspects of the development solution.⁹⁹ The BNG gives considerable importance to "Information, Communication and Awareness Building," placing emphasis on community mobilisation. This is to be achieved through a mobilisation and communications strategy to "clarify the intentions of the policy and to raise awareness" of its content. Communities, it is said, must be "mobilised to engage effectively with the housing programme."¹⁰⁰

Despite these and other policy stipulations on community consultation and participation, it is clear that processes for meaningful engagement with the affected communities were bypassed in favour of rapid delivery. The affidavit of Gerard Adlard who was engaged in assisting the Department of Housing in administering the N2 Gateway project in 2006, makes evident that his warnings of the lack of community participation were deliberately brushed aside with comments such as "People are tired of telling the government what they want. They want the housing issue to be solved. We have heard the people. Now we must go and do that" from the provincial government spokesperson.¹⁰¹

In fact, at the media launch of the project, the then Executive Mayor of Cape Town, Councillor Nomaindia Mfeketo remarked, "...this project is about rapid delivery. We have moved from concept to having the first contractor on site in only a few months. To achieve this, we have had to push very hard. We have had to get rid of all unnecessary bureaucracy. We have even had to limit the amount of consultation and participation. However, this approach brings rapid results and I am firmly convinced that all communities will appreciate this approach when implementation becomes visible. . ." ¹⁰²

As a result, whenever interaction took place between the affected communities and government authorities it was merely to announce decisions and not in anyway to consult about proposed decisions. Examples of consultation provided by state authorities in the course of the Constitutional Court proceedings include instances of information sharing regarding the benefits of the N2 Gateway project, attempts by Councillor Gophe and Thubelisha to convince Joe Slovo residents to move to Delft and promises made by Councillor Mfeketo to Joe Slovo fire victims regarding assistance from the government. Clearly none of these instances qualify as meaningful engagement or meaningful participation from a human rights perspective.¹⁰³

In the landmark *Olivia Road* case, the Constitutional Court stated that engagement is a two way process in which the City and those facing potential homelessness from an eviction should talk to each other meaningfully in order to achieve certain objectives, and that the larger the number of people potentially to be affected by eviction, the greater the need for structured, consistent and careful engagement.¹⁰⁴

⁹⁹ National Department of Housing, "Breaking New Ground" A Comprehensive Plan for the Development of Sustainable Human Settlements (September 2004), Part B, section 4.1.

¹⁰⁰ Ibid., Part B section 8 and 8.3.

¹⁰¹ Affidavit of Gerald Adlard, Constitutional Court Appeal Record, p. 648. section 3.2.

¹⁰² Opening remarks by Executive Mayor Nomaindia Mfeketo at Housing Media Event on 14 February 2005. Available at <http://archive.pmg.org.za/briefings/briefings.php?id=178>

¹⁰³ Submissions of the *Amici Curiae*: Community Law Centre (UWC) and Centre On Housing Rights And Evictions (COHRE) in *Various Occupants v Thubelisha Homes and Others* CCT 22/08 (4 August 2008), para., 149.

¹⁰⁴ Judgment of *Occupiers of 51 Olivia Road and 197 Main Street, Johannesburg v the City of Johannesburg and others* 2008 (3) SA 208 (CC), paras. 14-19.

In the *Joe Slovo* case, as was pointed out by the affected persons and in keeping with BNG principles, the need for engagement remains not only in the context of their eviction to Delft but at every stage of the project. Affected persons should have been consulted when plans for Joe Slovo settlement were being changed from an *in-situ* upgrading project to a roll over project that would involve the mass eviction and relocation of residents. Affected persons should have also been consulted regarding the location of their temporary and later permanent housing sites and the procedure and requirements regarding access to permanent homes via the N2 Gateway project.

It is clear that the various housing authorities saw meaningful engagement and consultations with affected persons as a hindrance rather than an essential step for securing the right to adequate housing for Joe Slovo residents. In the context of whether *in-situ* upgrading was possible at the Joe Slovo site, Thubelisha Homes and the Western Cape Department of Housing explained to the Constitutional Court that because the *in-situ* upgrading process was highly participative, consensus would be very difficult to achieve and the project would flounder. This explanation not only exposes the lack of genuine desire on the part of state authorities to meaningfully engage with affected persons but also runs contrary to the principles laid down in the BNG policy and Chapter 13 of the National Housing Code.¹⁰⁵

According to the affidavit of Gerard Adlard, there were several agreements that the various housing authorities entered into in 2007 that had a bearing on the nature of the N2 Gateway project and consequently on the right to adequate housing of Joe Slovo residents.

In February 2006, the Western Cape Province entered into an agreement with Thubelisha where Thubelisha was required to develop Phase 2 (which included Phase 3 at the time) of the N2 Gateway project. Financing for the development would be substantially from housing subsidies or grants. Only eligible families from the housing lists supplied by the City of Cape Town and approved by the N2 Gateway executives would benefit from the development. In March 2007, the City of Cape Town and the Western Cape Province entered into a land availability agreement which transferred Joe Slovo land from the City to the Province for the purpose of building houses financed exclusively by housing subsidies.

On 25 May 2007, the Province and Thubelisha entered into a second land availability agreement. This agreement, unlike the earlier two, reflects a shift in the intended beneficiaries of Phase 2 housing. Here, the land was made available to Thubelisha for the building of credit-linked houses, also known as 'bond houses'. The agreement also omitted beneficiary conditions that were included in the first land availability agreement.

In August 2007, Thubelisha entered into a contract with First National Bank (FNB) in which they were required to relocate the residents of Joe Slovo making available empty land to the bank. FNB on its part was to cover construction costs of the houses, sell the properties at the price it deemed fit and keep the proceeds. The agreement also explicitly states that there is no obligation on FNB to ensure that the target market is limited to persons living in Joe Slovo or Langa.

Agreements made in 2007 thus illustrate the way in which the various state housing authorities abdicated their responsibility to ensure that residents of Joe Slovo and Langa benefited from the N2 Gateway project, as originally conceived. Despite the fact that the change in focus and objective in both Phase 1 and Phase 2 would have a direct impact on the lives of Joe Slovo

¹⁰⁵ CLC and COHRE *amici* submission, para., 16.

residents, the various housing authorities made no efforts to meaningfully engage or consult with affected persons. On the contrary Joe Slovo residents were only informed of these changes from time to time with no scope for negotiations.¹⁰⁶

Similarly, with regard to relocation to Delft, there is no doubt that the various state authorities failed to adequately consult the affected persons despite the fact that Chapter 13 of the National Housing Code provides that any relocation should be the exception rather than the rule and to a location 'as close as possible' to the existing settlement in accordance with a 'community approved relocation strategy.' While the residents of Joe Slovo have made their objections to being relocated to Delft clear from time to time, there is little evidence to show that the state authorities have made substantial efforts to explore all feasible alternatives in consultation with affected communities. As Joe Slovo Task Team member Mzwanele Zulu told COHRE in November 2008, Joe Slovo residents are not against or opposed to development (as the government likes to assert), but want to be a *part* of development and need to be involved in the process because they are the ones who know, they are the ones on the ground who can help facilitate it effectively. Instead of meeting with Joe Slovo residents and discussing the alternative plans of *in-situ* upgrading that they had proposed, the then national housing minister Lindiwe Sisulu responded in a highly counterproductive manner by threatening to remove those who protested against relocation from the housing waiting lists.

Even in the case of those relocated from Joe Slovo to Delft after the 2005 fire, the lack of participation and its impact on the lives of those affected is evident. The 2007 DAG report on living conditions in the Delft TRAs, notes that affected persons were not involved in the decision-making processes. People were mainly informed about the plans and often with only a day's notice. Even decisions like the termination of a bus service for those relocated to Delft were taken without consulting with affected persons or giving prior notice. Community leaders thus found themselves in an awkward situation having to explain about situations which they did not have full information.¹⁰⁷ The DAG report also notes that the lack of involvement of affected persons in the decision-making process has resulted in inappropriate choices in terms of the type of housing to be provided and the location of these housing. Further, the absence of clarity on the process or timeline for allocation of permanent housing has created dissatisfaction and dependency as people wait endlessly to be granted 'brick houses'.¹⁰⁸

Unfortunately the situation had not changed since. COHRE visited the Tsunami TRA in Delft in November 2008 and found that residents had the same complaints recorded in DAG's 2007 report, and faced challenges similar to those they faced when they were first relocated. Residents interviewed had little information regarding the process for allocation of permanent housing and some alleged corruption and nepotism in the allocation system. It was alleged that permanent houses had been allocated to some families that had moved to the TRA in 2007 while those who had been relocated in 2006 and 2005 continued to wait, watching houses being built across the road from their TRAs. There were also allegations that permanent houses were being sold to TRA residents. These allegations clearly point to the lack of transparency, adequate information and popular participation in the housing allocation process and have the potential to lead to social conflict and housing rights violations of some of the most marginalised families within the Tsunami TRA.

¹⁰⁶ See Heads of Argument on Behalf of Applicants' Represented by Mr Penze's Committee in *Various Occupants v Thubelisha Homes and Others* CCT 22/08 (10 July 2008).

¹⁰⁷ DAG, "Living on the Edge: A Study of the Delft Temporary Relocation Area," (March 2007), p. 26.

¹⁰⁸ *Ibid.*

Despite this experience, however, the project proponents insist that relocation to TRAs in Delft will enhance security of tenure for the current Joe Slovo residents. However, as the *amicus curiae* submission in the Constitutional Court case points out, Delft only provides temporary housing. So far, there is no information about the timeline or plan for provision of permanent homes. Further, with the state having acquired only 60% of the land required for the project, there is no clarity on how long all those relocated from Joe Slovo will have to live in TRAs before they are allocated a permanent house. With reports of an average of ten families being allocated permanent housing every year from the Tsunami TRA and the experience of the Happy Valley TRA where families have been waiting for 12 years to be allocated permanent housing, there is legitimate cause for concern that many Joe Slovo residents could find themselves living permanently in temporary accommodation.¹⁰⁹

¹⁰⁹ Pearlie Joubert, "Unhappy Valley", *Mail & Guardian*, 16 March 2007. <http://www.mg.co.za/article/2007-03-16-unhappy-valley>

5. CONCLUSION



Children protesting against eviction from Symphony Way

There is little doubt that the N2 Gateway project has progressed thus far without due consideration to the right of affected persons to participate in developments that will directly affect their lives and livelihoods. Further, there is sufficient evidence to show that the project has been mismanaged and steps to reach the next phase have been pushed through without adequate preparation.

For instance, COHRE's meeting with the N2 Gateway project manager in the Western Cape Department of Housing revealed that even though both the national and provincial housing departments were pushing for the relocation of Joe Slovo residents, they were hugely ill prepared and did not have the land nor the TRAs required to house 20,000 residents. According to him, due to mismanagement on the part of Thubelisha, there were huge delays in allocating permanent homes to those living in TRAs primarily because Thubelisha had not prepared and verified the lists of beneficiaries in time. The empty houses were therefore ideal for occupation by local backyard shackdwellers who in any case were feeling cheated as permanent houses built in their area were being allocated to 'outsiders'. It was therefore hardly surprising that backyarders from Delft had to be forcibly evicted from houses that lay empty because they did not suit the requirements of Joe Slovo.

The recent Auditor-General's report on the special audit of the N2 Gateway Project which was released in May 2009 exposes just how badly planned and managed the N2 Gateway project has been. According to the report, "the selection of beneficiaries was not finalised prior to the commencement of construction, resulting in non-compliance with the prescribed requirement of listing the beneficiaries in the final business plan and loading these details on the National Housing Subsidy database prior to project implementation. The selection of the beneficiaries for the first 705 units was only finalised as at 28 February 2007 – almost two years after the N2

Gateway project had commenced." The Auditor-General further states that "the national Housing Code, the Breaking New Ground plan and the draft business plan were not consistent with regard to the qualifying criteria for proposed beneficiaries, especially in respect of the monthly household income requirement. It was also noted that the criteria communicated to the different communities were not consistent." The report recommends that "the three spheres of government should implement measures to ensure that the beneficiaries of the various sub-projects are identified in a timely manner to comply with prescripts. Furthermore, during the planning phase of a project, the qualifying criteria should be finalised to ensure that a consistent message is conveyed to the relevant role players."¹¹⁰

The N2 Gateway project has been hampered at every stage due to the unwillingness of the project proponents to meaningfully engage with affected persons and act in a manner that is transparent. Contrary to then Mayor Mfeketo's predictions, the impasse and lack of trust between the affected community and the authorities is precisely because rapid results cannot be achieved if the process is faulty.

In its order of 10 June 2009, the Constitutional Court also recognises this lacuna in the operations of the various housing authorities involved. Justice Yacoob notes "... the state could and should have been more alive to the human factor and that more intensive consultation could have prevented the impasse that has resulted". He however, is of the opinion that this is not sufficient to tilt the scales against eviction and relocation.¹¹¹ Similarly Justice O'Reagan recognises that the various state authorities have engaged in some consultations with affected persons, it has not been coherent or comprehensive and at times, as in the case of Phase 1, even misleading. Nonetheless, she states that the order of eviction can be made in a manner that seeks to remedy, to some extent, the failure of government to engage meaningfully with affected persons up to this stage.¹¹² Justice Moseneke, while observing that the state authorities did not issue Joe Slovo residents formal notice before applying for an urgent eviction order and thus did not give the affected persons the courtesy and respect of meaningful engagement, goes on to uphold the eviction and relocation as long as there is a guarantee that the specific percentage of houses will be allocated to Joe Slovo residents, and that authorities will engage meaningfully with persons affected by the eviction and relocation order.¹¹³

The final order of the Constitutional Court thus makes apparent the Court's willingness to condone past acts of omission in terms of engagement by project proponents in an attempt to balance competing claims by laying down the parameters of what may be considered 'just and equitable'. Sanctioning the eviction from Joe Slovo and relocation to Delft on conditions that meaningful engagement takes place between the various authorities and affected persons may have a mitigating effect on the impacts of relocation. Nevertheless, how meaningful the engagement will be in a situation where eviction and relocation to a particular place has been predetermined remains to be seen. With the parameters of the engagement already decided, there is great danger that the dynamics of the engagement are influenced by the inevitability of the situation. Under such circumstances, it is highly probable that from here on, for project proponents meaningful engagement will become just another box to tick, simply another procedural requirement.

¹¹⁰ "Report of the Auditor-General on the Special Audit of the N2 Gateway Project at the National Department of Housing (July 2008), pp. 8-9.

¹¹¹ Judgment in *Residents of Joe Slovo Community vs. Thubelisha Homes and Others* CCT 22/08 2009 ZACC 16 (10 June 2009), para. 113.

¹¹² *Ibid.*, para. 303.

¹¹³ *Ibid.*, para. 167.

6. RECOMMENDATIONS

COHRE's research and available information on the N2 Gateway project points to several flaws and acts of non-compliance in its planning and implementation. The failure of the various housing authorities to adequately consult affected people or explore all feasible alternatives including *in-situ* upgrading with a view to minimising displacement will likely result in human rights violations for Joe Slovo residents. There is legitimate cause for concern that the remedial measures laid down by the Court including provision of alternative housing, consultation with affected persons on the timeline and process for eviction and rehabilitation may not be sufficient.

In light of this situation, COHRE presents the following recommendations to the National Minister of Housing, the Provincial Minister for Local Government and Housing, the National Housing Development Agency replacing Thubelisha Homes, and the City of Cape Town.

- Immediately halt all plans of eviction of Joe Slovo residents and their relocation to Delft;
- Immediately engage with residents of Tsunami TRA, Blikkiesdorp and Symphony Way with a view to finding a permanent solution to their housing concerns;
- Engage in meaningful consultations with the residents of Phase 1 of the N2 Gateway project with a view to arriving at an amicable resolution of their problems;
- Conduct a fresh review of the N2 Gateway project by identifying the gaps in planning and implementation with a view to ensuring that concrete steps are taken in consultation with the affected community towards remedying the situation;
- Ensure that all consultations with community members involve the active participation of women and other marginalised groups.
- Make available all information on the number of houses to be built in Phase 2 of the project on Joe Slovo land and on the exact number that would be allocated to Joe Slovo residents upon completion;
- Make available all information regarding the availability of land for the construction of Phase 3 houses, as well the availability of land for constructing TRUs.
- Meaningfully engage with the community to explore all feasible alternatives to the eviction and relocation to Delft;
- Joe Slovo community members have expressed their preference for *in-situ* upgrading of the settlement through increased densification. Explore the feasibility of the proposal in consultation with the Joe Slovo community and/or their representatives;
- If *in-situ* upgrading is not possible, ensure that Joe Slovo residents are relocated to areas in the vicinity of the settlement so that relocation will not affect their rights and ability to work, attend school and access healthcare facilities;
- In a situation where no feasible alternatives to Delft are available, take steps to ensure that all plans and processes for eviction and relocation are finalised after consulting with affected persons including women and other marginalised groups;
- Where there is no alternative to relocation make all information on plans for mitigating impacts of the relocation available to the affected persons and their representatives;
- Ensure that these plans are finalised only after consultations with affected persons;

- Provide mechanisms for complaints and grievance redress regarding all those relocated from Joe Slovo informal settlement;
- Provide a clear timeline and plan for the provision of permanent housing to all affected persons, ensuring that the plan takes into account the needs of local persons waiting in line for permanent housing as well as those who have been relocated.

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