



# *Business as Usual?*

## *Housing rights and 'slum eradication' in Durban, South Africa*



*Centre on Housing Rights & Evictions*  
([www.cohre.org](http://www.cohre.org))

September 2008



## Centre on Housing Rights and Evictions (COHRE)

### COHRE International Secretariat

83 rue de Montbrillant  
1202 Geneva  
SWITZERLAND  
tel: +41.22.734.1028; fax: +41.22.733.8336  
email: [cohre@cohre.org](mailto:cohre@cohre.org)  
[www.cohre.org](http://www.cohre.org)

### COHRE Africa Programme

Private Mail Bag CT 402  
Cantonments  
Accra  
GHANA  
tel: +233.21.238.821; fax: +233.21.231.688  
email: [cohreafrica@cohre.org](mailto:cohreafrica@cohre.org)

Copyright 2008: The Centre on Housing Rights and Evictions (COHRE), Geneva, Switzerland  
Business as Usual? Housing rights and 'slum eradication' in Durban, South Africa  
All rights reserved

Copies available from COHRE and online at [www.cohre.org/library](http://www.cohre.org/library)

The Centre on Housing Rights and Evictions is registered as a not-for-profit organisation in: Australia, Brazil, Ghana, The Netherlands, Sri Lanka, Switzerland and the USA.

Prepared by: COHRE Africa Programme Fact-Finding Mission  
Project co-ordinator: Jean Du Plessis  
Primary author: Richard Pithouse  
Other researchers: Glen Robbins and Xolani Tsalong  
Expert assistance: Marie Huchzermeyer (policy) and Stuart Wilson (law)  
Editorial assistance: John Aitchison, Julian Brown and Mark Butler  
International review panel: Jean Du Plessis (COHRE), Prof. Nigel Gibson (Harvard), Prof. Marie Huchzermeyer (Wits), David Ntseng (Church Land Programme), Dr. Raj Patel (Berkeley), Xolani Tsalong (independent research consultant and civil society expert) (Please note that some affiliations have changed since the review panel submitted its reports in late 2007)  
Cover photo: Sunny Roumimper

Comments and suggestions are welcome. Please email [cohreafrica@cohre.org](mailto:cohreafrica@cohre.org)

# Table of Contents

<b>EXECUTIVE SUMMARY</b>	<b>1</b>
Chapter 1: Shack Settlements in Colonial and Apartheid Durban (1824 – 1994)	1
Chapter 2: Housing Rights and Post-Apartheid Law	3
Chapter 3: Housing Policy After Apartheid	6
Chapter 4: Slum Clearance in Durban	9
Chapter 5: Forced Evictions & Other Housing Rights Violations	9
Key Recommendations	10
<b>CHAPTER 1: SHACK SETTLEMENTS IN COLONIAL AND APARTHEID DURBAN (1824 – 1994)</b>	<b>18</b>
<b>INTRODUCTION</b>	<b>18</b>
<b>NATAL COLONIAL ADMINISTRATION (1853 – 1910)</b>	<b>18</b>
Colonial town planning	18
The sugar industry	19
The destruction of the Zulu kingdom	20
First moves towards segregation	21
Last resistance crushed	22
<b>THE UNION GOVERNMENT (1910 – 1948)</b>	<b>22</b>
Rural African land dispossession and black and white revolts in the cities	23
The migrant labour system	25
Shack dwellers' politics in pre-war Durban	26
The 1934 Slums Act and the first township in Durban	27
The growth in shack settlements during the war years	29
<b>GRAND APARTHEID (1948 – THE LATE 1970S)</b>	<b>31</b>
The 1949 anti-Indian pogrom	31
The Group Areas Act	32
Mass forced removals to peripheral townships	33
Memories of shack life	35
The new peripheral townships	36
<b>THE POPULAR REASSERTION OF THE RIGHT TO THE CITY (LATE 1970S TO 1994)</b>	<b>37</b>
Cracks in the barriers around white space	37
New shack settlements	38
Negotiating a new deal	40
<b>CONCLUSION</b>	<b>43</b>
<b>CHAPTER 2: HOUSING RIGHTS AND POST-APARTHEID LAW</b>	<b>45</b>
<b>INTRODUCTION</b>	<b>45</b>
<b>THE INTERNATIONAL RIGHT TO ADEQUATE HOUSING AND PROTECTION FROM FORCED EVICTIONS</b>	<b>45</b>
The International Covenant on Economic, Social and Cultural Rights of 1966	45
The Advisory Group on Forced Evictions	48
The African Commission on Human and Peoples' Rights	49
<b>SOUTH AFRICAN HOUSING LAW</b>	<b>49</b>
The Constitution	49
The PIE Act	50
<b>JURISPRUDENCE: THE RIGHT TO HOUSING IN THE SOUTH AFRICAN COURTS</b>	<b>52</b>
Grootboom	53
Rudolf judgment	54
Port Elizabeth Municipality	55
Modderklip	56

Moreleta Park	57
Concluding remarks on post-apartheid housing rights jurisprudence	59
<b>STATE ATTEMPTS TO CURTAIL HOUSING RIGHTS</b>	<b>61</b>
The proposed amendment to the PIE Act	62
The Slums Act	65
<b>CONCLUSION</b>	<b>71</b>
<b>CHAPTER 3: HOUSING POLICY AFTER APARTHEID</b>	<b>72</b>
<b>INTRODUCTION</b>	<b>73</b>
<b>THE INTERNATIONAL POLICY CONTEXT</b>	<b>74</b>
A brief history of the international policy consensus	75
The return of the ‘slum’	79
Assessments of the international policy consensus	80
International innovation	82
<b>SOUTH AFRICAN NATIONAL HOUSING POLICY AFTER 1994</b>	<b>85</b>
One million subsidies in five years	85
The Housing Act (1997)	87
The People’s Housing Process (1988)	88
Initial assessments of the subsidy system	90
Breaking New Ground, April 2005	95
<b>THE RETURN OF THE LANGUAGE OF ‘SLUM CLEARANCE’ IN SOUTH AFRICA</b>	<b>100</b>
The shifting deadlines by which ‘slums’ are expected to be ‘eradicated’	103
Making sense of the ‘eradication’ discourse in the context of a growing backlog	104
<b>CONCLUSION</b>	<b>105</b>
<b>CHAPTER 4: SLUM CLEARANCE IN DURBAN</b>	<b>106</b>
<b>INTRODUCTION</b>	<b>107</b>
<b>THE SLUMS CLEARANCE PROJECT IN POST-APARTHEID DURBAN</b>	<b>107</b>
The first years after apartheid (1994-2001)	107
The Slums Clearance Project (From 2001 onwards)	108
Assessing the slums clearance project on its own terms	110
<b>E<sup>THE</sup>KWINI MUNICIPALITY ANNUAL HOUSING DELIVERY</b>	<b>111</b>
<b>CONDITIONS IN SHACK SETTLEMENTS</b>	<b>113</b>
Access to Water	113
Sanitation	113
Electricity	114
The danger of fires	115
<b>THE QUALITY OF HOUSES PROVIDED BY THE MUNICIPALITY</b>	<b>116</b>
<b>CONDITIONS IN RELOCATION SITES</b>	<b>117</b>
Shack dwellers’ views on relocation	118
Residents’ views on relocation	120
Justifications for relocation	122
Factors driving relocation	125
<b>CONCLUSION</b>	<b>125</b>
<b>CHAPTER 5: FORCED EVICTIONS &amp; OTHER HOUSING RIGHTS VIOLATIONS</b>	<b>126</b>
<b>INTRODUCTION</b>	<b>126</b>
<b>EVICTIONS</b>	<b>126</b>
The demolition of ‘new shacks’	127
People rendered homeless during relocations	129
People rendered homeless during upgrades	131

Relocations that become forced removals	131
<b>INSUFFICIENT PARTICIPATORY DEVELOPMENT</b>	<b>135</b>
<b>REPRESSION</b>	<b>138</b>
<b>CORRUPTION</b>	<b>139</b>
<b>HOUSING RIGHTS AND THE 2010 FOOTBALL WORLD CUP</b>	<b>140</b>
<b>CONCLUSION</b>	<b>143</b>
<b>CONCLUSION</b>	<b>144</b>
<b>RECOMMENDATIONS</b>	<b>146</b>
<b>GENERAL RECOMMENDATIONS</b>	<b>146</b>
<b>RECOMMENDATIONS TO NATIONAL GOVERNMENT</b>	<b>147</b>
<b>RECOMMENDATIONS TO PROVINCIAL GOVERNMENT</b>	<b>149</b>
<b>RECOMMENDATIONS TO THE DURBAN (eTHEKWINI) MUNICIPALITY</b>	<b>149</b>
<b>RECOMMENDATIONS TO CIVIL SOCIETY</b>	<b>151</b>
<b>BIBLIOGRAPHY</b>	<b>152</b>

## Executive Summary

*This report into housing rights and 'slum eradication' in Durban was undertaken by the Geneva based Centre on Housing Rights and Evictions. It was largely researched in 2007 although some follow up work was done in early 2008. It has been subject to a rigorous editorial process and an equally rigorous international review process. It has found that in South Africa as a whole there has been a disturbing shift in recent years from a pro-poor and rights based discourse with regard to shack settlements to one that is more security based and sometimes anti-poor. The widely condemned KwaZulu-Natal Slums Act is a worrying consequence of this shift. In Durban the eThekweni Municipality is building a considerable number of houses and should be commended for this. However many of these houses are of poor quality and many are built far out of the city in a manner that entrenches rather than ameliorates the structural injustice that it is the legacy of apartheid spatial segregation. Furthermore the level of services provided to shack settlements is entirely inadequate to the point where it is often a clear threat to basic safety. Problems in this regard are particularly acute with regard to the provision of sanitation and electricity with the absence of the latter being directly linked to shack fires. It is also clear that unlawful evictions are routine in Durban and that relocations are often, although certainly not always, forced removals. Finally there is credible evidence to suggest that there has been severe, violent and unlawful repression of shack dwellers' organisations with Abahlali baseMjondolo being a particular target of state repression.*

*Since the research, writing, reviewing and editing of this report was concluded unlawful evictions have continued and there has been no improvement with regard to the acute and often literally life threatening lack of basic services in the settlements. But there has been a marked decline in reports of state repression of shack dwellers' organisations and a clear improvement in the willingness of the City to negotiate directly with shack dwellers' organisations.*

### **Chapter 1: Shack Settlements in Colonial and Apartheid Durban (1824 – 1994)**

This chapter is based on a thorough survey of the academic and other literature, as well as interviews with people who were children or teenagers in Cato Manor and are now living in various parts of the city in shacks or relocation townships built under apartheid such as Umlazi and Wentworth. It gives a brief history of shack settlements in Durban until 1994.

The chapter shows that, from its inception, town planning in the colonial settlement of Durban was informed by the planning model developed in and for London from the middle of the nineteenth century. That model was primarily driven by elite fears of political insubordination in the 'slums' of the East End of London and took the form of establishing expert rather than popular control of the planning process. Expert planning largely legitimated its power in the name of public health and its key tactic was to divide the city into separate hierarchically ordered zones for separate groups of people and separate purposes.

This mode of rule in Durban was accompanied by a mode of rule in the countryside that sought to progressively bring more land under white occupation while simultaneously bringing the land that remained under African occupation under the authority of the colonial state. Furthermore there was a sustained project, often driven by levying taxes, to compel African men to seek work in the colonial economy. Both of these processes were driven and sustained by state violence.

Popular white anxieties around African autonomy often took the form of racist vigilantism and pressured the state to continually work to segregate and regulate Africans. The rationality of popular African resistance was incomprehensible to white racism and was often blamed on white agitators.

The first shacks were built in Durban in the early 1880s after the final military defeat of the Zulu Kingdom and, at the same time, the movement into the city of Indian workers who had

completed their indenture in the sugar plantations. The bureaucracy put in place to regulate the movement of Africans struggled to achieve the control to which it aspired but it was sufficiently effective in its capacity to monitor and to harass to have arrested one third of the entire African population of the city by 1901. Popular white anxieties about the African and Indian presence in the city continued to mount and there was particular anxiety about the autonomous presence of African women in the city.

In 1908 the City moved to seize control of the largest source of African women's economic independence and established a Municipal beer monopoly through which it funded 'native administration'. There was considerable popular opposition to this, much of it led by the Industrial and Commercial Workers' Union (ICU). The ICU also led opposition to the national 1913 Land Act that authorised the mass enclosures of African occupied rural land and pushed an already dire rural crisis into a desperate cataclysm that is still playing itself out in the deprivation and struggles of today. Popular white demands for racial privilege were running high after the Rand Revolt of 1922 and in 1923 the national Native Urban Areas Act standardised the various developing systems of pass controls. Although it specifically sought to exclude African women from urban areas, the rate of female urbanisation continued to rise across the country. In Durban in 1929 two thousand white vigilantes and 350 police officers attacked the ICU Hall that was the centre of ongoing resistance to the Municipal beer monopoly. Six thousand African workers arrived to defend the hall and the people trapped inside it and by the end of that night eight people had been killed.

The 1934 Slums Act was described by its drafters as making "comprehensive provision for the elimination of slums." It enabled authorities to declare any dwelling with less than 3.7 m<sup>2</sup> of floor space per person, or without separate bedrooms for children of each sex, as a 'slum' after which it could be demolished. In the same year as the Slums Act was proclaimed Lamontville became the first township to be built in Durban for Africans. Durban city councillors were astonished that so many people preferred to remain in their well located shacks rather than be moved to what was then the periphery of the city. The Slums Act did succeed in freeing up land for white use and for the use of business but neither the poor nor the housing crisis were made to disappear by the demolition of dwellings designated as 'slums'.

But Lamontville was an exception to the more typical arrangements of temporary African presence in the city being dependent on job contracts. By 1937 the migrant labour system, the source of much white wealth and African poverty over the next 50 years, was in place. It sought to exclude Africans from any autonomous or permanent presence in the cities and justified this by posing an essential connection between whiteness and urban modernity and between Africanness and rural tradition. The migrant labour system ensured that rural African women, rather than white capital, carried the bulk of the burden of sustaining and reproducing the labour force.

During World War Two the demand for labour led to a greater tolerance for shack settlements in Durban but after the war there was rising popular white anxiety about the autonomous African presence in the city. Because Africans had not been allowed to buy urban land, most African shack dwellers had to rent from Indian landlords. In 1949 the pressures created by this situation were key factors in an anti-Indian pogrom.

The Group Areas Act which created racially segregated zones in cities across the country was passed in 1950 and the Prevention of Illegal Squatting Act was passed in 1951. This Act placed obligations on land owners to evict shack dwellers and created 'transit camps' to which they could be relocated.

Cato Manor, the largest shack settlement in the city had a vibrant cultural and political life and is remembered for, amongst other things, pioneering institutionalised gay marriage in South Africa. In 1958 the City began a 'slum clearance' project in Cato Manor which took the form of forced removals to racially segregated townships on the urban periphery for blacks and relocation to centrally located flats for whites. There was massive popular opposition to the evictions, much of it led by women. But the protests were put down and the evictions were largely completed by 1965. Other shack settlements in the city were also razed and their inhabitants relocated.

The apartheid state built housing on a mass scale and claimed to be delivering housing to people. However moving people from well located shacks to housing in peripheral townships left people economically worse because of the costs of commuting to work and placed particular burdens on women, leading, according to one study, to severe stress and sleep deprivation.

But the late 1970s cracks began to emerge around the spaces declared as white and Africans began to return to the city, to occupy land and to found new shack settlements. This process gathered pace after the 1976 uprising and by 1984 it was estimated that there were a million shack dwellers in Durban. The liberation movements actively supported the popular occupation of land and movement into the cities.

White capital, via the Urban Foundation, argued for the acceptance of African urbanisation and in 1987 the Durban City Council publicly accepted that the new settlements would be permanent. In 1991 the Urban Foundation and the Durban City Council began to upgrade the Kennedy Road settlement in Clare Estate.

The chapter concludes that the history of Durban is a history of racialised exclusion and subordinate inclusion and that justice will require the prioritisation of the right to the city for those to whom this has been denied. It notes that African women have historically suffered the most severe exclusion and now make up the majority of the shack dwelling population. It also concludes that history reveals clearly that the housing question is not reducible to the provision of houses. Questions of space and process are also critical. With regard to the former question it is essential to note that forced removals from a settled community in well located shacks to social isolation in peripheral houses has often been experienced as oppression. With regard to the latter question it is essential to note that while 'slum clearance' has always been presented as being in the interests of the people that it has removed from the city it is necessary to be very wary of any housing project that has to be implemented at gun point. In order to make a decisive break with the practices of apartheid future shack dwellers should be able to define their communities and their housing needs on their own terms and to plan their future development in genuine partnership with the state.

## ***Chapter 2: Housing Rights and Post-Apartheid Law***

Parts of this chapter draw on work done for the 2005 COHRE report on forced evictions in Johannesburg. But it has also been informed by academic and other research based literature as well as by a close examination of various court judgments from around the country.

The chapter begins by examining the international protection for the right to adequate housing and protection from forced evictions. There is a clear commitment to housing rights in Article 25 of the Universal Declaration of Human Rights which states that:



Everyone has the right to a standard of living adequate for the health and well-being of himself (sic) and of his family, including food, clothing, housing and medical care, a necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights of 1966 adds that:

The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his (sic) family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right recognising to this effect the essential importance of international co-operation based on free consent.

It is crucially important to note that in these provisions housing rights are not separated off from other livelihood rights such as the rights to food, clothing, medical care, social services and so on. This clear recognition of the interconnectedness of socio-economic needs means that there is a recognition that rights should not be addressed in isolation from one another as in, for example, the situation where a person's right to housing is met but because the house is poorly located it results in a decline in her rights to a livelihood, health care and so on. The General Comments on Covenant obligations take this interconnection very seriously and set minimum standards for compliance. In comment 3, adopted in 1990, a high standard is set for claims about resource constraints to be acceptable:

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.

Comment 4, adopted in 1991, sets out seven dimensions of adequacy to be taken into account when assessing efforts to give effect to the right to adequate housing. They are legal security of tenure, availability of services and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. Particular stress is laid on the right to secure tenure for people who cannot afford to buy property and, therefore, on forced evictions. Evictions are only considered to be procedurally fair if a set of detailed steps have been followed including genuine consultation, adequate notice and the provision of legal remedies (with access to legal aid where necessary).

The chapter then turns to an examination of South African housing law. Sections 26 (1) and (2) of the South African Constitution state 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.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (no. 19 of 1998), known as the PIE Act, was enacted to give legislative support to section 26 of the Constitution. It replaced the Prevention of Illegal Squatting Act on 1951. The PIE Act applies to everyone who

occupies land without ‘the express or tacit consent of the owner or the person in charge’ (Section 1). This includes people who occupied land lawfully at some point in the past but who no longer have the consent of the owner to occupy the land in question, as well as to people who took occupation of land unlawfully in the first place. 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. 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.

Where municipalities have brought applications under the PIE Act to evict shack dwellers, they have usually been required to show that they have a rational plan to re-accommodate the people in question. Eviction orders have generally been granted when such plans can be demonstrated and have usually been denied when such plans can not be demonstrated.

There have been a number of very significant court judgements with regard to housing rights in general and forced evictions in particular. The best known is the 1999 Grootboom case in which a group of shack dwellers who were left homeless after being evicted from the land that they were occupying approached the Cape High Court for relief. The court ordered the state to provide immediate emergency relief in the form of tents, with portable latrines and a regular supply of water. In the 2003 Rudolf case, also heard by the Cape High Court, the City of Cape Town sought to evict a group of people who had occupied a park and erected shacks. The Court dismissed the municipality’s eviction application on the grounds that the squatters were entitled to protection from eviction under the PIE Act. In another important case the Port Elizabeth Municipality appealed to the Constitutional Court in 2004 specifically asking that it be recognized that it is not constitutionally bound to provide alternative accommodation or land when it seeks the eviction of unlawful occupiers. The Constitutional Court found against the Municipality and reaffirmed the principle that “a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only an interim measure pending ultimate access to housing in the formal housing programme.” The 2005 Modderklip decision by the constitutional court introduced another innovation into the jurisprudence when the court ruled that when unlawful occupiers are evicted from privately owned land the state is still responsible for providing the alternative accommodation. The 2007 Moreleta decision introduced a further significant innovation when the Court ordered the police in Pretoria to rebuild shacks that they had demolished without a court order. When they failed to comply with the order a warrant of arrest was issued for the minister of police.

The chapter notes that while the courts have consistently affirmed housing rights it is often very difficult for very poor communities to access competent and committed legal support. Moreover during the chaos of an eviction this problem becomes even more acute.

The chapter concludes by noting that both the national and the KwaZulu-Natal provincial government have made clear attempts to roll back the legal protection for housing rights. The national government has proposed an amendment to the PIE Act that would seriously reverse protection currently offered to shack dwellers. For instance the amendment would mean that the PIE Act would no longer apply to an occupier who is a lease or bond defaulter or who occupies land in terms “of any other agreement”. There is a real danger that there are

circumstances in which this provision could be interpreted as excluding shack dwellers from the protection of Section 26 (3) the Constitution via the PIE Act. For instance back yard shack dwellers invariably have informal agreements with landlords and it is not uncommon for shack settlements to forge some kind of, often informal, collective arrangements with land owners. Moreover a high proportion of people living in shack settlements do so as tenants who pay rent to other shack dwellers and this dangerously broad formulation could conceivably result in attempts to exclude this extremely vulnerable group of people from constitutional protection. Moreover the Bill creates new criminal offences that could very easily be used to criminalise shack dweller's organisations. Given the often unlawful and violent state repression which shack dwellers' organisations are currently facing this is a matter of profound concern.

The KwaZulu-Natal Provincial Government passed the Prevention and Re-emergence of Slums Act in 2007. Academics have noted strong similarities with 1951 Prevention of Illegal Squatting Act. The Act aims to 'eliminate slums' in KwaZulu-Natal by 2014. It proposes to do this by criminalizing the occupation of land without permission from the landowner and exerting statutory force to compel landowners and municipalities to seek evictions. It enables municipalities to set up 'transit camps' for people evicted from their homes. It does say that these evictions should be undertaken in terms of PIE. It also criminalizes all attempts to stop evictions. COHRE has issued a statement that described the Slums Act as a 'regressive and highly dangerous piece of legislation' and has written to the provincial premier to express 'deep concern' about the fact that the Act is likely to be in conflict with international law.

### ***Chapter 3: Housing Policy After Apartheid***

The chapter is based on an extensive review of the academic and other researched based literature as well as an analysis of policy documents and in depth and focus group interviews in various relocation sites in Durban.

The chapter begins with a brief analysis of the international policy context. It is argued that there are four broad policy choices available to governments with regard to shack settlements: simple demolition, relocation to an alternative informal site, relocation to a semi-formal site or to formal housing, and legalisation and integration via some form of *in-situ* upgrade.

There is a clear international consensus that simple destruction, often referred to as forced eviction, is a fundamental violation of international law and human rights. Relocation from one site to another is considered as acceptable when there is an urgent need for the relocation and when the new site is suitable for the residents and there has been genuine and respectful consultation about the process. But when there has not been consultation and the new site is disadvantageous to the residents it is usually considered as a forced removal and as a violation of human rights and international law. Voluntary relocation to improved sites (with formal services and/or housing) and upgrades of settlements is, however, considered to be in line with international law and human rights.

From the passing of the Public Health Act in England in 1848 until the late 1970s there was a strong tendency by global policy making elites to pathologise shack settlements as places inhabited by people who were socially backward and dangerous to the health and political stability of the rest of society. In other words the problem was understood to be shack dwellers, and their self built homes and communities, rather than the conditions that had made building and living in shack settlements their best option. Many countries sought to 'eradicate' or 'clear' slums. For example the military dictatorship that took power in Brazil in a *coup* aimed at full-scale 'slum eradication' and insisted that there would be 'no more people living in slums in Rio de

Janeiro by 1976'. The Brazilian system took the form of peripheral housing developments financed by loans. In 1978 Chile, also after a military *coup*, embarked on a massive slum clearance programme, this time financed by one off subsidies. The United Nations approved the Brazilian 'slum clearance' programme at the time and the World Bank used the Chilean programme as the basis for its standard model. Both are now recognised as failures. This is not only because there are still shack settlements in these countries. It is also because people removed from well located shack settlements to peripheral resettlement sites suffered major set backs in their well being.

The recognition of the failure of most resettlement programmes led to a rethink in elite planning institutions. By the 1980s they tended to recommend that while shack settlements should not be seen as a solution for housing the poor that abrogates the responsibilities of society as a whole they should, nevertheless, be understood as a solution, imperfect but better than other immediately available options, that the poor had generated for themselves within the context of radically unequal societies. In the absence of a fundamentally transformative social project away from massive inequality it was strongly argued that the way forward was to give squatters tenure security as a first step, and to then support upgrading processes as a second step, beginning with the supply of life saving services such as water, sanitation and electricity.

The word 'slum' had a strong currency amongst global policy makers from 1848 to the late 1970s when, as part of the broader shift towards recognising the functionality of shack settlements, they were more usually called informal settlements. In recent years the term 'slum' has returned to the language of global policy making. This is often traced back to the Habitat 2 meeting in Vancouver 1999 at which the Cities Alliance was formed by UN Habitat and the World Bank and from which the Cities Alliance developed a 'Cities Without Slums' campaign. The Cities Alliance provide six criteria for the definition of a 'slum' the presence of any one of which results in an area being designated as a 'slum'. They are a lack of basic services, inadequate building structures, overcrowding, unhealthy and hazardous conditions, insecure tenure and poverty and exclusion.

Target 11 of the Millennium Development Goals is to 'have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the *Cities Without Slums* initiative.' The target would be considered to have been achieved once 100 million 'slum dwellers' have received an improvement in relation to any one of the six criteria used to define a 'slum'.

So, for instance, if water and sanitation are provided but tenure is not secured, the target would be considered to have been achieved. According to UN statistics, 100 million 'slum dwellers' represent no more than 10% of the world's population current living in 'slums', and the global 'slum' population is expected to double to 2 billion people by 2030, making this a very modest target. This is especially so given that the UN estimates that two out of five of Africa's slum dwellers are estimated to be living under life-threatening conditions.

However the choice of 'Cities Without Slums' as the slogan for the Cities Alliance's project to create secure tenure for shack dwellers has been widely misunderstood as indicating that 'slum eradication' is a Millennium Development Goal. It has been presented in this way by politicians and in the media to the point where this misunderstanding has considerable popular currency. In fact reducing the tenure security of shack dwellers in the name of 'slum clearance' would create more 'slums' as tenure insecurity is one of the definitions of a 'slum'.

Contrary to this misunderstanding, support based interventions enabling governments to upgrade settlements where they are in partnership with credible community representation remains the high water mark of international policy. However many argue, from both the left and the

right, that this does not go far enough. It is often argued that until urban land is decommodified to at least some extent the poor will continue to face systematic exclusion.

In South Africa the post-apartheid government immediately committed itself to building 1 million houses in 5 years and made use of a capital subsidy system to finance this. More than 2 million houses were built on this basis between 1994 and 2007. However it has been widely noted that both the quality and location of these developments has often been very poor. Moreover there have been high levels of corruption and party political interference in the allocation of houses and building contracts.

Studies of the relocation sites reveal that people are generally very pleased to have received indoor sanitation and water. Electricity has been less of a boon because people often can't afford to pay for it. But the studies also reveal that people are often unhappy with the quality of the houses and that, when they are peripherally located, people have often become significantly poorer after relocation. Moreover the houses are very small, often just one room, resulting in considerable overcrowding that leads to high levels of psychological stress. By only providing adequate services in the relocation sites people have often been forced to choose between staying in a good location without services and accepting relocation to a peripheral site with services. There is nothing inevitable about this choice – it is perfectly possible to provide services to shack settlements. In fact this was pioneered in the Kennedy Road settlement in Durban in the early 1990s

The Breaking New Ground (BNG) policy was published in 2004 and adopted in 2005 as a response to the problems with the existing system. BNG advocated concrete steps to avoid the replication of apartheid segregation. It also recommended upgrades where ever possible and sought to democratise planning with a view to include communities in planning their development via locally constructed deals with community organisations. However despite the progressive content of BNG many of the speeches introducing the new policy tended to focus on 'eliminating shack settlements' or even 'waging war on shacks' thus creating a very different popular understanding of the policy. Indeed a number of official documents concerned with implementing the policy specifically make reference to using the police and intelligence agencies to ensure that shacks are eliminated.

There is a basic contradiction between BNG, with its focus on the holistic and consultative process based on development of housing as a form of support for communities, and 'slum eradication' measures. BNG takes inadequate housing as the fundamental problem and seeks to take action to develop more adequate housing. However 'slum eradication' takes shack settlements as the fundamental problem and seeks to get rid of them. The contradiction inheres in the fact that, in the absence of other viable options, shacks are the most adequate housing currently available to millions of people. In some circumstances they are more adequate housing options than small, poorly constructed houses in peripheral relocation housing projects. For many people shacks are the only option for accessing the city or for setting up an independent household in the city. Using coercive policing and security strategies to forcibly eradicate shacks will inevitably result in the housing conditions of millions of people being radically worsened. The only way to get rid of shacks without doing major damage to the well being of millions of people is to develop better alternatives in terms of cost, location, services and the quality of the structures. It is clear that much of the escalation in slum eradication rhetoric is linked to the 2010 World Cup.

#### ***Chapter 4: Slum Clearance in Durban***

This chapter examines the City's Slum Clearance Programme. It is based on a review of all the available academic and other research based literature, Municipal documents and statements in the public domain, press coverage, and interviews with Municipal officials, other housing professionals, shack dwellers and residents in relocation sites as well as visits to shack settlements and relocation sites and direct observations of evictions and the Municipal response to shack fires.

The City adopted its Slum Clearance Programme in 2001. It aims to eradicate shacks by building houses and taking coercive steps to prevent new shacks from being erected and new settlements from being created. The City has done relatively well in terms of its ability to build houses at speed and at scale. However the discourse of 'slum eradication' has created the impression that all settlements are now temporary. This is not the case and there is no chance that any of the various current deadlines for eradicating shacks or 'slums' will be met. One deleterious consequence of this is that the idea that all settlements are now temporary has resulted in a failure to provide basic life saving services to the settlements.

The conditions in shack settlements are consequently appalling. The City stopped electrifying shacks in 2001 and the failure to electrify is a direct cause of the regular and often fatal shack fires. The lack of adequate sanitation and refuse removal are also critical issues that result in potential fatal health risks. Some people have lived in shack settlements for 30 years and, at current rates of housing delivery, could easily spend another 30 years there and so arguments about settlements being temporary hardly justify the shocking conditions. In fact in some instances services are being scaled back or removed altogether.

Assessments of the City's housing developments sites differ according to their location and people's circumstances. While complaints about the quality of the houses are more or less universal young couples are often happy with the size of the one room houses. However multi-generational families are often extremely stressed about the size of the houses. In most of the relocation sites most people were very unhappy about the distance from work, schools and shops. In many instances people have had to leave work or school because transport costs were unaffordable. But it should be noted that the problem of distance is not experienced as a serious problem by people with better jobs (such as unionised factory work).

The Slums Eradication discourse that focuses on eradicating shacks needs to be replaced with a housing rights discourse that focuses on supporting people to obtain the best possible housing available to them. It needs to be recognised that in the absence of other alternatives shacks will continue to be the most adequate available housing for many people and that coercive attempts to eradicate shacks will only make people worse off.

#### ***Chapter 5: Forced Evictions & Other Housing Rights Violations***

The eThekweni Municipality routinely evicts shack dwellers without an order of the court. These evictions are illegal and in fact criminal. They take three forms. The first is the demolition of new structures by the Land Invasions Unit. The City claims that it must demolish all new structures in order to be able to plan effectively with a view to providing houses to the occupants of existing shacks. It is often asserted that people erecting new structures are trying to 'jump the queue'. However there is no legal basis for these demolitions and when shack dwellers have been able to challenge them in the courts they have always won. The ban on the erection of new structures is

creating terrible multi-generational over crowding in existing structures and reducing the options of women seeking to escape domestic violence.

The second type of unlawful eviction is when people are left homeless during relocations. When a settlement is demolished as its residents are moved to a relocation site there is always a group of people who are not on the housing list and are left homeless. People may not be on the list because they are not eligible for a house, because they are tenants rather than owners, because they have not been able to pay a bribe to get on the list or because local elites see them as a political threat. Some estimate the percentage of people left homeless in the average relocation to be at least 25%. If this is accurate as many 200 000 people in greater Durban may be at risk from being made homeless in this way. In general it is the poorest people who are made homeless during relocations. This form of eviction is also illegal and in fact criminal.

The third type of eviction occurs when people are forced to accept relocation against their will. The Municipality claims that it does not compel people to accept relocation against their will. However, when this has been challenged in court the City has not been able to provide evidence of a willingness to relocate. Many shack dwellers and residents in relocation sites told COHRE that they have been forced to accept relocation as a result of threats of having their home demolished, of having services removed from the settlement and of being removed from the housing list. It was also common for people to report that they had reluctantly accepted relocation to escape the fires that plague that shack settlements due to the failure of the City to provide fire prevention measures. When people are forced to accept relocation with these kinds of threats, or under these kinds of circumstances, then the relocation is a forced eviction.

Allegations of corruption and party political interference in the compiling of housing lists and the allocation of housing are rampant. These allegations are often very detailed and, in so far as they pertain to simple corruption, most often name a particular former official in the City's Housing Department.

There are also vigorous claims, some backed up with credible independent eye witness accounts, that shack dwellers' organisations are being subject to illegal and violent police repression.

### ***Key Recommendations***

The most important recommendations made by this report are as follows:

#### *A General Paradigm Shift*

- There needs to be a general paradigm shift away from a security and control orientated view of shack settlements that is focussed on eradicating shacks towards a pro-poor view focussed on securing the strongest possible housing rights for as many people as possible. A pro poor and rights based view would be committed to ongoing negotiations with dweller organisations with a view to, in this order, ensuring tenure security, providing services and achieving *in-situ* upgrades where ever possible.

#### *National Government*

- The Slums Eradication discourses needs to be replaced with a housing rights discourse
- The 2004 Breaking New Ground Policy needs to be implemented
- All provinces and cities should be mandated to achieve tenure security for as many people as possible, to provide services to all shack settlements, including those not

suitable for *in situ* upgrades and to upgrade settlements *in situ* and in partnership with dweller organisations where every possible. Where this is not possible relocations should be negotiated and should be to sites as close to the original settlement as is possible.

- The national government needs to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) and to sign and ratify the International Convention on the Protection and Rights of Migrant Workers and Members of their Families (CMW).
- Provinces need to be prevented from passing 'slums eradication' legislation and instead be required to ensure that all their legislation fits with the constitution.
- The South African Police Services and the National Prosecuting Authority need to be instructed to arrest and prosecute Municipal officials and private landowners who give orders for illegal evictions and the illegal repression of shack dwellers' organisations (such as the unlawful banning of marches, violent police attacks on peaceful and lawful protest etc.)
- There needs to be independent and credible investigation into allegations of torture and other violations of basic rights levelled by shack dwellers against the Sydenham Police station in Durban and, also, into the various allegations of intimidation and other unlawful activities by businessman Ricky Govender in Motala Heights.
- There needs to be a publicly stated commitment to an 'evictions free world cup' and South Africa should be declared an 'evictions free zone'.

#### *Provincial Government*

- The KwaZulu-Natal Slums Act, currently under appeal in the High Court, needs to be repealed or significantly modified.
- The Breaking New Ground Policy needs to be implemented at provincial level
- Municipalities must be instructed to follow the law and to cease unlawful and criminal activities such as evictions carried out without an order of the court.

#### *eThekweni Municipality*

- The Municipality needs to plan for the natural growth of settlements. This must include allowing and planning for family growth and family reunification.
- Housing needs to be provided in better locations and at much higher rates of density. Subsidised transport needs to be urgently provided for people who have already been relocated to peripheral relocation sites.
- The Municipality must abide by the law and must immediately cease to evict people without an order of the court. Some form of reparations needs to be considered for people who have already been subject to unlawful forced evictions. This could include immediate access to well located land with tenure security, priority on housing lists and financial compensation.
- The eThekweni Municipality needs to provide life saving basic services to shack settlements as a matter of urgency including adequate water, sanitation and electricity and other fire prevention initiatives.
- The eThekweni Municipality's response to shack fires needs to be radically improved.
- An independent ombudsperson needs to be employed and tasked with investigating claims of corruption and party political interference with regard to housing lists and claims of improper and unlawful actions with regard to the implementation of housing policy.
- In the future no one should be considered to have consented to relocation if they have



not signed a statement giving such consent. Furthermore, given that in some other cities people have claimed that they have been forced to sign such statements under duress, including under the threat of being denied their social grants, shack dwellers organisations should be able to invite civil society or legal representatives of their choosing to be present during all negotiations and when documents are signed.

- In the future all relocation and evictions must be publicly announced in good time and at least 3 months in advance. Senior municipal officials, independent civil society observers, shack dwellers' legal representatives and the media must be invited to be present at all relocations and evictions.
- The Municipality needs to become more transparent and to put all of its plans and policies in the public domain including its housing lists, its plans for each settlement and the full details of all the undeveloped land that it owns.
- Where communities are represented by democratic and credible organisations the Municipality needs to negotiate directly with these organisations rather than ward councillors.
- All consultants on geotechnical and environmental issues should report to committees set up in partnership between the Municipality and local shack dwellers organisations. All reports should be made public and there should be a period in which there can be public comment before they are accepted. Shack dwellers' organisations should be able to request that their own experts assess all such reports.
- The eThekweni Municipality needs to conduct an investigation into the activities of Ricky Govender and the general situation in Motala Heights.
- The often violent police repression and harassment of Abahlali baseMjondolo, the largest shack dwellers' organisation in Durban, needs to cease immediately. There needs to be a thorough and credible independent investigation into all the complaints made against the police by Abahlali baseMjondolo and various independent eyewitnesses such as church leaders, journalists, academics and so on .
- The Breaking New Ground Policy needs to be implemented at Municipal level.
- There needs to be a paradigm shift away from seeing government's primary task as achieving slum clearance to seeing government's primary task as supporting housing rights.

### *Civil Society*

- There needs to be stronger collaboration between human rights and basic needs/housing-oriented civil society groupings in order to support the development of a common agenda on housing rights for shack dwellers.
- Support for poor people, community organisations and social movements to access committed top level legal support on a sustained basis needs to be radically stepped up.
- Civil society needs to organise to create more public platforms for shack dwellers to express their views about housing policy and practice in Durban.
- A clear and public stand needs to be taken against both unlawful evictions and the unlawful and often violent repression of popular organisations contesting evictions.
- Education campaigns need to be undertaken to make society in general (including police officers, journalists, government officials, shack dwellers etc) fully aware of the legal protection for unlawful occupiers.
- Links need to be forged with civil society organisations concerned with housing rights in countries like Brazil, India, the Philippines, etc.
- It is imperative for civil society organisations to complement critique and resistance with

participation in the development of viable, creative alternatives.

## Introduction

COHRE is an international housing rights organisation based in Geneva. The purpose of COHRE reports into housing rights in cities is, firstly, to establish a clear understanding of what is happening with regard to housing rights and then, secondly, to propose positive recommendations to improve the situation. In South Africa COHRE has already produced reports on Johannesburg (2005)<sup>1</sup> and Pietermaritzburg (2007)<sup>2</sup> and will be investigating the currently very tense situation in Cape Town during 2008. In view of the clear evidence that, around the world, ‘mega-events’ tend to result in forced evictions and the exclusion of the poor from city centres,<sup>3</sup> COHRE will also monitor the impact of the 2010 FIFA World Cup on Housing Rights in South Africa. As with all COHRE reports it is hoped that this report will generate a wider understanding of the key issues and encourage an open, positive and solution centred public discussion.

In 1999 and again in 2001 the eThekweni Municipality, which governs the greater Durban area, won the Impumelelo Innovation Award for its public housing programme. However since 2005 there has been considerable public protest against the Municipality by shack dwellers’ organisations, some of which has been reported internationally. The attention COHRE was initially drawn to the recognition for the Municipality’s housing programme and then, later, to the extensive protests against the way the programme was being implemented. In 2006 a decision was taken to investigate housing rights with particular regard to shack dwellers in the eThekweni Municipality. This report is the result.<sup>4</sup> The research was mainly conducted during 2007 but follow up work was, where necessary, continued into early 2008. A first draft was carefully reviewed by a panel of South African and international experts in late 2007 and early 2008<sup>5</sup> and the report went through the hands of three expert editors.

COHRE is pleased to note that there have been some encouraging signs of progress since the research for this report was completed in early 2008. In particular there has been a clear decline in claims of state harassment against shack dwellers’ organisations and COHRE has also been pleased to note that the City and Abahlali baseMjondolo have entered into negotiations. However unlawful forced evictions continue and follow up visit have revealed that there has not been any material improvement in the circumstances of any of the settlements that COHRE visited while researching this report. Regular shack fires continue to be a particularly acute crisis that requires comprehensive and urgent intervention.

The United Nations estimates that a billion people currently live in shacks world wide, and speculates that this number may double by 2030.<sup>6</sup> However, multi-national responses to the global housing crisis remain modest. For example, the Millennium Development Goals, endorsed

---

<sup>1</sup> COHRE “*Any Room for the Poor?*” *Forced Evictions in Johannesburg, South Africa* (2005) [http://www.cohre.org/store/attachments/COHRE%20Johannesburg%20FFM\\_high%20res.pdf](http://www.cohre.org/store/attachments/COHRE%20Johannesburg%20FFM_high%20res.pdf)

<sup>2</sup> COHRE *Pushed to the Periphery* (2007) [http://www.cohre.org/store/attachments/Pushed\\_tothe\\_Periphery\\_14May07.pdf](http://www.cohre.org/store/attachments/Pushed_tothe_Periphery_14May07.pdf)

<sup>3</sup> COHRE *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (2007) [http://www.cohre.org/view\\_page.php?page\\_id=123#i785](http://www.cohre.org/view_page.php?page_id=123#i785)

<sup>4</sup> The COHRE Durban mission was coordinated by Jean du Plessis. Primary author: Richard Pithouse. Research support: Glen Robbins and Xolani Tsalong. Editorial assistance: John Aitchison, Julian Brown and Mark Butler. COHRE extends grateful thanks to the many people who made time to be interviewed for this report. Special thanks are also due to Marie Huchzermeyer for advice on questions relating to policy, to Stuart Wilson for advice on legal issues, and to Mahendra Chetty for making available the Legal Resource Centre’s voluminous documents relating to forced evictions in Durban and for making time to discuss them all.

<sup>5</sup> Grateful thanks to the review panel that reviewed this report, in particular Mark Butler, Jean du Plessis, Nigel Gibson, Marie Huchzermeyer, David Ntseng, Raj Patel, and Xolani Tsalong.

<sup>6</sup> Mike Davis, *Planet of Slums*. (Verso: London, 2006)

in 2000, aim only to “have achieved a significant improvement in the lives of at least 100 million slum dwellers” by 2020.<sup>7</sup>

Nevertheless, housing rights are currently a key global issue and, in many countries, housing is a major source of social conflict. This is as true in many cities in the minority of wealthy countries as it is in cities in the majority of the world. From Paris<sup>8</sup> to Bombay<sup>9</sup> and Haiti<sup>10</sup> the questions of housing and social inclusion have become absolutely central to national debates.

While there are cities that have produced genuine and effective innovation in response to the global housing crisis, with Naga City in the Philippines being perhaps the most commonly cited contemporary example,<sup>11</sup> in many countries, with Harare in Zimbabwe being perhaps the most notorious one,<sup>12</sup> states are responding by effectively criminalising the poor and their self-developed solutions to the housing crisis.<sup>13</sup> The tendency to present both people and social arrangements that expose the failure of a system as threats to society - despite the urgent imperative to recognise that the system is flawed - is not new.<sup>14</sup> There is also nothing new in the tendency to present ‘the slum’ as a threat to the social order that should be repressed rather than recognised as an indication of systemic failure that requires urgent support while the system is being reformed. The return to these ideas, however, is a return to ideas that were thoroughly discredited thirty years ago, even amongst elite planners and institutions, in theory and in practice. Janice Perlman’s path breaking 1976 study of Rio de Janeiro, found that:

The evidence strongly indicates that favelados [shack dwellers]...are not economically marginal, but are exploited and repressed; that they are not culturally marginal, but are stigmatized and excluded from a closed social system...Favela [shack settlement] removal is perversely creating the marginalized population that it was designed to eliminate. After removal...the favelados found themselves literally cast out of the city – rejected and punished for being poor, and geographically isolated from the myriad opportunities of urban life that had initially attracted them.<sup>15</sup>

It is now internationally acknowledged that one of the most common mistakes in urban planning with regard to shack settlements is the failure to take into account the experience, intelligence and innovation of shack dwellers. This understanding is most advanced in countries and cities where, often after bitter struggles against top down planning, some measure of genuinely participatory planning has been achieved. Brazil is one country where some municipalities have made important progress in this regard, and Brazilian academic Marcelo Lopes de Souza argues that

---

<sup>7</sup> United Nations Millennium Declaration. Resolution adopted by the General Assembly, 18 September.) New York: United Nations, 2000)

<sup>8</sup> Colin Falconer, ‘Why Did the Banlieues Burn?’ *Radical Philosophy*, Vol. 136. (March/April 2006)

<sup>9</sup> *Forced Evictions: Violations of Human Rights, 2003 -2006*, COHRE (2006)  
[http://www.cohre.org/store/attachments/Global\\_Survey\\_10.pdf](http://www.cohre.org/store/attachments/Global_Survey_10.pdf)

<sup>10</sup> See Peter Hallward, *Damming the Flood*. (Verso: London, 2007)

<sup>11</sup> See *Housing Rights Award 2007*, COHRE  
<http://www.cohre.org/2007Awards>

<sup>12</sup> See *Operation Murambatsvina: A Crime Against Humanity*, COHRE and Zimbabwean Lawyers for Human Rights (2007)  
<http://www.cohre.org/store/attachments/Operation%20Murambatsvina%20CAH%20Report%20-%20Final%20Web.pdf>

<sup>13</sup> See Raúl Zibechi, *The Militarization of the World’s Urban Peripheries*, Americas Program Special Report. (2007)  
<http://americas.irc-online.org/am/4954>

<sup>14</sup> See, for instance, the chapter on development in Lewis Gordon’s *Disciplinary Decadence*. (Paradigm Publishers: Boulder, 2006)

<sup>15</sup> Janice Perlman, *The Myth of Marginality: Urban Poverty & Politics in Rio de Janeiro*. (University of California Press: Berkeley, 1976) p. v195.

though even “progressive professional planners and planning theoreticians usually share with their conservative counterparts the (tacit) assumption that the state apparatus is the sole urban planning agent” the poor are not fated to “only criticize (as a ‘victim’ of) state-led planning, but can also directly and (pro)actively conceive and, to some extent implement solutions independently of the state apparatus. These solutions often deserve to be understood as ‘(grassroots) urban planning’.”<sup>16</sup>

If there is one broader lesson that emerges from COHRE’s intense engagement with housing rights around the world, it is that good laws and good policies will not produce good outcomes if there is no genuine commitment to open and respectful engagement between elite and grassroots planners.

International assessments of the broader housing right situation in South Africa are mixed. It is generally agreed that there are clear and important achievements - but there are also points of serious concern.

The law in South Africa is strongly orientated towards housing rights, and the higher courts are developing a very progressive set of commitments to housing rights that is widely admired internationally. Organisations of the poor have often had great success when appealing to the courts for protection. However, research invariably notes that it remains extremely difficult for most poor people’s organisations to access the courts, and that the commitment of the state to the rule of law is uneven.<sup>17</sup>

Formal policy positions, especially since the adoption of the widely welcomed policy document “*Breaking New Ground*” *Comprehensive plan for housing delivery* in 2004, are largely designed to support housing rights,<sup>18</sup> and have received a considerable degree of international support. However, practical commitment to these policies appears to be uneven and there has been, especially since 2004, an increase in the use of a security driven discourse that is directly at odds with the rights based approach of the *Breaking New Ground* policy.<sup>19</sup>

Almost two million low cost houses (also known as RDP - Reconstruction and Development Programme - houses) have been built since the end of apartheid, and this is widely recognised as a significant achievement. However, the rate of building has never reached levels high enough to begin to resolve the housing crisis in the country and has been in decline since 2004. It is often argued that the portion of the national budget dedicated to housing is far too low<sup>20</sup> and that capacity in the Municipalities is uneven, with many being unable to spend the money allocated to them effectively. Moreover it has often been argued that new houses have generally been of very poor quality, are too small for family life, and have often been built in peripheral locations that are not viable for poor people and that entrench the spatial logic of apartheid. It has been widely argued that the democratically elected government has largely continued the apartheid strategy of building peripheral townships.<sup>21</sup>

---

<sup>16</sup> Marcelo Lopes de Souza, ‘Together with the state, despite the state, against the state: Social movements as ‘critical urban planning’ agents,’ *City*, Vol. 10, No. 3. (December 2006) p. 327.

<sup>17</sup> See Marie Huchzermeyer, *The Struggle for In Situ Upgrading of Informal Settlements - Case Studies from Gauteng*, Paper presented at the Southern African Housing Foundation Conference & Exhibition, Cape Sun. (9-11 October 2006)

<sup>18</sup> See Huchzermeyer *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil*.

<sup>19</sup> Ibid.

<sup>20</sup> See Imraan Buccus, ‘Everyone needs a stake in our society’, *The Mercury*. (5 March 2008) <http://www.themercury.co.za/index.php?fArticleId=4287402>

<sup>21</sup> See Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil*. (2004)

Across the country, the poor have responded to the housing crisis by developing their own housing solutions and, increasingly, by public protest and appeals to the courts. Popular responses to the housing crisis include multi-generational occupation of formal housing, subletting of formal housing, building back yard shacks in established formal housing projects, turning former office blocks into flats in city centres largely vacated by business flight to the suburbs, and founding and expanding shack settlements. While these solutions are all profoundly imperfect, it is clear that people will, as they do around the world, continue to choose them in the absence of alternatives. There have been a number of instances in which state responses to popular responses to the housing crisis have been unlawful and unacceptably authoritarian.<sup>22</sup> This tendency is well illustrated in this report.

This report itself consists of five chapters. The first chapter provides a brief outline of the history of shacks, shack dwellers and housing policy in colonial and apartheid Durban. The second chapter gives an overview of the law as it currently stands in the statute books and as it is currently being developed through jurisprudence. The third chapter explains post-apartheid housing policy. The fourth chapter takes a detailed look at housing policy and practice in contemporary Durban and the final chapter looks at forced evictions in contemporary Durban and the likely impact of the 2010 Football World Cup on the situation. The report ends with a short conclusion and a list of recommendations.

---

<sup>22</sup> See, for instance, Martin Legassick *Background to the Delft Evictions: Thoughts provoked by being interviewed by Keketso Sechane, Heart 104.9 radio, 19/2/2008* <http://westerncapeantieviction.wordpress.com/2008/02/19/background-to-delft-evictions/>

# Chapter 1: Shack Settlements in Colonial and Apartheid Durban (1824 – 1994)

## Introduction

This chapter provides an outline of the history that needs to be understood in order to develop a nuanced understanding of the housing crisis in contemporary eThekweni, the metropolitan area of Durban. A few key themes emerge in this overview of the history of shacks in the city. Perhaps the most central are the ongoing struggle of the black poor to win a place in the city, close to work and other sources of support and opportunity, and the clash between grassroots and government urban planning. It is striking that when city planners did concede the right of the black poor to choose to live urban rather than rural lives, they most often sought to reduce the right to the city to a right to housing. This resulted in the expulsion of people from the autonomous occupation of land close to the city centre to strictly regulated and bleak townships on its periphery.

## Natal Colonial Administration (1853 – 1910)

### *Colonial town planning*

In 1824 a colonial trading post, Port Natal, was established in the area between the Umbilo and Umgeni rivers. The settlement was formally laid out and named Durban in 1835. In 1853 the British colonial administration awarded the small settlement a municipal government. The Municipality soon developed a town planning capacity based on the British model that had been developed for London. This model was formed by the Public Health Act of 1848, legislation promoted by Edwin Chadwick.<sup>23</sup> Chadwick argued for expert rather than democratic control over local government. He had also pushed for the creation of the 1834 Poor Law that established the institution of the workhouse.<sup>24</sup>

Mandisa Mbali has argued that the chief motivation for the 1848 Public Health Act was a fear amongst the elite that “the poor condition of the vast tightly packed and physically smelling slums of London were breeding revolt.”<sup>25</sup> The fear of the poor had become distinctly ‘racialised’ as people living in what came to be called ‘slums’ were seen as having reverted to ‘savagery’. The Victorian journalist Henry Mayhew referred to the London ‘slums’ as a ‘*terra incognita*’ (unknown land), a ‘dark netherworld’ inhabited by “a savage or heathen race right in our very midst.”<sup>26</sup> When British planning was extended to the colonies in Asia and Africa, its impetus “was explicitly both race and hygiene related. From the beginning, [colonial] urban planning and building control in Africa were inseparable not only from colonial capitalism but from racial segregation.”<sup>27</sup>

Boer trekkers arrived at Durban in 1837 from the Cape and, after a number of battles with the Zulu Kingdom, proclaimed the Boer Republic of Natalia in 1839. It occupied the area south of

---

<sup>23</sup> Edwin Chadwick *The Sanitary Condition of the Labouring Population* (1842)  
<http://www.victorianweb.org/history/chadwick2.html>

<sup>24</sup> Mandisa Mbali, “A Bit of Soap and Water and Some Jik’ Historical and Feminist Critiques of an Exclusively Individualising understanding of Cholera Prevention in Discourse Around Neo-liberal Water Policy’, *Policy Paper Presented to the Municipal Services Project Conference* (May 2002)  
<http://www.queensu.ca/msp/pages/Conferences/Services/Mbali.htm>

<sup>25</sup> *Ibid.*, p. 2.

<sup>26</sup> Anthony Wohl, *Endangered Lives: Public Health in Victorian Britain* (Harvard University Press: Boston, 1983)

<sup>27</sup> C. Meyers, cited in Susanna Godehart, ‘The Transformation of Townships in South Africa: The Case of kwaMashu Durban’ *Spring Research Series* No. 49 (2006) p. 47.

the Tugela and Buffalo rivers, and proclaimed Pietermaritzburg as its capital. In 1843 it was annexed by the British and became a British colony.

From the early 1840s Africans in Natal were suffering from a severe land shortage, and between 1846 and 1847 the colonial administration set aside seven segregated areas for African occupation. According to Keletso Atkins, these were intended to have three functions: “They would be mechanisms for dividing and controlling the black population to minimize the possibility of hostile combinations forming against the white inhabitants, they would free up Crown land in order to make it available for future settlement, and they would ensure a steady supply of migrant labour for the settler community.”<sup>28</sup> Atkins has also pointed out that it was well known at the time that these ‘locations’ were chosen from amongst the worst and most barren parts of the region.<sup>29</sup> Two of these ‘locations’ now form part of the eThekweni Municipality – Inanda and Umlazi. In 1848 the introduction of *isibhalo* - a tax that in practice required engaging in a period of obligatory labour - forced those unmarried men who were resident in these ‘locations’ and who did not possess a pre-existing employment contract with a white employer to work for the colonial state or on sugar estates.<sup>30</sup> As squatting became a popular tactic both to gain access to arable land and to avoid taxes, the colonial state responded with Ordinance 2 of 1855, giving magistrates the power to remove African trespassers from public and private lands.<sup>31</sup>

African workers in Durban often worked on the *togt* system – a system in which workers only contracted to sell their labour for a single task or a single day. This produced tremendous white anxiety about the relative autonomy of African workers. This anxiety resulted in a situation where “for a span of over sixty-five years, [white] town dwellers and civil officials conducted vigorous campaigns to rid the boroughs of the *togt* menace.”<sup>32</sup> The *amaWasha* (laundrymen organised into a guild) were a particular target of these attacks, but were able to defend their autonomy. In 1859 an agent of the sugar industry ascribed their political restlessness to “some evil disposed white man,”<sup>33</sup> evoking a trope that would prove to have a long life. Many *amaWasha* later moved to Johannesburg to work in the mining towns, and were there able to earn enough money to avoid being separated from their lands.<sup>34</sup>

#### *The sugar industry*

Sugarcane plants were brought to Durban from Mauritius and an experimental farm was set up on land that later became the Botanic Gardens and the Greyville Race course. It was soon concluded that Natal could follow the Caribbean, and become a major sugar producer in the colonial economy. Vast amounts of land were appropriated for the sugar industry: To this day Moreland, a company formed by the consolidation of the colonial plantations, remains the largest land owner in the city. But finding people to work the land was difficult as the majority of the indigenous population still lived outside of the wage economy. Confronted with the daunting military strength of the Zulu Kingdom, the Empire’s initial solution was to import labour. In 1860, the first indentured labourers were bought from India to Natal to work on the sugar plantations. They soon became a major driver of economic growth. The colonial planters had not wanted to enable the development of a settled Indian community, and had planned to sustain their labour force by the cyclical importation and repatriation of labour from and to India.<sup>35</sup> They

---

<sup>28</sup> Atkins, *The Moon is Dead*, p. 47.

<sup>29</sup> Ibid. p. 47.

<sup>30</sup> Ibid. p. 53.

<sup>31</sup> Ibid. p. 48.

<sup>32</sup> Ibid. p. 114.

<sup>33</sup> Cited in Atkins, *The Moon is Dead*, p. 105.

<sup>34</sup> See Charles van Onselen, *New Babylon New Nineveh* (Jonathan Ball: Johannesburg, 2001)

<sup>35</sup> This vision was largely achieved with the Chinese labour brought to the mines in Johannesburg for a few years after 1904.



were therefore extremely reluctant to allow Indian women into the colony. Nonetheless, Imperial regulations required that 40 women embark with every hundred 100 men, and a settled community quickly developed that would, within a generation, realise the worst fears of the often anxious and hostile white population<sup>36</sup> by surpassing it in number.<sup>37</sup>

Within the city itself, an 1874 strike by dock workers<sup>38</sup> became the first recorded explicit collective African challenge to colonial authority. It marked the beginning of a political struggle that would result in the end of white monopoly control of the municipal authority 120 years later.

### *The destruction of the Zulu kingdom*

In 1879 the Zulu Kingdom was invaded by the British Army, supported by colonial forces. Four years later, the Zulu Kingdom was destroyed.<sup>39</sup> In 1887 Sir Arthur Havelock, Governor of Natal and later of Zululand, travelled to Zululand to inform an assembly of Zulu leaders that:

All the Zulus must know that the rule of the House of Chaka is a thing of the past. It is dead. It is like water spilt on the ground...The Queen has taken the rule of the country out of kindness for the Zulu nation. The Zulus can no longer stand by themselves...It is to save the Zulus from the misery that must fall upon them if they were left to themselves that the Queen has assumed the Government of the country.<sup>40</sup>

After the destruction of the Zulu Kingdom, the first shack settlements began to be constructed in Durban as a result of the accompanying loss of land and imposition of various taxes, as well as the simultaneous movement into the city of Indian workers who had completed their indenture on sugar plantations.<sup>41</sup> These settlements also became home to a number of white people. Bill Freund writes that “Durban had the appearance of a string of colonial commercial and residential islands set in a sea of cultivated shacklands.”<sup>42</sup> He adds that “To a [non-shack dwelling] white observer, the vast majority of poor Indians lived in squalid shacks whose disorder defied any sense of structured purpose. However, those wood-and-iron shacks in fact were ideally suited to the needs of their inhabitants in some respects. They could be built, repaired and extended cheaply with little reference to the construction industry.”<sup>43</sup> They were equally functional for Africans, many of whom had been forced off their lands and were looking for a well located and affordable means of access to the alternative livelihoods offered by the city.

By 1894 Zululand was one of the chief sources of labour for the mines on the Witwatersrand. Here, early versions of Influx Control laws requiring African workers to carry passes had begun

---

<sup>36</sup> For more on this see Bill Freund, *Insiders and Outsiders: The Indian Working Class in Durban* (University of Natal Press: Pietermaritzburg, 1995)

<sup>37</sup> Jo Beall, ‘Women under indentured labour in colonial Natal, 1860-1911’ in Cheryl Walker (ed), *Women and Gender in Southern Africa to 1945* (David Philip: Cape Town, 1990) pp. 146 – 167.

<sup>38</sup> David Hemson, ‘Dock Workers, Labour Circulation and Class Struggles in Durban, 1940-1959’, *Journal of Southern African Studies* (1977) p. 123.

<sup>39</sup> Jeff Guy *The Destruction of the Zulu Kingdom: The Civil War in Zululand, 1879-1884* (University of Natal Press: Pietermaritzburg, 1994)

<sup>40</sup> Jeff Guy *The Maphumulo Uprising: War, Law and Ritual in the Zulu Rebellion* (University of KwaZulu-Natal Press: Pietermaritzburg, 2005 pp. 237-238.)

<sup>41</sup> In 1960 R.G.T. Watson, former General Manager of the Tongaat Sugar Company, wrote, without regret, that in the 1920s ‘Flogging...was accepted as the traditional and most effective method of getting work out of coolies and kaffirs and of maintaining plantation discipline’. *Tongaati, an African Experiment* (Hutchinson: London, 1960) p. 149. It is hardly surprising that so many chose the relative freedom of the shanty town over re-indenture.

<sup>42</sup> Freund, *Insiders and Outsider*, p. 33.

<sup>43</sup> Ibid. 35.

to be implemented by Paul Kruger's government in the Zuid-Afrikaansche Republiek from 1890.<sup>44</sup> These mines were dependent on cheap labour, and their growth in turn fuelled the further growth of Durban as the main port through which the mines were connected to the imperial economy. By 1895 there was a rail line between Durban and Johannesburg and the port city's population soon grew from 10 000 in 1887 to 55 700 in 1900.<sup>45</sup>

### *First moves towards segregation*

Colonial authorities soon began to act against the settlements by legally entrenching the segregation of Africans. The key tool of colonial urban planning was the division of the city into different zones which were then allocated to different activities and to different groups of people. By 1900 municipal acts had been adopted to control and monitor access to these different urban zones. By 1901, in consequence, a third of the city's African population (20 000 people) had been arrested in terms of various government and municipal laws.<sup>46</sup> In 1903 contemporary commentators described Durban as a "modern Babylon" in which white men living with African women were "bringing disgrace on our own people".<sup>47</sup> In the same year the City acted to practically entrench segregation by beginning to build Municipal barracks for male migrant workers. This was intended to result in - in their own words - "reducing illegal liquor traffic, theft, assault, and the risk of fire, to protect health standards and to maintain property values".<sup>48</sup>

Concerns mounted still further when it was learnt that the number of African families living in central Durban had increased to 200 in 1904.<sup>49</sup> In that year, the debate over space in the city was hotly contested in white Durban as some of the white urban population called for the African labour force to be housed in barracks on the outskirts of the city while business owners argued for these barracks to be located closer to the sites of work. These barracks were a cheap alternative to proper housing, which the city had decided it could not afford.<sup>50</sup> Despite this conflict between white citizens and white business - especially acute around the building of barracks near the port for stevedoring companies - many barracks were built in the city during the early years of the century.<sup>51</sup> These urban barracks, along with the growing shack settlements, escalated white anxieties still further. A town councillor declared that the:

...want of a system of rule, control and provision for the native is one which ought not to be tolerated one hour longer... he lives under unsanitary conditions [and] is almost out of control... there are five or six thousand men right in the middle of the town exposed to temptations of various sorts in the shape of drink. What would be thought of us if there was a serious riot in the middle of the large town?<sup>52</sup>

The constant anxiety surrounding the presence of single African woman earning livelihoods outside of colonial control is striking. In 1906 the Chief Constable declared that:

---

<sup>44</sup> 'eGoli: A History of Black Johannesburg' *South African History Online*  
[www.sahistory.org.za/pages/places/villages/gauteng/johannesburg/index.htm](http://www.sahistory.org.za/pages/places/villages/gauteng/johannesburg/index.htm)

<sup>45</sup> Freund, *Insiders and Outsiders*, p. 11.

<sup>46</sup> Paul la Hausse, Alcohol, The Ematsheni and Popular Culture in Durban, 1902-1936 in P. Maylam & I. Edwards (ed) *The People's City: African Life in Twentieth-Century Durban* (Pietermaritzburg: University of Natal Press) p.83.

<sup>47</sup> *Ibid.*, p. 61.

<sup>48</sup> Maarsdorp & Humphries, *From Shanty Town to Township*, p. 11. Some of the language used here, like so much of the official language of that time, is strikingly similar to that used by the City, and even more so the Province, to justify forced removals today.

<sup>49</sup> *Ibid.*, p. 42.

<sup>50</sup> *Ibid.*, p. 40.

<sup>51</sup> *Ibid.*, p. 40.

<sup>52</sup> *Ibid.*, p.40.

This borough is at present infested by a large floating population of Native females, and who are living in many instances with Europeans and with Kaffirs... principally through the manufacture and sale of Native beer... it is very desirable that the borough should be rid of these persons.<sup>53</sup>

### *Last resistance crushed*

Hut taxes and other taxes had been used by British colonial governments across Africa to force people out of a rural non-capitalist economy and into wage labour. In 1906 the tax burden in Natal was significantly increased when a poll tax, known as the head tax, was implemented. This resulted in the Bhambatha Rebellion. Some two thousand African workers and domestic servants left the city to return to their homesteads, where many joined the rebellion.<sup>54</sup> This rural revolt produced tremendous anxiety in white Durban about the possibility of an attack on the city.<sup>55</sup> However, the rebellion was ruthlessly crushed. Governor Sir Henry McCullum described it as “unfathomable unrest.”<sup>56</sup> The inability of white authority to understand the rationale of black resistance would also prove to be an enduring trope.

The crushing of the Bhambatha Rebellion increased the labour supply for the City.<sup>57</sup> As a result the pressure to address white anxieties about the autonomous African presence in the city, and in particular the presence of autonomous women, increased, as did concern over the more material matter of who would pay for the African presence in the city. The key strategy developed from 1908 was to establish a Municipal beer monopoly, via the Native Beer Act (No. 23). The City could thus simultaneously seize control of the largest source of African women’s economic independence, and also ensure that neither ratepayers nor business would have to cover the costs. Under this Act, Africans were only allowed to drink ‘native beer’, the City was the only agent licensed to brew it, and it was only sold at licensed Municipal Beer Halls.<sup>58</sup> The profits were then used to fund ‘Native Administration’. This process came to be known as the ‘Durban system’ and was widely copied across colonial Africa.

### **The Union Government (1910 – 1948)**

The establishment of the Union of South Africa in 1910 removed the colonies from direct Imperial control, and allowed local whites to run the new national state. Quick shifts towards greater regulation of the African presence in the cities followed. The 1911 Native Regulation Act put in place a series of pass controls, thus substantially firming up a system in which single male workers were expected to live in hostels for the duration of their labour contracts, and to then return to their rural homes. But various ongoing attempts to install an effective system of pass controls<sup>59</sup> over African women failed. According to Phil Bonner, “The root of this failure can itself be tracked down to the campaigns against women’s passes which burst out in a number of Free State towns between 1913 and 1923.”<sup>60</sup>

---

<sup>53</sup> Ibid., p. 42

<sup>54</sup> Ibid., pp. 68-69.

<sup>55</sup> Jeff Guy *The Maphumulo Uprising*, p. 67.

<sup>56</sup> Ibid., p. 248.

<sup>57</sup> Paul la Hausse ‘The Cows of Nongoloza’: Youth, Crime and Amalaita Gangs in Durban, 1900-1936,’ *Journal of Southern African Studies*, Vol. 16, No.1. (1990) pp.83.

<sup>58</sup> Paul la Hausse, Alcohol, *The Ematsheni and Popular Culture in Durban*

<sup>59</sup> This is not a device unique to colonial attempts to build modern cities. The Communist Party implemented a pass system in China. See Robert Neuwirth, *Shadow Cities* (Routledge: New York, 2006)

<sup>60</sup> P.L. Bonner, ‘Desirable or undesirable Basotho women?’ Liquor, prostitution and the migration of Basotho women to the Rand, 1920-1945. 1911’ in Cheryl Walker (ed.), *Women and Gender in Southern Africa to 1945* (David Philip: Cape Town, 1990) p. 241.

The 1913 Land Act gave legal sanction to the mass enclosures of land for the purpose of setting up a fully commercial white agriculture, and these enclosures pushed a rural crisis into a spiralling descent into mass poverty that is still evident in the deprivation and struggles of today. In his *Native Life in South Africa*, Sol Plaatjie wrote of the “roving pariahs” created by the “sickening procedure of extermination, voluntarily instituted by the South African parliament.”<sup>61</sup> The Land Act initiated two waves of expulsion from the land. The first took place immediately, as land was expropriated and enclosed.

In Durban massive revenues were generated by the municipal beer monopoly despite ongoing resistance in the form of daily acts of individual defiance and sporadic acts of organised collective resistance. In 1914, Mrs. Ncamu led 4 000 women in signing a petition against the Beer Act.<sup>62</sup> But despite the revenues generated by the beer monopoly, only a quarter of Durban’s 30 000 African workers were formally housed in male only barracks by 1916. White paranoia about Africans living outside of prison-like compounds remained rampant. An article in the *Natal Mercury* railed against “menacing...native hooligans.”<sup>63</sup>

A second wave of expulsions from rural land consequent to the 1913 Land Act occurred from the early 1920s as white farmers became able to capitalise agriculture. According to Paul la Hausse “the expansion of sheep farming and wattle plantations in particular led to the mass evictions of labour tenants and the impoverishment of many more.”<sup>64</sup>

A swift hardening of official attitudes towards Africans in cities followed the insurrectionary threat to the state posed by the 1922 Rand Revolt – a revolt by 20 000 white miners and their families in Johannesburg under the slogan ‘Workers of the world [to] unite and fight for a white South Africa.’<sup>65</sup> The revolt was put down bloodily, using artillery, tanks and planes. Following this, the system of reserving certain jobs for white workers was firmed up and the Land Act was followed by the Native Urban Areas Act of 1923. This act introduced a more uniform system of pass controls urban housing segregation. It, and the various pieces of legislation that followed it, sought to stem the flow of African people into the cities through a policy of Influx Control. Those (mostly male) workers in possession of permits for formal employment were compelled to inhabit segregated workers’ quarters; those workers without permits were forced to leave the urban areas. This system remained on the statute books, in different versions, until 1986 and was replaced, in 1990/1991, by a “non-racial urban policy framework designed largely by the think-tanks of big business”<sup>66</sup> with the Urban Foundation being the major player. More than 17 million people were arrested under Influx Control Laws between 1921 and 1986.<sup>67</sup> The annual arrest toll peaked in 1968, at 694 000.<sup>68</sup>

---

<sup>61</sup> Cited in Colin Bundy, *The Rise & Fall of the South African Peasantry* (David Philip: Cape Town, 1988) p.231. In the same book Bundy, writing about the 1913 Land Act, notes that “the details abound of infant mortality, malnutrition, diseases and debility; of social dislocation expressed in divorce, illegitimacy, prostitution and crime; of the erosion, desiccation and falling fertility of the soil; and of the ubiquity of indebtedness and material insufficiency of the meanest kind.” p. 221.

<sup>62</sup> Ibid. p.50

<sup>63</sup> Cited in la Hausse, *The Cows of Nongoloza: Youth, Crime and Amalaita Gangs in Durban, 1900-1936* p.93.

<sup>64</sup> la Hausse, ‘The Cows of Nongoloza’, p.103.

<sup>65</sup> Jeremy Krikler, *The Rand Revolt: The 1922 Insurrection and Racial Killing in South Africa* (Jonathan Ball: Johannesburg, 2005)

<sup>66</sup> Mark Swilling, ‘Introduction’ in *Apartheid City in Transition* (Oxford University Press: Cape Town, 1991) p. xi.

<sup>67</sup> ‘Over 17 million arrested under influx control laws’, *South African History Online*  
<http://www.sahistory.org.za/pages/chronology/thisday/1991-02-10.htm>

<sup>68</sup> Bill Freund, *The African City* (Cambridge University Press: Cambridge, 2007) p. 125.

Although the 1923 Urban Areas Act specifically aimed to exclude African women from urban areas, and was followed by further regulations with similar intent, the rate of female urbanisation in the first decades of the twentieth century was higher than that for men. Walker argues that for women “migration was more likely to represent a means of escape than either a means to reinvest in the rural economy or a process of dispossession. It was a personal choice, involving flight from the controls of pre-colonial society initially and the deteriorating quality of rural life under colonialism and settler rule subsequently.”<sup>69</sup> She shows that “excluded from the formal industrial sector”, compelled to make a life in the informal sector (or via domestic work) and “Unwanted by the urban authorities, handicapped by inferior legal status, their housing options determined by their relationships to men, African women were thrust onto the margins of urban society. That urban life continued to hold any attraction for them at all was testimony to the strength of female dissatisfaction with their situation in rural areas.”<sup>70</sup>

After rapid growth in the manufacturing industry in the 1920s Durban became the second largest city in the country, both in terms of the size of its economy and of its population. It retains this position today. But economic growth did not reduce social tensions. Tensions around the Beer Act were coming to a head. Paul la Hausse reports that there was “massive resistance from women beer brewers at the end of the 1920s.”<sup>71</sup> In 1928 A.W.C. Champion, head of the Industrial and Commercial Workers’ Union (ICU) spoke strongly against the Durban System in an address to a meeting of 5 000 ICU workers. In 1929 a boycott of the beer halls led to the famous beer hall riots, leading to the open expression of racial antagonism:

White ‘vigilantes’ laid siege to the ICU Hall, and by evening close on two thousand white civilians, from ‘every class’, and three hundred and fifty policemen faced six thousand stick-wielding African workers. These Africans had poured from every quarter of town to relieve the beleaguered men, women and children in the hall and in the ensuing clashes one hundred and twenty people were injured and eight mortally wounded.<sup>72</sup>

In the end the ‘vigilantes’ destroyed the ICU Hall in Prince Edward Street, along with the instruments of its famous brass band. Although the riots were soon crushed by the police, the beer monopoly never regained its full authority.

Although most areas were racially exclusive by the 1920s and 1930s, a number of areas remained racially mixed. As the 1930s and 40s passed, official tolerance for these racially mixed zones waned. One strategy for bringing mixed and largely autonomous areas under control was the extension of the boundaries of Durban to include eight new peri-urban areas into Durban municipality in 1931.<sup>73</sup> This extended the geographic area under Municipal control up and down the coast, from Durban North to Isipingo.<sup>74</sup> According to Bill Freund, “This was done both in order to allow for economic development and to control or eliminate undesirable, illegal and untaxed activities of all varieties and by inhabitants of all colours.”<sup>75</sup>

---

<sup>69</sup> Ibid. pp. 188-189.

<sup>70</sup> la Hausse, ‘The Cows of Nongoloza’, p. 190.

<sup>71</sup> Ibid. 114.

<sup>72</sup> Ibid. 55.

<sup>73</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952* (University of Natal Press: Durban, 1952) p. 19.

<sup>74</sup> Ibid., p.19.

<sup>75</sup> Freund, *Insiders and Outsiders*, p. 25.

### *The migrant labour system*

By 1937 the migrant labour system was firmly in place.<sup>76</sup> It profoundly shaped the development of South African cities and many aspects of South African life. Its central idea was that Africans had no permanent right to the city. Only whites, coloureds and Indians were thought to be fully capable of urban life and were therefore legally permitted to live in urban spaces - although the system presumed that this would happen under the authority of white paternalism in the cases of coloureds and Indians. Africans were forced to return 'home' when not in waged employment. The system required the careful containment, regulation and monitoring of Africans in the city.<sup>77</sup> The migrant labour system was primarily justified by the racist ideology that contrasted an imagined essential connection between whiteness and urban modernity with an equally imagined connection between blackness and rural tradition. This form of racism reached its full perversity after 1959, when mass removals to the Bantustans often resulted in prosperous cosmopolitan urban people finding themselves dumped in rural 'homelands' which they had never previously visited, and in which they had no familial, economic or meaningful cultural connections.<sup>78</sup> Recent work has shown that the irrational association between whiteness and urban modernity - an association that is unable to recognise African modernity - continues to disfigure contemporary urban life in Durban.<sup>79</sup>

There was also a clear material base to the migrant labour system. As Maynard Swanson put it "the underlying question was one of overall social control: how to organize society to provide for mutual access of black labourers and white employers in the coming industrial age without having to pay the heavy social cost of urbanization or losing the dominance of white over black."<sup>80</sup> The unpaid and unsubsidised work of rural African women enabled first the mines, and then later industry more generally, to access extremely cheap labour.<sup>81</sup> Until the development of strong black trade unions - a process<sup>82</sup> that began with the formation of the ICU in Cape Town 1919, began to achieve sustained success after the Durban strikes in 1973<sup>83</sup> and reached fruition in the 1980s - migrant labour was the foundation of much of the wealth of urban white South Africa and, also, of much of the poverty of rural African life. As Cheryl Walker observes: "The migrant

---

<sup>76</sup> See Marian Lacey, *Working for Boroko: The origins of a coercive labour system in South Africa* (Ravan Press: Johannesburg, 1981)

<sup>77</sup> But see T. Dunbar Moodie and Vivienne Ndatshé's *Going for Gold: Men, Mines and Migrations* (University of California Press: Berkeley, 1994) for an account of how mine workers developed ideas and practices around personal integrity and collective solidarity in the prison-like circumstances of the mine compound.

<sup>78</sup> For more on this see Cosmas Desmond's *The Discarded People*, Laurine Platsky and Cheryl Walker's *The Surplus People: Forced Removals in South Africa* and Elaine Unterhalter's *Forced Removals*.

<sup>79</sup> The most important work in this regard has been that of Richard Ballard. See, for instance, 'Middle Class Neighbourhoods or 'African Kraals'? The Impact of Informal Settlements and Vagrants on Post-Apartheid White Identity', *Urban Forum*, Vol. 15. No. 4 (2004) pp. 48-73 and 'Bunkers for the Psyche: How Gated Communities Have Allowed the Privatisation of Apartheid in Democratic South Africa' *Dark Roast Occasional Paper Series*, No.2, 25. (2005) pp. 1-23.

<sup>80</sup> Bill Freund, *The African City*, p.109.

<sup>81</sup> The point has been most famously argued by Harold Wolpe, 'Capitalism and Cheap Labour-Power in South Africa: From Segregation to Apartheid' *Economy and Society*, 1 (1972) and Martin Legassick, 'South Africa: Forced Labour, Industrialisation and Racial Differentiation' in R. Harris (ed), *The Political Economy of Africa* (New York: John Wiley, 1975)

<sup>82</sup> See Ken Luckhardt and Brenda Wall, *Organize or Starve: The history of the South African Congress of Trade Unions* (Lawrence and Wishart: London, 1980)

<sup>83</sup> See Institute for Industrial Education, 'The Durban Strikes: South Africa 1973' in Robin Cohen, Peter Gutkind and Phyllis Brazier (eds.), *Peasants and Proletarians: The Struggles of Third World Workers* (Hutchinson: London, 1979)

labour system has long been recognised as one of the key institutions in the development of modern South Africa – a source of immense profits for a few and immense hardship for many.”<sup>84</sup>

Maynard Swanson famously coined the term ‘sanitation syndrome’ to describe the way in which arguments for urban planning policies were presented as being in the interests of public health, and thereby the general interest, when in fact they were to the systematic advantage of whites. This syndrome was driven by a conflation between white anxieties about the presence of black people in the cities and the epidemics of disease that could spring from the conditions in which black people were forced to live. In this syndrome the ‘slum’ became a particular site of racial anxiety<sup>85</sup> - an anxiety that became greatly exacerbated when such an area became a site of racial mixing. The result was that, in Phillip Bonner and Lauren Segal’s phrasing: “Fears of infection, racial mixing and a lack of control led to many sections of the whole communities – and some sections of black society – to call for the segregation and clearance of the slum yards.”<sup>86</sup> Richard Ballard’s research reveals that for white society under apartheid, “Squatter settlements were constantly pathologised, and were presented as dysfunctional and problematic.”<sup>87</sup>

### *Shack dwellers’ politics in pre-war Durban*

But shack settlements were more than just ‘slums’, and more than just a grassroots survival strategy. They were also sites of political innovation. The Industrial and Commercial Workers’ Union (ICU) was the largest political organisation of the poor in the shack settlements at the time. Helen Bradford explains that in the 1920s, “The ICU was constituting itself as a rudimentary but nonetheless alternative power centre in wide-ranging spheres of social and state activities.” She adds that:

especially when infused with the creativity of members, even superficially moderate activities could point the way to the development of innovative, popular institutions. Fragmentary and partial though they were these attempts to broaden the conflict to various arenas of society were nonetheless significant. Thus in addition to its meetings and office work, the ICU promoted alternative political and cultural practices to those through which whites shaped the ideas of blacks.<sup>88</sup>

In Durban the ICU ran night schools, staged music and dance performances, held large marches in the suburb of Sydenham and spoke in many churches, becoming what liberation theology would later call a prophetic voice in these environments and often leading to a profound re-orientation of their collective social vision.

At the same time as the ICU veered between outright militancy and various kinds of accommodation with the colonial state, it also made innovative use of the courts. Bradford notes that there was significant “grass-roots support for the ICU’s court battles” and concludes that, “Simply in order to fight, achieving and defining specific legal rights is a key tactic whereby movements acquire ‘first a soil to stand on, air, light and space.’”<sup>89</sup>

---

<sup>84</sup> Cheryl Walker, ‘Gender and the Migrant Labour System,’ in Cheryl Walker (ed), *Women and Gender in Southern Africa to 1945* (David Philip: Cape Town, 1990) p. 168.

<sup>85</sup> Maynard W. Swanson, ‘The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909’ *The Journal of African History*, Vol. 18, No. 3 (1977), pp. 387-410.

<sup>86</sup> Cited in Godehart, p.51.

<sup>87</sup> Ballard, 21002. pp.49-50.

<sup>88</sup> Bradford, *A Taste of Freedom*, p. 138.

<sup>89</sup> Bradford, *A Taste of Freedom*, p. 136.

The *ad hoc* 'slum clearance' processes of the 1930s were given legislative support when the Slums Act<sup>90</sup> became national legislation in 1934. Its drafters described its purpose as the making of "comprehensive provision for the elimination of slums." It declared that:

Whenever the medical officer of health is of opinion that any condition exists in or upon any premises which does not conform with the requirements of the Act or regulations, or any premises are of such construction or in such a state or so situated or so dirty or so verminous as to be injurious or dangerous to health or liable to favour the spread of any infectious disease ; or any premises are so situated, used or kept as to be unsafe or injurious or dangerous to health, or any land is so congested with buildings as to be injurious or dangerous to health, or any premises have not such a proper, sufficient and wholesome water supply available within a reasonable distance, he must report to the local authority that a nuisance exists upon such premises or land.<sup>91</sup>

The Slums Act required a minimum of 3.7 square meters of floor space per person and separate bedrooms for children of different sexes (i.e. there had to be three bedrooms per dwelling).<sup>92</sup> The Act did allow for owners of properties declared as slums to make the necessary investments to have this declaration withdrawn: "A declaration that premises are a slum may be rescinded if the owner satisfies the local authority that he has removed the nuisance which led to the declaration and paid all the expenses and costs to which the local authority has been put."<sup>93</sup> However, once an area was declared a slum, the Act sought to ensure that there was no legal defence against eviction:

After an order for demolition, nobody may enter the slum except for the purpose of carrying out the demolition...Power is given in the Act to eject persons unlawfully occupying or entering a slum, and there is no exemption from ejection merely on the ground of lack of other accommodation. The Act also applies to premises owned by the Crown, and local authorities are indemnified from all claims whatsoever by reason of anything necessarily done in the execution of their duties or the exercise of their powers under the Act.<sup>94</sup>

Diane Scott argues that modernist city planning is both utopian and authoritarian. She shows that in Durban, as with this mode of planning elsewhere, zoning regulations were the key tool for planners to divide up the city. Everything had to be in its assigned place – 'impurity' could not be tolerated. She concludes that:

The concept of urban zoning...precludes both mixed land use and the informal, unregulated occupation of space. The word 'slum' 'connotes a perception of something anomalous ... an affront to expectations of what is appropriate'. This term

---

<sup>90</sup> The Regulation for the Control and Inspection of Premises in the defined Zones (1939) (City of Durban) were framed under Section 32 of the Slums Act- Provincial Notice 546 of 1939. This Act was intended to be applied to the surrounding areas and areas within the Old Borough of Durban. The aim of this Act was to obtain a simpler and quicker method of removing homes and people from these areas. For more on this see, H.R. Burrows *et al*, *Durban Housing Survey 1952* (Durban: University of Natal Press, 1952) pg 343

<sup>91</sup> W. G. Hoal; A. J. Pienaar; Justice Lansdown; H. Pring; A. A. Hope; Alan Roe; R. J. Morton 'Review of Legislation', *Journal of Comparative Legislation and International Law*, 3rd Ser., Vol. 18, No. 2. (1936), p. 126.

<sup>92</sup> Godehart, *Transformation of a Township in South Africa*, p. 54

<sup>93</sup> *Ibid.* 127.

<sup>94</sup> W. G. Hoal et al, 'Review of Legislation', p. 127.



came to be used in modernist planning discourse to describe those areas that should be removed from the planned formal city. The existing Indian and African residential areas in Durban in the early part of the twentieth century exhibited these ‘illegal and inappropriate’ characteristics, and it was these areas that became the object of re-zoning or slum clearance procedures in the name of rational planning.<sup>95</sup>

However the legislation did not successfully override previously existing legislation that ensured that people could not be evicted if alternative accommodation was not provided. Moreover academic supporters of the legislation lamented that “it was not always easy to implement” because “each owner of slum property must appear in court and each case must be investigated.”<sup>96</sup>

Susan Parnell has shown that the 1934 Slums Act was aimed primarily at freeing up land for the needs of business, secondly at removing perceived threats to public health and, lastly, at achieving segregation. But she also shows that simply stating the objectives of a course of action did not ensure that they would in fact be achieved through bureaucratic action. Neither the poor nor the housing crisis were successfully made to disappear through the eradication of slums.<sup>97</sup>

The first African township in Durban, Lamontville, was created in 1934 for people removed from their homes under the Slums Act. A.W.G. Champion applied for a house and was turned down on the grounds of his role in the 1929 protests.<sup>98</sup> Although Lamontville is reasonably central today, in 1934 it was 15 kilometres outside the city and very much on its periphery. Various informal livelihoods that were possible near the city centre were not viable there. Louise Torr reports that: “Durban city councillors expressed astonishment at the preference of Africans for remaining in the shack settlements”<sup>99</sup> even when shack rental was more expensive than renting a three roomed house in Lamontville. This inability amongst officials to comprehend that formal houses on the urban periphery were not necessarily in the best interests of shack dwellers would prove to be another trope with considerable staying power. However in 1934 the Reverend Mtimkulu explained the ‘mystery’ very clearly:

By living at Mayville and other such districts, the natives were able to walk to work; their womenfolk could take in washing and their children were able to attend school in the district, whereas in the case of [Lamontville] Native Village, the tenants would have to pay 8s.6d. per month for transport and no school was provided for the children.<sup>100</sup>

Paul Maylam’s research has found that:

Not all of Durban’s leading administrators were ardent advocates of formal housing for Africans. The main exception was Gunn, the Medical Officer of Health. Whilst committed to shack elimination, Gunn saw the dangers of an over-commitment to a formal housing policy. As early as 1934 he condemned the Lamont township scheme as an expensive failure: it was far from places of work, and its transport and shopping facilities were inadequate. He argued that careful consideration had to be

---

<sup>95</sup> Dianne Scott “Creative Destruction’: Early Modernist Planning in the South Durban Industrial Zone, South Africa,’ *Journal of Southern African Studies*, Vol. 29, No. 1. (Mar., 2003), p. 240.

<sup>96</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952*, p. 342.

<sup>97</sup> See Freund, *Insiders and Outsiders*, p. 68-69.

<sup>98</sup> Louise Torr, ‘Lamontville’ in Paul Maylam and Iain Edwards (eds.) *The People’s City: African Life in Twentieth-Century Durban* (University of Natal Press: Pietermaritzburg, 1996) p. 253.

<sup>99</sup> *Ibid.*, p. 254.

<sup>100</sup> *Ibid.*, p. 255.

given to the existing life-style of shack dwellers: “Re-housing will fail in its object, if it compels a radical interference with the basis of living and means of support to which the slum-dweller has been accustomed and habituated.”<sup>101</sup>

In 1939, *The Regulations for the Control and Inspection of Premises in Defined Zones (City of Durban) Slums Act - Provincial Notice 546* was passed with a view to “obtain a simpler and quicker method of cleaning up areas than is possible under the Slums Act.”<sup>102</sup> However, it was still not legally possible to carry out major slum clearances without providing new housing. Although these legal constraints to wholesale forced removals limited the powers of the Slums Act, scholars note that it did help to support the development of “the growing prominence of a discourse about slums and slum removal” that continued until the 1970s.<sup>103</sup> This is significant as often ‘discourse’ - the language of power and authority - can produce a ‘common sense’ that directs practice more firmly than formal policy and law.

#### *The growth in shack settlements during the war years*

In the 1930s and 1940s there was dramatic growth in the manufacturing industry. Male African workers in formal employment were expected to be housed in barracks. One resident described them as follows:

there are narrow, dark, winding stairs, that lead to the room occupying the floor above, and the air is foul...for 3d a man is given what passes for a bed...this consists of the frame of a bed with a wooden board in place of the spring...the men must provide their own blankets...the rooms are terribly stuffy, the windows being situated so high that it would be a good job to open them...the ‘comfort’ and ‘rest’ to be got from sleeping on a wooden board in a room where a harsh light burns throughout the night must be experienced to be appreciated.<sup>104</sup>

But shack settlements provided a less regimented alternative for African workers and one in which family life was possible. For a while *Umkhumbane* (Cato Manor, the largest shack settlement in the city) was tolerated as the Imperial war economy required more labour.

Maylam argues that:

It would be a mistake to see Durban’s shack settlements simply as the product of a housing shortage. Africans were not merely passive victims in the whole urbanization process. Although appalling living conditions often prevailed, the shack settlements did offer advantages and opportunities to their inhabitants. First, they were free from the strict regulation and control exercised by the authorities in municipal institutions. Second, shacks were cheap accommodation; and being located close to places of work, transport costs were reduced. And third, the settlements offered enormous scope for informal sector activity. Petty entrepreneurs operated as unlicensed traders, hawkers, painters, backyard motor mechanics, or shack-builders.<sup>105</sup>

---

<sup>101</sup> Maylam, ‘The ‘Black Belt’: Black Squatters in Durban 1935-1950’, *Canadian Journal of African Studies* Special Issue: South Africa (1983) pp. 419-420.

<sup>102</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952*, p. 343.

<sup>103</sup> Freund, *Insiders and Outsiders*, p.69.

<sup>104</sup> Cited in Hemson, ‘Dock Workers’, p. 72.

<sup>105</sup> Maylam, *Black Squatters in Durban 1935-1950*, p. 418.

As the power of African workers grew, they began to extend their political demands beyond the work place and to assert a right to the city. For instance, Zulu Phungula, a leading trade unionist, insisted that: “The Government must show us where to go because our homes are here in Durban”<sup>106</sup>

There were still voices within the Municipality that rejected the ‘bulldoze and relocate’ model of ‘slum eradication.’ In 1943 Gunn argued that in the absence of viable alternative housing the erection of shacks must be condoned and that “water supply and sanitary services must be made good *at all costs and with the least possible delay.*”<sup>107</sup> In the following year the Report of the Durban Health Enquiry (Wadley) Commission “condemned the earlier preoccupation with permanent, formal housing” and argued that more would have been achieved by the immediate extension of water and sanitation services to the growing shack settlements.<sup>108</sup>

The growth in shack settlements during the war nonetheless produced increased anti-black feelings amongst the white population.<sup>109</sup> At the same time, however, a black working class non-racialism developed as African and Indian workers stood together in a series of strikes beginning at the Falkirk Foundry in 1937.<sup>110</sup> But in the year after the war an acute shortage of land threatened this solidarity. Unlike Africans, Indians had been free to live in the city and to buy ‘white land’. As a result, many of those who had become successful market gardeners turned to shack renting as it was more profitable in the period during and after the war.<sup>111</sup> The shortage of land led to increased overcrowding, and thus also to the exploitation of many of the renters by the Indian landlords. The *Durban Housing Survey* argued that:

Many Indian landlords, in common with landlords of other races, are tempted to exploit the acute need for shelter that has arisen in the post-war years. The relatively high rents charged often limit the accommodation that can be afforded. As a result a typical family crowds into one room and must share with the other occupants of the house the kitchen, lavatory and bathroom. In many cases, however, there is no kitchen available either for private or common use, and each family must prepare its food in its one living room, or outside in the yard.<sup>112</sup>

The post-war increase in the African population led to a rise in white fears of a *swart gevaar* [black danger].<sup>113</sup> This fear of cities being ‘overwhelmed’ by Africans resulted in an increase in popular and official white rhetoric around control and order. This later became the underpinning for the development of the apartheid state. Deborah Posel explains:

Apartheid was underpinned by a hankering for order – and orderly society and an orderly state to tame the perceived dissolution and turbulence engendered during the 1940s. For many anxious whites, the fate of white supremacy had grown precarious, endangered by the spectre of *die swart gevaar* (the black danger) threatening to overwhelm cities.<sup>114</sup>

---

<sup>106</sup> David Hemson ‘Dock Workers’, p. 88.

<sup>107</sup> Gunn, cited in Maylam, *Black Squatters in Durban 1935-1950*, p.422

<sup>108</sup> Ibid.

<sup>109</sup> See Freund, *Insiders and Outsiders*, p. 68, and Paul La Hausse, ‘The Cows of Nongoloza’.

<sup>110</sup> See Freund, *Insiders and Outsiders*, p. 54-56.

<sup>111</sup> Ibid., p. 25.

<sup>112</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952*, p. 232.

<sup>113</sup> Deborah Posel, “What’s in a name? Racial categorisations under apartheid and their afterlife,” *Transformation* 47 (2001) p. 52.

<sup>114</sup> Ibid., p. 52.

According to Posel, whites felt a need to reassert boundaries that could better control space and movement, and thus limit interaction among people regarded as racially different.<sup>115</sup> The state therefore turned hostile attention towards pockets of space considered to be racially diverse, such as Berea Road, Stamford Hill, Greyville and Cato Manor.

### **Grand Apartheid (1948 – the late 1970s)**

Although the National Party was voted into power in 1948, Durban wasn't able to give immediate effect to its plans to entrench and formalise colonial segregation. Paul Maylam's work shows that, on the contrary:

shack-builders were penetrating close to some of [white] Durban's most venerated areas; in 1949 shacks were found next to the Botanic Gardens and on land opposite the Country Club. So serious was the situation, complained Gunn, that no part of the city could be regarded "as wholly immune" from shack building.<sup>116</sup>

Middle class opposition became increasingly strident:

For a great many of Durban's middle class residents, the shack settlements aroused sentiments of fear and indignation. Particularly vociferous were Indian property-owners in neighbouring areas. The Cato Manor Ratepayers Association complained that their community was threatened by disease and that Indian market gardeners were being "ruined" as shack-dwellers stole their produce or polluted their gardens. In 1948 the Merebank branch of the Natal Indian Congress drew the town clerk's attention to the "nuisance" being created by shack-dwellers in their area. The shack settlements were widely perceived as hotbeds of crime, vice, and disease.<sup>117</sup>

#### *The 1949 anti-Indian pogrom*

In 1949 serious conflict erupted in Durban between Indian landlords and African tenants denied the right to own property. This conflict, according to Freund, "escalated into an anti-Indian pogrom."<sup>118</sup> David Hemson describes it as "one of the most destructive upheavals in South African history. The most dominated and repressed section of the South African working class turned against a minority group which possessed urban land and trading rights and preferential treatment in employment."<sup>119</sup>

Most academic accounts ascribe the riots to a mixture of Indian racism and the struggle for Africans to secure space in the city (a problem consequent to white racism). This accords well with contemporary popular memory amongst African shack dwellers. Those with roots in *Umkhumbane* and other settlements of the time (e.g. around Pinetown) remember the conflict as a 'war' against exploitation and exclusion.<sup>120</sup> As is consistently the case, there were attempts at the time to ascribe the disturbances to white agency, but there is no evidence for this.<sup>121</sup> It is also important to note that after 1949 a new African shack-lord class emerged to extort large profits

---

<sup>115</sup> Deborah Posel, 'What's in a name?', p. 52.

<sup>116</sup> Paul Maylam 'The "Black Belt": African Squatters in Durban 1935- 1950' *Canadian Journal of African Studies / Revue Canadienne des Études Africaines*, Vol. 17, No. 3, Special Issue: South Africa. (1983), p. 415.

<sup>117</sup> *Ibid.*, p. 415.

<sup>118</sup> Freund, *Insiders and Outsiders*, p. 57.

<sup>119</sup> Hemson, 'Dock Workers', p. 111.

<sup>120</sup> Mpola focus group. 17 September, 2007.

<sup>121</sup> Freund, *Insiders and Outsiders*, p. 58.

from tenants and to attempt to forge clientalist relations with the state.<sup>122</sup> The riots certainly did not achieve the decommodification of the land.

The Indian Mayville and Cato Manor Rate Payers' Association responded to the conflict by requesting that Africans be expelled from the area.<sup>123</sup> By this time there were close to 70 000 people living in the shacks. The initial response of the City was to provide basic services within the settlement – “roads, storm water drainage, street lights and ablution blocks...Sites were also made available for schools, churches, community halls, sports grounds, crèches, shops.”<sup>124</sup> Low interest loans were also provided for building and upgrading shacks. In the policy jargon of today this would be called an *in-situ*-upgrade. For a while *Umkhumbane* flourished and its urban cosmopolitanism produced everything from its famous *izitabane* (gay) community to musical and dance syntheses that have continued into the present.<sup>125</sup> Some attempts were made to move Indians out of the area and into poor quality formal housing on Springfield Estate, but as Freund notes: “It was often difficult to persuade shack dwellers to consider moving there.”<sup>126</sup>

### *The Group Areas Act*

In 1950, however, the legal foundation for the successful segregation of the City were laid via the newly-passed Group Areas Act, which eventually resulted in mass forced removals of Indians and Africans to segregated townships on the periphery of the city. Freund notes that “Few whites were forced to leave their homes, but many benefited from the availability of relatively cheap land for home purchases.”<sup>127</sup>

In Freund's analysis:

Two trajectories came together in the making of Group Areas. The first was white racism, the desire to define Durban as a city built around a white core...However, at the same time, the Group Areas idea was closely allied to notions of progress, hygiene and modernity...For the bureaucratic planners of Group Areas...it was an undeniable good. They aligned themselves with the massive movement to reconstruct working class housing in Britain and other European countries at the same time, a movement which certainly had major parallels and affinities with processes in South Africa...Modern Durban was to be reconstructed on the basis of the clearance of slums.<sup>128</sup>

The City presented their project as “the noble art of slum clearance”<sup>129</sup> and Freund stresses that planning for segregation was often organised through “sanitised language” that evoked “technocratic rationality.”<sup>130</sup> The opponents of this process sought to reveal its politics by presenting it as a racist attack on black interests. There were also times when some of the motives of the state were laid bare. For instance in 1951 Dr. Eiselen, Secretary for Native Affairs, stated that “Only by the provision of adequate shelter in properly planned Native townships can full control over urban Natives be regained.”<sup>131</sup>

---

<sup>122</sup> See Iain Edwards, ‘Cato Manor, June 1959’ in Maylam and Edwards (eds.), *The People's City*.

<sup>123</sup> Freund, *Insiders and Outsiders*, p. 70.

<sup>124</sup> Gavin Maarsdorp & A.S.B. Humphreys, *From Shantytown to Township* (Juta: Cape Town, 1975) p. 17.

<sup>125</sup> Edwards, ‘Cato Manor, June 1959’, p. 108.

<sup>126</sup> Freund, *Insiders and Outsiders*, p. 69.

<sup>127</sup> *Ibid.*, p. 64.

<sup>128</sup> *Ibid.*, pp. 64-65.

<sup>129</sup> *Ibid.*, p. 65.

<sup>130</sup> *Ibid.*, p. 69.

<sup>131</sup> Cited in Godehart, *Transformation of Townships in South Africa*, p.52.

In 1951, the Prevention of Illegal Squatting Act was passed. Writing in 1985, Platzky and Walker noted that it “was the opening shot in what has been an ongoing and increasingly vicious battle to root out the people living ‘illegally’ in town and to destroy their precarious hold on an urban livelihood.”<sup>132</sup> It gave magistrates powers to order the demolition of shacks, and placed obligations on landowners to evict squatters. Although so called ‘transit camps’ had been used to house people removed from shack settlements since the late 1940s, this Act formalised the practice. It enabled local authorities to set up ‘transit camps’ instead of providing alternative accommodation whenever they wanted to evict people from their homes.<sup>133</sup>

Cato Manor had been under particular pressure for some time. In 1951, the Durban Housing Survey declared Cato Manor an “appalling threat” and reported that: “Urgent steps are obviously needed to eliminate the threat to the health, comfort and security of both the slum dwellers and their fellow citizens.” The Survey recommended urgent “re-siting” as a “temporary plan chiefly for the control of an area of potential danger to the City’s health.”<sup>134</sup>

#### *Mass forced removals to peripheral townships*

Previous attempts at legislating segregation had experienced mixed success. By the 1950s, however, the apartheid state was in a strong position and the city of Durban had developed a powerful planning bureaucracy.<sup>135</sup> This was largely hostile to shack dwellers. An example of this hostility can be seen in a 1952 pro-segregation study by academics at the University of Natal, which declared that:

Durban’s attractive flowering trees are threatened by destructive insects, many of her older dwellings by white ants, and her beach by unchecked tides. But the most serious threat to Durban’s health and racial harmony lies in her slums and vast shack settlement, the breeding grounds of disease, crime and despair made more dangerous by ignorance and neglect.<sup>136</sup>

This elite hostility was matched by popular white hostility. By the 1950s black people in ‘white’ neighbourhoods were at risk of violence from groups of young white men.<sup>137</sup>

In March 1958, as the city’s African population grew rapidly and the apartheid state began to achieve its full power, the Durban City Council began a ‘slum clearance’ project. This project was conceived within a colonial academic and policy consensus that possessed a global reach.<sup>138</sup> It was justified in the name of increasing property values, reducing crime, and improving health and hygiene. There was a distinct racial bias: “Whereas white families were compensated or accommodated in sanitary public housing schemes, black people were often financially ruined by the forced relocation from ‘slums’.”<sup>139</sup> Black shack dwellers were relocated to racially segregated

---

<sup>132</sup> Platzky and Walker, *Forced Removals in South Africa*, p. 104.

<sup>133</sup> Marie Huchzermeyer *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (Africa World Press: Trenton, N.J., 2004) p. 100.

<sup>134</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952*, pp. 382-383.

<sup>135</sup> Scott, ‘Creative Destruction,’ p. 239.

<sup>136</sup> H.R. Burrows *et al*, *Durban Housing Survey 1952*, p. 341.

<sup>137</sup> Freund, *The African City*, p. 121.

<sup>138</sup> It is important to note this fact because it is now routinely assumed by elites that the City Council’s policies towards shack dwellers must be highly commendable because they are informed by a global academic and policy consensus and are therefore ‘world class’.

<sup>139</sup> SANGOCO *Paper on Housing for the Poverty Hearing*, 1998, p.7.

[http://www.sangoco.org.za/site/index.php?option=com\\_content&task=view&id=47&Itemid=47](http://www.sangoco.org.za/site/index.php?option=com_content&task=view&id=47&Itemid=47)

modern townships on the periphery of the city, such as KwaMashu. The new houses in these townships were significantly smaller than those built in Lamontville in the 1930s. In contrast, white shack dwellers (numbering, according to Lodge, “a few thousand”<sup>140</sup>) were moved into flats in the city. People who didn’t have their names on the right documents “would have their homes and sometimes their possessions within them flattened without warning by bulldozers.”<sup>141</sup> Among the people made homeless by the forced removals were “unemployed and self-employed men and women, widowed women and their dependents, single women and the elderly and infirm not directly related to a prospective KwaMashu household head.”<sup>142</sup>

Forced removals to new houses in new townships were militantly opposed, primarily on the grounds that transport costs from the new townships to work were unaffordable. This opposition was popular, and extended beyond people at risk of being made homeless by eviction. In 1958 ten thousand Indians gathered at Curries Fountain to protest against the Group Areas Act.<sup>143</sup> In June 1959 women attacked the beer halls, and in that year demonstrations in the settlements stopped the evictions three times. There were moments when the resistance was clearly organised and articulated as a women’s project.<sup>144</sup> In particular, women residents in Cato Manor issued a direct challenge to the state and the dominance of men in the settlement. The slogan ‘*Wa thint’ abafazi wa thint imbokodo!*’ (You strike a woman, you strike a rock!) was widely used and some contemporary shack dwellers claim that it was invented in Cato Manor and only later taken up in more elite oppositional politics.<sup>145</sup>

In November 1959, a mass boycott of the municipal beer hall led to an escalating conflict which culminated in January 1960 when a number of lives, including those of policemen, were lost. However the mass evictions were continued and largely completed in August 1965.

Other shack settlements in the city were also razed in this period. For example, the mostly Indian Tin Town on the Springfield Flats was cleared by 1964. The Durban Corporation’s Department of Bantu Administration and the University of Natal set up a co-operative research project to assess the capacity of relocated shack dwellers to pay for services in the new segregated townships, and came to the conclusion that “the policy of re-housing Africans in townships on the urban periphery involved them in a significant increase in living costs.”<sup>146</sup> The same conclusion was reached with regard to Indians relocated from Tin Town. Moreover, various studies indicated that women workers relocated to the periphery of South African cities carried particular burdens, having to endure long and expensive commutes on top of household responsibilities. One study indicated that the result of these burdens was “severe stress and sleep deprivation.”<sup>147</sup>

The Group Areas Act also created a situation of sustained uncertainty in those areas that were rendered vulnerable to forced removal, but which were able to avoid it for an indefinite period of time. For instance, an Indian community had been resident at Motala Farm in Pinetown since the First World War, when the area had been divided into plots for housing. In 1953 the community was first threatened with forced removal under the Group Areas Act and in

---

<sup>140</sup> Lodge, *Black Politics*, p. 147.

<sup>141</sup> Lodge, *Black Politics*, p. 147.

<sup>142</sup> Iain Edwards, *Cato Manor. June 1959*, p. 115.

<sup>143</sup> Paul Maylam, ‘Introduction’ in Maylam and Edwards (eds.), *The People’s City*, p. 23.

<sup>144</sup> See Edwards, ‘Cato Manor, June 1959’.

<sup>145</sup> Focus group, Arnett Drive, 4 August 2007.

<sup>146</sup> Maarsdorp & Humphreys, *From Shantytown to Township*, p. 40.

<sup>147</sup> See Alison Todes ‘Housing, Integrated Urban Development and the Compact City Debate’ in Phillip Harrison, Marie Huchzermeyer and Mzwanele Mayekiso (eds.), *Confronting Fragmentation: Housing and Urban Development in a Democratising Society* (UCT Press: Cape Town, 2003) pp. 112-113.

1966, as Pinetown became less agricultural and more industrial, the land increased in value and Motala Farm was zoned as a 'white area'. The lack of security of tenure meant that at the same time as the state stopped investing in the area, people stopped investing in their homes and conditions worsened seriously. In other words, tenure insecurity caused by the Group Areas Act created the very 'slums' the Act was supposed to 'eliminate.' But in Motala Farm the forced evictions that occurred in many other areas of the City did not happen. In 1983, owing largely to the ongoing representations to the white elite in Pinetown by the wealthier residents of Motala Farm, it was deproclaimed as a white area, thus allowing the Indian residents to remain. However the mixed race residents were immediately moved out to Marianridge.<sup>148</sup>

### *Memories of shack life*

These forced removals are remembered bitterly in popular and official memory as great crimes of apartheid. They occur as originary events in many accounts of political conscientisation. However, the memories of these settlements also capture an essential recurring ambiguity: on one hand, the shack settlements are remembered as sites of political and cultural freedom, due to their proximity to the city, their cosmopolitanism, and their autonomy from the state and authoritarian modes of enforcing 'tradition.' At the same time, the settlements are also remembered as sites of suffering as the absence of state support meant the absence of the services - sanitation, roads, health, water, refuse collection and so on - that were needed for a viable urban life. Speaking in 1960, the head of the ICU, A.W.C. Champion (who, despite all his other failings, had supported militant mobilisation against conditions in *Umkhumbane*) still described the settlement as "the place in Durban where families could breathe the air of freedom".<sup>149</sup> Contemporary shack dwellers with roots in *Umkhumbane* recall it with similar ambiguity as being simultaneously a deprived and elevated place. The deprivation was material, the elevation inhered in the fact that it was economically and politically freer than other places where African people could live.<sup>150</sup>

In this period, places like Cato Manor, District Six in Cape Town, and Sophiatown in Johannesburg gave rise to vibrant and cosmopolitan urban cultures in which local practices mixed with, appropriated, and reworked imported cultural idioms such as jazz.<sup>151</sup> In Johannesburg, urban 'slum life' produced the Drum writers, while the painter Gerard Sekoto spent important phases of his life in District Six and Sophiatown.<sup>152</sup> Well-known contemporary Durban musicians such as Madala Kunene and the late Spho Gumede have often spoken about their musical roots in Cato Manor.<sup>153</sup> Many people loved these places - they became themselves precisely because of the urban cosmopolitanism of these 'slums'. Bloke Modisane's novel *Blame Me On History* famously begins: "Something in me died, a piece of me died, with the dying of Sophiatown...In the name of slum clearance they had brought the bulldozers and gored into her body."<sup>154</sup> For Alexander Steward - the author of a notorious book in defence of apartheid and against Father Trevor Huddleston's condemnation of the destruction of Sophiatown - all that needed to be said was that: "Sophiatown is a slum, Johannesburg is a modern perpendicular city."<sup>155</sup> For Stewart, a slum was a place of "squalor and unhappiness and disease and crime."<sup>156</sup> It

---

<sup>148</sup> COHRE is indebted to Shamita Naidoo from Motala Heights, as Motala Farm is now known, for making available her considerable archive of documents on the history of the area.

<sup>149</sup> Paul Maylam, 'Introduction', p. 19.

<sup>150</sup> This emerged clearly in focus groups held in the Arnett Drive Settlement (4 August 2007) and in e Section, Umlazi (18 August 2007)

<sup>151</sup> See Freund, *The African City*, pp. 116 - 117.

<sup>152</sup> *Ibid.*, pp. 117 - 118.

<sup>153</sup> Personal communication with Gumede and Kunene.

<sup>154</sup> Bloke Modisane, *Blame Me on History* (Paper Books: Johannesburg, 1986) p. 5.

<sup>155</sup> Alexander Steward, *You are Wrong Father Huddleston* (Culemborg Publishers: Cape Town, 1956) p. 11.

<sup>156</sup> *Ibid.*, p. 34.



was therefore obvious that slums should be demolished, and people moved to clean, modern township housing. Steward listed the positive attributes of these modern townships built by the apartheid state: first on his list is sanitation. Free water was last.<sup>157</sup> It is sufficient for Steward to dismiss the bitter opposition to 'slum clearance' from the residents of Sophiatown by simply stating that they were "slum-dwellers" and that their opposition to the forced evictions came only from "agitators and rent racketeers."<sup>158</sup> This too proved to be an enduring trope. When Steward turned his attention to Korsten in Port Elizabeth, local opposition to forced removal was simply dismissed as the work of

the professional agitators and the landlords who had this in common – that the elimination of the slum would close down their respective businesses. They had their pawns whom they pushed out into the limelight and into trouble...Well, despite the alliance of the racketeer and agitator the miracle has happened.<sup>159</sup>

The radical disjuncture between the views of the political and planning elite and the experiences of the people subject to their plans has usually been understood in terms of racism: white planners simply assumed that they knew what was best for African shack dwellers. But Diane Scott argues that it is also useful to examine this disjuncture through the lens of critical ideas about modernist planning:

One of the primary characteristics of organized modernism is its radical break with history and tradition. This follows from the assumption that all activities, values and patterns of human behaviour that are not based on scientific reasoning would need to be re-designed. Scientifically based economic and social plans that emerged in response to this assumption were considered to be superior. So too were those 'experts' - the planners, engineers and architects - with the scientific knowledge to devise and implement such plans objectively for the good of the 'public'.<sup>160</sup>

### *The new peripheral townships*

As Freund notes, "Destruction was not all that happened. The second thrust by the state was the willingness to engage in large-scale construction of new residential housing. By contrast with previous, relatively lacklustre attempts to segregate the city, the apartheid authorities were willing to try and resolve the urban question in South Africa by building large and racially defined townships beyond the edge of the white city."<sup>161</sup> Godehart reports that nationally

between 1950 and 1970 more than 400 000 housing units were delivered to the urban poor. This was a very remarkable achievement and South Africa was a leader in the field of mass housing but the results were disastrous from the point of view of social and urban development...the isolation of the townships at the peripheries of cities was the worst dimension of planning.<sup>162</sup>

These townships were built by municipalities with funding from the national government, often in the form of subsidized loans. The municipalities which were expected to repay these loans with rental income generated in the townships. In Durban, one of these townships, Phoenix,

---

<sup>157</sup> Ibid., p. 35.

<sup>158</sup> Steward, *You are Wrong Father Huddleston*, p. 76.

<sup>159</sup> Ibid., 34

<sup>160</sup> Scott, 'Creative Destruction', p. 239.

<sup>161</sup> Freund, *The African City*, p. 124.

<sup>162</sup> Godehart, *The Transformation of Townships in Southern Africa*, p.61.

demarcated in 1964, was known to be particularly bleak. Bleaker still were the ‘transit camps’ to which people were sent when housing was not available.<sup>163</sup> But, as Iain Edwards stresses, in the view of the state “The destruction of Cato Manor and the creation of KwaMashu were cited as evidence of the beneficent nature of state intervention.”<sup>164</sup> Indeed, the Minister of Bantu Administration and Development, M. C. Botha, assured the country that “The Bantu people like being moved...The Bantu people like the places where they are being resettled.”<sup>165</sup>

### **The popular reassertion of the right to the city (late 1970s to 1994)**

At the height of apartheid Africans were successfully barred from occupying any autonomous or potentially autonomous spaces in the city and could legally live only in workers’ hostels or servants’ quarters. After the Sharpeville massacre in 1960, the protests against pass laws that had been common in the 1950s were crushed and the state appeared impregnable.

#### *Cracks in the barriers around white space*

In the late 1970s cracks began to emerge in the barriers around white space. In 1973 the Durban strikes<sup>166</sup> began a new era of urban militancy. Workers again become willing to reject the restrictions of hostel life. Then in 1976, the country-wide aftermath of the uprising in Soweto widened these cracks considerably. There was an immediate response from both the state and big business. In this year the Crossroads settlement in Cape Town, previously considered an illegal squatter settlement, was re-designated as a ‘transit camp’<sup>167</sup> - thus marking the beginning of an official acceptance of an autonomous urban African presence. Also in this year, big business set up the Urban Foundation, an organisation that undertook research, worked with the state to shape policy and, later, undertook its own housing interventions. Although the 1979 replacement of the Slums Act of 1934 gave the apartheid state the legal means to ‘clear’ the shack settlements, it lacked the capacity and political credibility to carry out mass forced evictions. Despite the military occupation of many townships by the mid 1980s the state had lost the capacity to completely regulate the movement of Africans. In 1986 the Act was amended again to further increase the powers of local authorities to implement forced removals in the name of ‘clearing slums’. But although elite white suburbs were protected where possible, people were able to flood into the cities, seize land in defiance of the state, and establish communities beyond the control of the apartheid state.

A 1978 a study of Malukazi, a new shack settlement on ‘tribal land’ in Umbumbulu near Umlazi, was undertaken by academics at the University of Natal. Some of these researchers had formerly worked in support of government housing policy. They noted that they had begun their project with the understanding that squatting was “a social pathology, something which should be overcome, eradicated or punished” but that “only very slowly as we became familiar with the community” they came to the conclusion that “the settlement at Malukazi can be viewed not as a problem in itself but as a solution to wider structural problems.”<sup>168</sup> They argued that:

Erection of complete houses with most of the usual services in a township context never copes with the rapid rate of urbanisation, causing people to develop their own alternatives – spontaneous settlements – whatever the stringency of control. The

---

<sup>163</sup> Desmond, *The Discarded People*, p.23, pp. 67-71.

<sup>164</sup> See Iain Edwards, ‘Cato Manor, June 1959’, p. 107.

<sup>165</sup> Desmond, *The Discarded People*, p. 23.

<sup>166</sup> See Institute for Industrial Education, ‘The Durban Strikes: South Africa 1973.’

<sup>167</sup> Huchzermeyer, *Unlawful Occupation*, p. 101.

<sup>168</sup> P. Stopforth, ‘Profile of the Black Population in a Spontaneous Urban Settlement Near Durban’, *Centre for Applied Social Science* University of Natal, Fact Paper 3, (1978).

contradiction in this process is evident when the bulldozers move in to destroy the shelters of informal settlement: they destroy what constitutes a solution, even if imperfect, to the problem of shelter in an urbanizing context, and further, there is no evidence that the proponents of the “bulldozer philosophy” consider the consequences of their acts further than removal of people to some other jurisdiction.”<sup>169</sup>

By the early 1980s the construction of formal township housing by the state had more or less stopped as the state battled to contain a growing urban rebellion and waged war in Angola. The growth of shack settlements was rapidly escalating. In 1984 there were an estimated one million shack dwellers around Durban.<sup>170</sup> In 1986, Influx Control was officially abandoned and by 1988 the figure had increased to 1.7 million.<sup>171</sup> Some studies reported that Durban had surpassed Mexico City as the fastest growing city in the world. These days it is often asserted that the growth in shack settlements in the 1980s was a consequence of the political violence between pro- and anti-apartheid forces that wracked the province in that period. But not all shack dwellers were political refugees and there were multiple causes for the rapid growth in the number of shacks in the city. For example, the new shacks could enable the reunification of families split apart by the migrant labour system.<sup>172</sup> This included families where women domestic workers had been living in their employers’ outbuildings.<sup>173</sup> Shacks also enabled people fleeing rural poverty to access the opportunities of the city. Some shack dwellers had been evicted from white farms, while others were in flight from abusive conditions on those farms. The settlements also provided an important safety net for people - especially women, teenagers and sometimes even children - fleeing abusive relationships. They created living space for newly formed urban households and as many as half the residents of new settlements were already urbanised.<sup>174</sup> Sometimes these were people who had grown up in township houses, and in many other instances they were people who had previously been living in backyard shacks in townships.<sup>175</sup>

While this movement into the city was celebrated by the ANC underground and in exile, it was greeted with tremendous racialised panic in many white and Indian communities. With regard to the white response, Ballard notes that: “Needless to say, the reaction from nearby formal residential neighbourhoods was characterised by outrage and horror rather than democratic optimism.”<sup>176</sup>

### *New shack settlements*

In the 1980s, hundreds of settlements were founded in Durban. These were characterised by a wide range of very different origins, modes of governance, political affiliation and relationships with people in nearby township or suburban housing. Their internal politics ranged from democratic street committees to outright warlordism. In Bantustan land adjacent to rural townships, shack settlements such as Inanda were often built on the land of ‘shack farmers’ who

---

<sup>169</sup> Ibid. p. 78.

<sup>170</sup> Elaine Unterhalter, *Forced Removals* (International Defence and Aid Fund for Southern Africa: London, 1987) p. 87.

<sup>171</sup> Maylam, *The Struggle for Space in Twentieth Century Durban*, p.25.

<sup>172</sup> Gerry Mare, *African Population Relocation in South Africa* (SA Institute of Race Relations: Johannesburg, 1980) p. 36.

<sup>173</sup> Pema Ridge Settlement, focus group, 17 September 2007.

<sup>174</sup> SANGOCO Paper on Housing for the Poverty Hearing, 1998, p.17..

[http://www.sangoco.org.za/site/index.php?option=com\\_content&task=view&id=47&Itemid=47](http://www.sangoco.org.za/site/index.php?option=com_content&task=view&id=47&Itemid=47) Also see Gerry Mare *African Population Relocation*, p. 25.

<sup>175</sup> SANGOCO, Paper on Housing for the Poverty Hearings, p. 11.

<sup>176</sup> Richard Ballard ‘Middle Class Neighbourhoods or ‘African Kraals’? The Impact of Informal Settlements and Vagrants on Post-Apartheid White Identity’, *Urban Forum*, Vol 15. No. 4. (2004) pp. 51-52.

charged rent for access to land and ruled their areas with iron fists.<sup>177</sup> But in settlements built outside of Bantustan land - whether an urban African township like Lamontville or an Indian suburb like Clare Estate - settlements were not usually commercial projects, and were often run democratically.

All these settlements served as nodes of connection enabling a new mobility between city, township and village life. Many people were able to use the better livelihoods and education available in the city to dramatically improve their material circumstances and autonomy. For those who remained in acute poverty, an urban base could keep hope alive and nihilism at bay. Many shack dwellers invested tremendous hopes in the gathering popular resistances to apartheid during the 1980s. In his blurb for Omar Badsha's *Imijondolo*, a photographic essay on the Amouti settlement in Durban, Desmond Tutu wrote to recommend the book as a "harrowing chronicle of what does happen to God's children who are victims of a vicious policy...I hope this book will sear our consciences so that we will work to put an end to policies that can produce such human tragedy".<sup>178</sup> It was widely believed that the end of apartheid would be the end of the shanty town – through development and not through destruction.

In Durban the new shacks had many names, but the most widely used was *imijondolo*. Two explanations are given for the origin of the word. The first is that this was an initially colloquial word derived from the name 'John Deere' – the first shacks built in the 1980s were constructed from the discarded and salvaged packing crates for John Deere tractors. The second explanation is that *umjondolo* (the singular form of *imijondolo*) derives from the word *umjendevu*, meaning spinster. This constructs the settlements as sites of gendered transgression: the settlements enabled women to become migrant workers, despite apartheid rules that largely reserved access to the city to male migrant workers and they became an important space for single poor urban women who wished to live apart from their families. Unmarried women were thus able to access city life outside the confines of domestic labour and the family. The general lesson of the international literature on cities – that proximity to the city has particular benefits for women – is borne out in local studies.<sup>179</sup>

The 1980s were marked by a violent conflict between the anti-apartheid United Democratic Front and the pro-apartheid Inkatha, with the latter receiving support from the South African Police and, after 1987, the KwaZulu Police. This conflict was often waged in shack settlements – and in consequence some came to be governed by warlords. By the late 1980s, however, the UDF-aligned civics had won over large portions of the squatter periphery.<sup>180</sup> Marie Huchzermeyer reports that - although there were certainly instances where UDF-aligned civics were authoritarian – generally, "the UDF and civic structures introduced free access to land. In informal settlements, this meant a shift from rental tenure towards a system that may be associated with 'communal land holding in rural areas' with entry through sponsorship and screening."<sup>181</sup> She also reports that grassroots democracy and decommodification were central

---

<sup>177</sup> See Mike Morris and Doug Hinson's 'Power Relations in Informal Settlements' in Doug Hinson and Jeff McCarthy, *Here to Stay: Informal Settlements in KwaZulu-Natal* (Indicator Press: Durban, 1994) for a particularly bleak account of authoritarianism in the settlements at this time. However the idea of Inanda as uniformly warlord/shacklord territory in the 1980s has become something of a stereotype and it is important to understand that it was not all like this. (David Ntseng, Interview 11 October 2007)

<sup>178</sup> Omar Badsha, *Imijondolo* (Afrapix: Durban, 1985). Twenty years on, and more than ten years after the end of apartheid, the only thing that gives any indication that the photographs are not contemporary are the fashions worn by the models in the adverts in the newspapers with which many shacks are wallpapered.

<sup>179</sup> See for instance Alison Todes 'Housing, Integrated Urban Development and the Compact City Debate' in Harrison, et al, (eds.) *Confronting Fragmentation*, p. 112.

<sup>180</sup> Huchzermeyer, 'Unlawful Occupation', p. 117.

<sup>181</sup> *Ibid.*, p. 117.

concepts in the civic movements. Catherine Cross argues that shacklords gave way to civic structures that “focused a powerful social movement against the practice of paying rent to access land.”<sup>182</sup> A number of people have argued that the tenure system created by the civics was not understood by city planners. For instance Cross argues that:

The perception of appropriate land rights and housing for the informal population which is often held by planners and administrators tends to put forward the white suburban property system, and to interpret urban informal tenure as a botched non-tenure which can be dismissed. This outlook fails to take into account the distinct character of African tenure in South Africa, and its emphasis on the active role of residence rights in relating the individual and the household to the community. Urban informal tenure draws its philosophical basis from African social thought, and calls for appropriate consideration as a tenure system in its own right.<sup>183</sup>

Cross explains that this tenure system works in the following way: new community members must have a sponsor and undergo a period of probation before a gradual acceptance is extended; a land right is then granted with the expectation of the new member’s ongoing active commitment to the community. This land right can be withdrawn and the person can be asked to leave the settlement if he or she indulges in habitual anti-social behaviour.

### *Negotiating a new deal*

In 1985, riots broke out in the Crossroads settlement in Cape Town after the Minister of Co-operation, Development and Education, Gerrit Viljoen, said that “uncontrolled squatting would not be tolerated”.<sup>184</sup> In four days of conflict 18 people were killed and hundreds injured. In response the state declared a moratorium on forced removals. Although distinctions between ‘legals’ and ‘illegals’ allowed the state to continue to evict, mass protest had won a major concession – the exclusion of autonomous or self-planned African communities from the cities, successfully enforced since the mid 1960s, was no longer absolute.

In this period, the Urban Foundation became a major player in reformulating state policy in response to the new situation.<sup>185</sup> The Foundation aimed to develop an individual, market-based solution to the housing crisis. It replaced the term ‘squatter camp’<sup>186</sup> with the term ‘informal settlement’ - which, they felt, broke with the fears of invasion implicit in the earlier term, and which implied instead a temporary condition that could be alleviated by unleashing previously blocked entrepreneurial energies. The Foundation resurrected the housing model of the early 1950s, when the state was weaker and shack dwellers were stronger than under high apartheid. It worked for the provision of basic services to shack settlements, and for shack dwellers to be allowed to develop their homes into more formal dwellings as their incomes improved. The prospect of tenure security and of access to services was widely used to persuade settlement committees to force a halt to the building of new shacks.<sup>187</sup> Cross warned that the tightening of

---

<sup>182</sup> Catherine Cross ‘Shack Tenure in Durban’ in Doug Hindson and Jeff McCarthy, *Here to Stay*, p. 180.

<sup>183</sup> *Ibid.*, p.178.

<sup>184</sup> Platzky & Walker, *Surplus People: Forced Removals in South Africa*, p. xxvi.

<sup>185</sup> See Marie Huchzermeyer’s account of the Urban Foundation in her ‘Unlawful Occupation’, pp. 121-124 and 145–178.

<sup>186</sup> The term ‘squatter camp’ probably came to South Africa from California where it was used in the 1930s to describe the settlements erected by the dust bowl refugees. See *John Steinbeck Of Men and Their Making: The Selected Non-Fiction of John Steinbeck* (Penguin: London, 2002)

<sup>187</sup> Cross, p. 168.

official controls though development could restrict access to land by the poor and lead to a re-emergence of the tenancy system.<sup>188</sup>

By July 1987 the Durban City Council had publicly accepted that, in principle, the new settlements would be permanent. Nevertheless, in the same year “squatters in Wentworth, Clare Estate and Reservoir Hills had their shacks demolished by the police and many were arrested for trespassing.”<sup>189</sup> Despite this, more shacks were erected in Clare Estate and within two years the city conceded the permanence of the settlements, in practice as well as in principle. In 1989, the Urban Foundation began the upgrade of the Besters’ Camp settlement in Inanda. In July 1991 the City resolved to develop the largest settlement in Clare Estate, Kennedy Road, in partnership with the Urban Foundation in two phases. Phase one was duly implemented. This shift in thinking was not an entirely local development. As Janice Perlman observes:

it was recognized in the early 1960s that the self-built shanty towns of the Third World were not the problem but the solution, and that giving land tenure to the squatters...yielded better results than the bulldozer. Yet it took almost a generation for these ideas to be adopted, first by the international agencies then by national governments (early 1980s) and now finally – and still only partially – by local governments.<sup>190</sup>

But there had not only been an international shift in how shack settlements were understood. There was also a shift in how shack dwellers *themselves* were understood. Perlman explains that:

Research institutes, consultants and academics are not the most fertile sources for answers. As Dennis Goulet puts it, ‘experts simply do not know best what is good for someone else’. Experience over the past 20 years shows that, since intelligence is not distributed along class or geographic lines, the most promising innovative approaches often come from local experience – from the people, community groups, street-level bureaucrats, and small scale enterprises closest to coping with problems on a daily news.<sup>191</sup>

While the functionality of shack settlements was acknowledged, the rationality of shack dwellers - especially as it related to urban planning - was not. A number of prominent local academics were explicitly arguing that the power of civic organisations would have to be broken and that collective forms of political expression would have to be replaced with individual access to government authority. In other words the recommendation was “to reduce the power and role of community based organisations.”<sup>192</sup>

In 1990, when the ANC opened their offices in Johannesburg after their unbanning, a huge banner in the foyer declared ‘Occupy the Cities!’<sup>193</sup> At this point in time, the ANC gave active encouragement to land occupations. For instance, in that same year, Ronnie Mamoepa, the publicity secretary of the Southern Transvaal United Democratic Front (UDF), announced that his organisation would be embarking on a nation-wide campaign to occupy vacant urban land. Ballard explains that “From the point of view of the UDF and ANC and similar bodies, land

---

<sup>188</sup> Cross, p. 187.

<sup>189</sup> Brij Maharaaj ‘Segregation, Desegregation and De-Racialisation’ in Padayachee & Freund (eds.) (*D)urban Vortex* (University of Natal Press: Pietermaritzburg, 2002) p. 179.

<sup>190</sup> Janice Perlman ‘A dual strategy for deliberate social change in cities’ *Cities* Vol. 7, No.1. (February 1990) p. 6.

<sup>191</sup> *Ibid.*, pp.6-7.

<sup>192</sup> See Huchzermeyer’s discussion of this in ‘Unlawful Occupation’, p.153.

<sup>193</sup> Gill Hart, personal communication.

invasions also performed an important symbolic role whereby people were reclaiming land from which they had been excluded under apartheid.”<sup>194</sup>

Also in 1990, the Urban Foundation gained decisive influence over the National Party’s urban policy making and was asked to devise a socio-economic upliftment programme for the state.<sup>195</sup> It did so in the form of a consultant - rather than community - driven programme that allocated a capital subsidy through the specially set up and state-financed Independent Development Trust (IDT). The subsidy delivered ownership of a serviced site to qualifying household heads on whose behalf developers made applications.<sup>196</sup> Because it didn’t challenge the property market - a market based on spatial exclusivity - Urban Foundation serviced sites were generally provided on the periphery of the cities, as in the apartheid model.<sup>197</sup> The civics condemned this consultancy driven model and its result of toilets on peripheral sites (known disparagingly as the ‘toilets in the veld model’). The Foundation defended itself by pointing to the large numbers of serviced sites delivered. However it is important to note that evictions continued (for instance at the Canaan settlement) when settlements were declared unsuitable for upgrading.<sup>198</sup> In this instance no serious attention was given either to investing in land to make it suitable or to finding nearby land.

In 1992 the IDT announced the end of its site and service capital subsidy programme, and the National Housing Forum was set up to negotiate a vision for a new post-apartheid housing policy. The Housing Department records that it was a “multi-party non-governmental negotiating body comprising 19 members from business, the community, government, development organisations and political parties outside the government at the time. At these negotiations the foundation for the new government’s Housing policy were developed and agreed to.”<sup>199</sup> Sarah Charlton and Caroline Kihato follow Marie Huchzermeyer in arguing that two main groups were represented at this forum – one linked to the ANC, trade unions and the civic movement and the other linked to business. The group aligned to business interests promoted the Urban Foundation’s model of a capital subsidy driven individual freehold site and service approach. The other main group, aligned to popular political forces, promoted a state-built rental model on the European social democratic approach. The final compromise saw a state-built ‘starter house’ added onto the Urban Foundation site and services model. It has been widely noted that, amongst other questions, “critical debates on the spatial impact of capital subsidies and urban restructuring were never resolved.”<sup>200</sup>

In Durban, Operation Jumpstart was set up at the initiative of business interests.<sup>201</sup> This operation developed out of a report commissioned by the city’s largest landowner, Tongaat Hulett.<sup>202</sup> It was conceptualised as a ‘stakeholder body’ in which old and new elites could meet outside of the normal administrative and political structures to begin planning a new urban

---

<sup>194</sup> Ballard, ‘Middle Class Neighbourhoods...’, pp. 51-52.

<sup>195</sup> Huchzermeyer, ‘Unlawful Occupation’, p.131.

<sup>196</sup> Ibid., p. 132.

<sup>197</sup> Ibid., p. 132.

<sup>198</sup> Ibid., p. 160.

<sup>199</sup> National Department of Housing, *History of the Department*  
<http://www.housing.gov.za/Content/The%20Department/History.htm>

<sup>200</sup> See, for instance, Sarah Charlton and Caroline Kihato, ‘Reach the Poor: An analysis of the evolution of South Africa’s housing programme’ in *Democracy and Delivery: Urban Policy in South Africa*, ed. U.Pillay (UCT Press: 2006) p.272.

<sup>201</sup> Ann Bernstein and Jeff McCarthy, ‘Durban’s vision needs good leadership,’ *Business Day*. (16 October 1996)  
[http://www.cde.org.za/article.php?a\\_id=209](http://www.cde.org.za/article.php?a_id=209)

<sup>202</sup> Charles Abugre ‘NGOs, Institutions and Sustainable Development in South Africa’ in Ken Cole, *Sustainable Development for a Democratic South Africa* (Earthscan: London, 1994) p. 121.

vision.<sup>203</sup> But there were immediate critical responses. For instance, David Dewar argued that: “The urban problem is interpreted almost entirely as provision of shelter; as a consequence, kilometres of housing area are emerging but [with] few qualities or advantage of [a] ‘city’. The emerging urban structure and form is exploitative.”<sup>204</sup>

On 9 November 1993 the African National Congress issued a press statement in the lead up to the first democratic elections condemning the “housing crisis in South Africa” as “a matter which falls squarely at the door of the National Party regime and its surrogates”. It went on to describe conditions in the ‘informal settlements’ as ‘indecent’ and announced that:

Nelson Mandela will be hosting a People’s Forum on Saturday morning in Inanda to hear the views of residents in informal settlements...The ANC calls on all people living in informal settlements to make their voices heard! ‘Your problems are My Problems. Your solution is My Solution’, says President Mandela.<sup>205</sup>

The civics had been organised together as the South African National Civics Organisation (SANCO). SANCO had earlier resolved to stay independent of the ANC, but just before the election it decided instead to formally align with the party - which swept to power in the national parliament in 1994. Housing was a key part of its electoral platform.

## Conclusion

This account of the colonial and apartheid history of shack settlements in Durban points to some key trends. On this basis it is possible to identify a number of indicators useful for the development of a housing policy based on the principle of redress for the wrongs of apartheid. An important step towards thinking through this policy was taken in 1998, in a paper on housing commissioned by the South African National Non-Governmental Organisation (SANGOCO) for the Poverty Hearings.<sup>206</sup>

Here it was argued that the exclusion of some people from the cities, and the subordinate inclusion of others, had been a key cause of inequality in South Africa. A housing policy that aimed to redress this would need to prioritise the rights of those who had been excluded from the city. It needs to be recognised that whites have been systematically privileged over blacks, and that those blacks with relatively more access to the city have also been systematically privileged over those with less. It is also clear that poor African women have suffered the most severe systematic exclusion from the city.

Another important lesson derived from this history is that international practice is not necessarily good practice. Much of what was done under apartheid was in accordance with the international expertise of the time. Therefore, it is important that new policies committed to social justice must take into account local experience and imagination, and must engage with local realities and local people rather than merely following international trends. It is essential that this engagement must be with local shack dwellers and not just with local experts with technical skills.

It is also crucial to recognise that the housing question is not reducible to the provision of houses. On the contrary, there have consistently been times when shack dwellers have actively

---

<sup>203</sup> Freund, *The African City*, p. 136. Also see Shannon Moffett and Bill Freud, ‘Elite Formation and Elite Bonding: Social structure and development in Durban,’ *Urban Forum*, Vol 14. (2004) pp. 134-161.

<sup>204</sup> Cited in Freund, *The African City*, p.136.

<sup>205</sup> African National Congress, *Southern Natal Statement on the Housing Crisis*, Durban (1993)

<sup>206</sup> SANGOCO *Paper on Housing for the Poverty Hearing*.



resisted forced removal from shacks to houses - whether because their shacks were better located in terms of work, schools, and communities, or because the proposed new housing (or its associated rates and services) were simply unaffordable. The question of geographic space - of where people live - is often as important as the question of the kind of structures in which people live. The question of social space is equally important. A person who can live with dignity in a particular community may not be able to survive when isolated from those social networks, and when removed from de-commodified access to land, housing and services.

It is also important to note that exclusion from the city was usually justified as reform, and as being in the interests of the people who were forcibly evicted. A key general lesson can be learned from this aspect of the apartheid experience: people should be able to speak for themselves, rather than have planning bureaucracies decide for them what is good for them. It is important to be extremely wary of any situation in which planning elites have to forcibly impose a 'beneficial' policy. The history of Durban (as well as the comparable histories of other societies, such as Brazil and the United States) must also lead us to adopt a particular critical distance from the language and practice of slum clearance. When a vastly better alternative - participatory community development - is so readily available, there can be no excuse for this way of thinking and acting.

It is also important to recognise that racism does not provide a full explanation of elite hostility to shack dwellers. History shows that in Durban, as elsewhere, there clearly exists what Grant Saff has described as "the mutuality of interests that relatively privileged groups, irrespective of race, have in protecting 'their' space from the encroachment of those lower down the order."<sup>207</sup>

Further, the apartheid experience - in which people were moved from shack settlements to bleak modernist townships - must raise serious questions about the design of new developments, and about who should undertake that design.

Finally, it would be wise to be cognisant that even when racial segregation is no longer official policy it could still be the case that, as Diane Scott warns, "a modernist utopia implemented exclusively by the state is dangerous as it detaches through reductionism and abstraction the 'pure' form - the map - from its 'impure' content - the ordinary people on the ground."<sup>208</sup> In other words, it would be critically important to take seriously shack dwellers' own views on what is best for them. This would include taking seriously what they have already achieved in terms of desegregating the city, building housing and developing communities on unused land, as well as considering their thinking about the future development of their communities and the city.

---

<sup>207</sup> Cited in Ballard, 'Middle Class Neighbourhoods...', p. 49.

<sup>208</sup> Scott, 'Creative Destruction,' p. 258.

## Chapter 2: Housing Rights and Post-Apartheid Law

### Introduction

This chapter shows that both the rights of access to adequate housing and to protection from forced or arbitrary evictions are well entrenched in international and South African domestic law. It is possible to recognise many of the protections built into broad international instruments in domestic constitutional entitlements, as well as in statute law and in the jurisprudence of the higher South African courts. Housing rights, protection from evictions and the rights to organise and to speak out in defence of these rights are also widely (although, many would argue, not adequately) acknowledged in terms of law at a South African national and provincial policy level. However, there are currently gravely serious attempts being made to reverse some of gains that have been concretised in law since the end of apartheid. This is particularly the case with attempts to simultaneously criminalise shack dwellers while radically reducing their security of tenure, thus rendering them vulnerable to both forced eviction and to the repression of any organised attempts to defend their right to the city.

### The international right to adequate housing and protection from forced evictions

#### *The International Covenant on Economic, Social and Cultural Rights of 1966*

A clear human rights perspective is enshrined in Article 25 of the Universal Declaration of Human Rights of 1948 ('the Declaration'); and Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights of 1966 ('the Covenant').<sup>209</sup> Article 25 of the Declaration states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself[sic] and of his family, including food, clothing, housing and medical care, a necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

In a partial recapitulation of this clause, Article 11 (1) of the Covenant affirms:

The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his [sic] family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right recognising to this effect the essential importance of international co-operation based on free consent.

It is crucially important to note that in these provisions housing rights are not separated off from other livelihood rights such as the rights to food, clothing, medical care, social services and so on. This means that there is a clear recognition of the interconnectedness of socio-economic needs. From the perspective of housing rights for the poor there is an appreciation that the development of housing must be planned and implemented in such a way as to facilitate the development of viable communities - that is, communities with good access to both economic opportunities and social services. Failure to understand the interconnectedness of needs could

---

<sup>209</sup> United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948; United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966.

result in a positive response to just one of many needs that could, under certain circumstances, result in an overall deterioration in people's situation. For example people targeted for housing projects often depend on low paying and precarious jobs and livelihood strategies which require proximity to urban centres. In such a case it may be that relocation to a housing development on a peripheral site can improve a person's situation in terms of the actual structure of her dwelling while simultaneously worsening her position with regard to work, education, health care and so on. In some instances being the recipient of housing delivery could even result in a major set back in a person's overall wellbeing. In fact there is enormous evidence from across time and space to show that this is most often the case when people are removed from centrally located shacks or 'slums' to peripheral housing developments.<sup>210</sup> Progress with regard to housing can not therefore be measured merely by units delivered.

The recognition of the interconnectedness of social needs and rights is taken very seriously in the General Comments on Covenant obligations, which aim to give content to the rights the Covenant enshrines. These General Comments were developed by experts appointed by the United Nations General Assembly to a special committee – The Committee on Economic, Cultural and Social Rights. General Comments 3, 4 and 7 are relevant to housing rights.<sup>211</sup>

South Africa has signed the Covenant but has failed to ratify it. It remains important, however, to carefully analyse South Africa's efforts to fulfil the obligations of the Covenant. Given the government's often stated commitment to human rights, and given the high level of international praise for South Africa's progressive human rights framework - much of which is derived from international human rights treaties, including the Covenant - such analysis is vitally necessary.

General Comment 3, adopted in 1990, introduces the concept of the 'minimum core obligation' to characterise the nature of state duties under the Covenant. The idea is that each right entails an implied minimum set of specific benefits and protections that a state party to the Covenant must provide to all rights-bearers. In other words, certain minimum standards are set for the way in which governments should respond to the people over which they exercise authority.

In assessing the extent of a state's compliance with its minimum core obligations, the Comment sets a high standard of review, especially in connection with resource constraints. For example, in Paragraph 10:

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.

Even if a State party can demonstrate that its obligations are not fulfilled due to resource constraints, paragraph 12 of the Comment requires that 'vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes'. For now, the individualised minimum core approach has been rejected by the South African courts in favour of a conception of socio-economic rights, which emphasises a collective entitlement to a

---

<sup>210</sup> Literally hundreds of studies have reached this conclusion. Perhaps one of the best known is Janice Perlman's classic study of the favela eradication programme undertaken by the military dictatorship in Brazil in the 1970s, *The Myth of Marginality* (University of California Press: Berkeley, 1976).

<sup>211</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 3 on the Nature of States Parties Obligations: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 1990; Committee on Economic, Social and Cultural Rights, *General Comment No. 4 on Right to Adequate Housing*, 1991; Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on Right to Adequate Housing: Forced Evictions*, 1997.

‘reasonable’ policy. (This is discussed in more detail below.) Minimum core obligations still, however, form the foundation of any international appraisal of South Africa’s progress in realising socio-economic rights. The concept also remains a resource for lawyers and other rights advocates seeking to give effect to South Africa’s domestic socio-economic rights entitlements.

General Comment 4, adopted in 1991, focuses on the right to adequate housing. The comment explains the right to adequate housing as being ‘the right to live somewhere in peace and dignity’. Here the Comment affirms the right as an entitlement to something more than just bricks and mortar. Adequate housing, according to the Comment, means adequate privacy, space, security, lighting, ventilation, basic infrastructure, all at an affordable cost and within a reasonable distance from job opportunities and social services. Paragraph 8 of the Comment sets out seven dimensions of ‘adequacy’ to be taken into account when assessing efforts to give effect to the right. These are:

- Legal security of tenure: From rental housing to full freehold, whichever tenure is considered most appropriate for a particular context must guarantee legal protection against forced eviction, harassment and other threats. Importantly, the Comment concludes that forced evictions are *prima facie* incompatible with the requirements of the Covenant.
- Availability of services, material, facilities and infrastructure: These include ‘sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
- Affordability: Housing costs should not deny a rights-bearer the resources necessary to meet other basic needs.
- Habitability: Housing must be sufficiently spacious, safe and healthy.
- Accessibility: Adequate housing must be accessible to all entitled to it. Disadvantaged groups must be assisted to access housing and land.
- Location: Adequate housing must be situated so as to allow access to job opportunities, healthcare services, schools, child-care centres and other social facilities.
- Cultural adequacy: Housing must be constructed so as to enable the expression of cultural identity.

The Committee on Economic, Cultural and Social Rights recognises that the most common obstacle to realising the right to adequate housing is the failure to provide secure tenure to people unable to purchase land to live on, thus increasing their vulnerability to forced evictions. General Comment 7 on the Covenant therefore concentrates specifically on forced evictions. The Comment affirms that - in terms of the Covenant - a state must demonstrate that forced evictions, if carried out, are justifiable. In other words, governments have to justify forced evictions. The Comment also requires that adequate compensation is provided for any loss of rights or property caused by an eviction. Humane relocation plans must be put in place, and suitable alternative accommodation found for those unable to provide for themselves after an eviction. The Comment takes the view that some evictions may be justifiable, especially for wilful non-payment of rent and/or intentional damage to rented property without just cause. It also takes the view that - in cases of urban renewal or large-scale developments - eviction and relocation of relatively large numbers of people may be necessary. It is very clear, however, that this should only happen *as a last resort*.

Paragraph 15 of the Comment sets out eight requirements for an eviction to be considered procedurally just or to have been carried out fairly. These are:

- an opportunity for *genuine* consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- information on the proposed eviction(s) and, where applicable, on the alternative purpose for which the land or housing is to be used should be made available in a reasonable time to all affected;
- especially where groups of people are involved, government officials or representatives should be personally present during an eviction;
- all persons carrying out the eviction must be properly identified;
- evictions should not take place in particularly bad weather or at night, unless the affected persons consent otherwise;
- there must be provision of legal remedies i.e. people must be able to challenge the eviction legally;
- there should be provision, where possible, of legal aid to people who can not afford to employ lawyers to approach the courts.

Paragraph 20 of the Comment refers specifically to urban renewal or ‘beautiful city’ initiatives. It requires that these initiatives guarantee protection from eviction, or at least guarantee ‘re-housing based on mutual consent’. This should also be understood to apply to the preparation of cities for major events such as sporting events, conferences and so on.<sup>212</sup>

#### *The Advisory Group on Forced Evictions*

The South African government’s publicly declared commitment to international laws and agreements to uphold housing rights includes participation in various international projects on cities many of which are organised through UN-HABITAT. For instance, Coughlan Pather, head of the eThekweni Housing Department, has been one of 18 members on the secretariat of the Advisory Group on Forced Evictions (AGFE) from 2004 - reporting to the Executive Director of UN-HABITAT.

AGFE is an advisory group set up to monitor and promote alternatives to forced evictions. It takes the view that forced evictions are placing the attainment of the Millennium Development Goals on housing in jeopardy and that:

The practice of forced evictions constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the person, the right to security of the home, the right to security of tenure and the right to equality of treatment.<sup>213</sup>

---

<sup>212</sup> This is important because so called ‘mega-events’ often result in forced evictions. For more information see the COHRE Report: *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights*.  
<http://www.cohre.org/mega-events>

<sup>213</sup> ‘Finding solutions to forced evictions worldwide: A priority to meet the MDGs and implement the Habitat Agenda’ *Executive Summary Report of the Advisory Group on Forced Evictions (AGFE) to the Executive Directory of UN-HABITAT*, April 2007.  
[http://www.unhabitat.org/downloads/docs/5152\\_68295\\_AGFE\\_Executive\\_Summary\\_Report\\_April\\_2007.pdf](http://www.unhabitat.org/downloads/docs/5152_68295_AGFE_Executive_Summary_Report_April_2007.pdf)

Amongst other strategies for encouraging concrete action to stop evictions AGFE has encouraged mayors to declare their Municipalities ‘eviction free territories.’<sup>214</sup>

### *The African Commission on Human and Peoples’ Rights*

There are also strong commitments to the legal protection of housing rights in various Pan-African institutions including, for instance the African Commission on Human and Peoples’ Rights, set up in 1981 by the Assembly of Heads of State and Government of the then Organization of African Unity (now the African Union). This body is intended to “promote human and peoples’ rights and ensure their protection in Africa.”<sup>215</sup> In the case of *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* the commission observed that forced evictions have a drastic impact on people’s social, economic, physical and psychological well-being:

Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of the means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths. Evictions break up families and increase existing levels of homelessness.<sup>216</sup>

### **South African housing law**

#### *The Constitution*

Sections 26 (1) and (2) of the South African Constitution state 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.

The South African government has enacted a number of laws to enhance tenure security and to ensure that a court must consider ‘all the relevant circumstances’ before granting an eviction order. These laws include:

- The Extension of Security of Tenure Act (no. 62 of 1997);
- 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) – known as the PIE Act.

Of these post-apartheid statutes, this chapter considers only the PIE Act. This is because the PIE act has been the first point of reference for shack dwellers in most of the few instances when they have been able to access the legal system to oppose unlawful evictions through the courts. The PIE Act has, however, also been the first point of reference for the state, in those instances where it has sought to lawfully evict shack dwellers from their homes.

---

<sup>214</sup> *First Report of AGFE to the Executive Director of UN-Habitat*, 2005, p.141  
<http://www.habitants.org/article/articleview/1448/1/190/>

<sup>215</sup> *African Charter on Human and Peoples’ Rights*  
[http://www.achpr.org/english/info/charter\\_en.html](http://www.achpr.org/english/info/charter_en.html)

<sup>216</sup> African Commission on Human and Peoples’ Rights, Communication No. 155/96; (2001) AHRLR 60 (ACHPR 2001) at para 63. In this case, the Commission derived a right to adequate housing, including a prohibition on unjustified evictions, from a combined reading of articles 14, 16 and 18(1) of the African Charter on Human and Peoples’ Rights (1981).

## *The PIE Act*

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (no. 19 of 1998) (PIE) is the successor statute to the Prevention of Illegal Squatting Act (no. 52 of 1951) and its many amendments. The Prevention of Illegal Squatting Act was a mechanism to enable the apartheid state in general, and its municipalities in particular, to ‘clear’ land illegally occupied by shack dwellers, most of whom were black and poor and a majority of whom were women. The Act therefore operated in an extremely anti-black, anti-poor and anti-women manner. By contrast, 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 everyone who occupies land without ‘the express or tacit consent of the owner or the person in charge’ (Section 1). This includes people who occupied land lawfully at some point in the past but who no longer have the consent of the owner to occupy the land in question,<sup>217</sup> as well as to people who took occupation of land unlawfully in the first place. 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 the requirement that the property owner must serve ‘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.<sup>218</sup>

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.<sup>219</sup> The Act also provides for the court to appoint the local sheriff to oversee the eviction, if it deems such oversight necessary.

Section 5 of the Act also allows for urgent eviction proceedings if:

- there is a real and imminent danger of substantial injury or damage to persons or property if the unlawful occupiers are not evicted from the land immediately; and
- the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order is granted; and
- there is no other effective remedy available to the problem the owner seeks to cure by evicting an unlawful occupier.

---

<sup>217</sup> Or ‘holders over’ in sense discussed in *Ndlomu vs. Ncgobo; Bekker and Another vs. Jika*, 2003 (1) SA 113 (SCA).

<sup>218</sup> See Sections 4(3), 4(4) and 4(5) of the PIE Act.

<sup>219</sup> See Sections 6, 7 and 8 of the PIE Act.

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.

Section 6 thus sets out a carefully crafted balance between 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 South Africa's large number of shack dwellers from repeated or arbitrary eviction without the provision of alternative accommodation or land. Indeed, where municipalities and other organs of state have brought applications under the PIE Act to evict significant numbers of shack dwellers, they have usually been required to show that they have a rational plan to re-accommodate the people in question. Where the organ of state has been able to show this, eviction applications have generally been successful.<sup>220</sup> Where the organ of state has been unable to show evidence of a rational plan to re-accommodate large numbers of unlawful occupiers, eviction orders have generally been refused.<sup>221</sup>

The Centre for Applied Legal Studies (CALs),<sup>222</sup> at the University of the Witwatersrand in Johannesburg, and the Legal Resources Centre (LRC),<sup>223</sup> which has offices nationally, have made the most use of the PIE Act to defend the housing rights of shack dwellers. In a recent document CALs concluded that:

The PIE Act is an important and sensitive piece of legislation. After several years of

---

<sup>220</sup> This is so both for evictions effected under Section 6, and where the organ of state in question is evicting as an owner, under Section 4 of the Act. See especially *PE Municipality vs People's Dialogue on Land and Shelter and Others*, [2000] (2) SA 1074, where an eviction order was granted to the Port Elizabeth Municipality subject to the identification of suitable alternative land. See also *The City of Johannesburg vs. The Unlawful Occupiers of the Mandelaville Informal Settlement*, Witwatersrand Local Division, Case No. 25450/01 (unreported), where an eviction order was granted solely on the basis of the availability of suitable alternative accommodation.

<sup>221</sup> See *Transnet t/a Spoornet vs Informal Settlers of Good Hope and Others*, [2001] 4 All SA 516 (W), where an application for eviction of various informal settlers was postponed indefinitely, pending the institution of an enquiry as to the needs and rights of the settlers in question and the prospect of relocation to 'a safer and healthier site'. See also *The City of Cape Town vs. Neville Rudolf and others*, [2003] (11) BCLR 1236 (C).

<sup>222</sup> <http://www.lrc.org.za/>

<sup>223</sup> <http://www.law.wits.ac.za/cals/>



application in its current form, the courts have, in theory at least, achieved an equitable balance between the rights and obligations of landowners, tenants, the landless and the state. A degree of legal certainty has also been achieved.<sup>224</sup>

It is essential to stress, however, that while some municipalities swiftly stopped evicting illegally after losing cases brought against them for failure to comply with the PIE Act, regular – and, indeed, routine - illegal evictions remain common in many parts of the country. Mahendra Chetty, a lawyer at the Durban office of the Legal Resources Centre (the organisation that has assisted the majority of those shack dwellers in eThekweni who have been able to seek legal recourse against evictions) told COHRE that:

I have never come across one incident where the City has acted in accordance with the law in terms of Section 21 of the Constitution and PIE Act. There is not one instance that we know of where the City has evicted with a court order. The City, as a matter of regular and consistent practice, acts in flagrant breach of the law.<sup>225</sup>

Moreover CALS have noted that:

although Section 8 of the PIE Act makes eviction without a court order a criminal offence, South African Police Service (SAPS) officers are notoriously reluctant to respond to complaints of illegal eviction. CALS is unaware of a single successful prosecution in terms of Section 8 of the PIE Act since its promulgation.<sup>226</sup>

### **Jurisprudence: The right to housing in the South African courts**

There are widely recognised and serious problems with housing delivery in post-apartheid South Africa. They include problems with the quality and location of the housing, widespread allegations of corruption and politicking around housing lists, and a lack of popular participation in development planning. The two dominant themes thus far in housing rights litigation have been, however, unlawful evictions and the state's failure to cater for people living in desperate circumstances while they wait in the queue for low-cost housing. The landmark case is 'Government of the Republic of South Africa and Others vs. Grootboom and Others'<sup>227</sup> but a number of important cases have been conducted since Grootboom. This section of the chapter gives a brief overview of some of the key aspects of the judgments in these cases. While the judgments of the regional courts do not set binding precedents outside of those courts' areas of jurisdiction, they do provide an important indication to how the obligations that the Constitution imposes on the state with regard to housing should be understood at a local level.

The understanding of the Constitution developed in these cases will help to inform this report's assessment of the extent to which the right to adequate housing is being respected, protected and promoted in eThekweni.

---

<sup>224</sup> Comment on General Notice 1851 of 2006. Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006 by Centre for Applied Legal Studies, University of the Witwatersrand. (20 February 2007) <http://www.law.wits.ac.za/cals/CALSPIESUBMISSION.pdf>

<sup>225</sup> Interview, 13 September 2007.

<sup>226</sup> Comment on General Notice 1851 of 2006. Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006 by Centre for Applied Legal Studies, p.13.

<sup>227</sup> [2001] (1) SA 46 (CC).

## *Grootboom*

In September 1998, about 900 people moved from an overcrowded shack settlement in Cape Town known as Wallacedene to an adjacent stretch of privately owned land. The landowner sought a court order to evict them. The order was granted and they were evicted in May 1999. In the course of the eviction, their shacks - and most of their possessions - were destroyed. They returned to Wallacedene to live on a sports field. The community subsequently sued the Oostenberg Municipality, the Cape Metropolitan Council, the Western Cape Provincial Government, and the national government, seeking an order to provide them with temporary shelter. Their application was largely successful in the Cape High Court, which ruled that Section 28 (1) of the Constitution (the child's right to shelter) placed an immediate obligation on the state to house the community's children and their parents in tents, with portable latrines and a regular supply of water. The state appealed against the judgment, chiefly on the grounds that the South African Constitution had been wrongly interpreted as obliging the state to provide the people in the community with immediate relief.

In its judgment on appeal, handed down in October 2000, the Constitutional Court again ruled in favour of the applicants, but for different reasons. Focussing on the right to housing in Section 26 (1) and (2) of the Constitution, rather than on children's right to shelter in Section 28(1), the Constitutional Court held that the state was not under a specific duty to assist the Grootboom applicants in particular. The real question was whether or not the state's housing policy and practice, in its totality, was reasonable. The Court concluded that the measure of this reasonability lay in Section 26(2) of the Constitution. This requires the State to devise and implement a comprehensive, co-ordinated housing programme which is capable of facilitating the progressive realisation of the right of all people to access adequate housing. This programme must be reasonable both in its design and in its implementation. It must include reasonable provision for those whose housing needs are urgent and those who are living in intolerable conditions.<sup>228</sup>

Using this measure, the Court held that the state's policy was not reasonable as it did not cater for people living in situations of crisis or who were otherwise in desperate need – people in the same position as the applicants.

The relief granted by the Constitutional Court was, however, less far-reaching than that granted by the Cape High Court, amounting only to a declaration that the state's housing policy was defective in the manner set out, thus requiring the state to devise and implement measures aimed at providing relief to people in desperate need. The only direct benefit derived from the Grootboom case came earlier, in September 2000, when the Cape High Court had granted an interlocutory order enforcing a voluntary commitment by the Oostenberg Municipality to provide the Grootboom applicants with basic services and building materials.

The caution shown by the Constitutional Court in the wording of its order may be contrasted with the wording of the sixty-two page written judgment of the High Court, which is far more forthcoming about what the state is required to do in order to comply with its obligations under the right to housing. The state's programmes and policies, the High Court held, must:

- be comprehensive, coherent and effective;
- be reasonable within the social, economic and historical context of widespread
- deprivation, and within the availability of the state's resources;

---

<sup>228</sup> *Grootboom (supra)* paragraphs 40 – 42.

- give special attention to the needs of the most vulnerable;
- be aimed at lowering administrative, operational and financial barriers over time;
- allocate responsibilities and tasks clearly to all three spheres of government;
- be implemented reasonably, be adequately resourced and be free of bureaucratic inefficiency or onerous regulations.<sup>229</sup>

### *Rudolf judgment*

A subsequent case, decided in 2003 by the Cape High Court, elaborated on the state's obligations with regard to the right to housing. In *City of Cape Town vs Neville Rudolf and Others*, the City of Cape Town sought to evict a group of 50 squatters and their families who had left unaffordable backyard shack rental accommodation and subsequently taken up residence in a municipal park. The municipality immediately moved to evict Rudolf and his co-squatters, without offering to provide any alternative accommodation, claiming that their occupation of the park was nothing more than a 'typical case of illegal land grabbing.'<sup>230</sup> With the assistance of the Legal Resources Centre in Cape Town, the squatters defended themselves against the municipality's application to evict, and brought a counter-application challenging the constitutionality of the City of Cape Town's housing policy on the grounds that it failed to provide them with a place where they could legally live.

In argument, Rudolf's advocate claimed that the squatters formed a class of people in desperate need, living in a situation of crisis. The municipality's failure to make provision for them - beyond its formal low-cost housing delivery programme - amounted to a breach of its constitutional duty to make emergency provision for people with nowhere to live, as set out in *Grootboom*. The Court was also told that Rudolf and many of the other squatters had been on the municipality's formal housing subsidy waiting list for many years, and had been given little or no relief as a result.

The Court dismissed the municipality's eviction application on the grounds that the squatters were entitled to protection from eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act'). At the same time, the Court upheld the squatters' counter-application, accepting that no provision had been made in the municipal housing policy for people in the crisis situation the squatters found themselves. In particular, the Court held that Cape Town's housing policy was constitutionally defective in the following ways:

- it failed to make short-term provision for people in a crisis situation or in otherwise desperate need;
- it gave inadequate priority to the resources and needs of people who had nowhere where they could lawfully live.
- in determining the allocation of housing, it gave too much weight to how long an applicant had been on the municipal housing subsidy waiting list, and not enough to the extent of an applicant's need.

---

<sup>229</sup> Sandy Liebenberg, 'The courts and socio-economic rights: carving out a role', *ESR Review* 3 (1), Community Law Centre, University of the Western Cape, (2002); 'South Africa's Evolving Jurisprudence on Socio-Economic Rights', *Law, Democracy and Development*, 6 (2002).

<sup>230</sup> [2003] (11) BCLR 1236 (C).

## *Port Elizabeth Municipality*

In 1992 a small group of people moved onto a piece of undeveloped land in the Port Elizabeth suburb of Lorraine after being evicted from another piece of land. By 2000 some 68 people, including 23 children, were occupying twenty nine shacks. In that year - responding to a petition signed by 1600 people in the neighbourhood - the Municipality sought an eviction order against the occupiers in the South Eastern Cape Local Division of the High Court . The High Court concluded that the squatters were unlawful occupiers and instructed the sheriff to evict them. The shack dwellers appealed to the Supreme Court which set the judgment aside. In 2004 the Municipality appealed to the Constitutional Court specifically asking that it be recognized that it was not constitutionally bound to provide alternative accommodation or land when it sought the eviction of unlawful occupiers. The Constitutional Court found against the Municipality<sup>231</sup> and reaffirmed the principle that “a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only an interim measure pending ultimate access to housing in the formal housing programme.”<sup>232</sup>

The judgment also asserted that “PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law.”<sup>233</sup> There is much that is significant about this aspect of the judgment, including its stress on the value of negotiation as a response to conflicts of interest. While non-consultative and top-down development strategies remain common, consultation is often asserted in an instrumental manner as a technocratic strategy for managing and directing people’s expectations and aspirations. But here the judge was talking about something different. He concluded that

...the former depersonalised processes that took no account of the life circumstances of those being expelled were replaced by humanised procedures that focused on fairness to all. People once regarded as anonymous squatters now became entitled to dignified and individualised treatment with special consideration for the most vulnerable...<sup>234</sup>

In other words the manner in which the state responds to shack dwellers, particularly when under pressure from a social panic by middle class residents, is to be valued or condemned as an ethical practice - and not merely a managerial technique aimed at achieving smoother process. Dignity requires more than the provision of a minimum material standard of life: it also requires that personhood be respected. In this regard the Court pointed out that:

Section 26(3) evinces special constitutional regard for a person’s place of abode. It acknowledges that a home is more than just a shelter from the elements. It is zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that established itself on a site that has become its familiar habitat.<sup>235</sup>

This makes it impossible to assume - as Municipalities often do - that forced removal from a shack to a low-cost house automatically constitutes progress. The judgment goes beyond

---

<sup>231</sup> Port Elizabeth Municipality v Various Occupiers CCT53/03

<http://www.constitutionalcourt.org.za/uhtbin/cgisirsi/DVArTA0zVC/MAIN/199640012/503/980>

<sup>232</sup> Ibid., paragraph 28, p.3.

<sup>233</sup> Ibid., paragraph 6, p.4.

<sup>234</sup> Ibid., paragraph 13, p.7.

<sup>235</sup> Ibid., paragraph 16, p.8.

asserting that people may have good economic reasons for an attachment to place: it also asserts that those reasons for attachment may be social and even entirely subjective. One consequence of this is that it is necessary to respectfully negotiate all potential relocations.<sup>236</sup> The constitutional commitment to the right of ordinary people to speak and to be heard was later taken up more fully in the 2006 judgment in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amicus Curiae)*. In this case Judge Sachs asserted that: “The right to speak and to be listened to is part of the right to be a citizen in the full sense of the word. In a constitutional democracy dialogue and the right to have a voice on public affairs is constitutive of dignity.”<sup>237</sup> Later in the same year, in *Doctors for Life International v The Speakers of the National Assembly and Others*, Judge Ngcobo held that: “Commitment to principles of accountability, responsiveness and openness shows that our constitutional democracy is not only representative but also contains participatory elements. This is a defining feature of the democracy that is contemplated.”<sup>238</sup>

In the view of the judge in the decision against the Port Elizabeth Municipality the diminishment of the personhood of the poor diminishes society as a whole:

It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when State action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence.”<sup>239</sup>

In the light of the fact that it was in 2004 that the newspaper headlines first declared a government ‘war on shacks,’ there is also particular value in the insistence of the judgment that courts give careful consideration to “the background of the history of eviction in the apartheid era and its lasting and enduring effects on the distribution of land and access to housing today”<sup>240</sup> when considering applications for court orders authorizing evictions. The growing elite fear that shacks (which are nothing more than the homes of the very poor) will be a threat to a ‘world class’ future, and the consequent demand for their annihilation, is a desire to escape the suffering of the past by excluding it from sight and mind and concern rather than by overcoming it by patient collective effort. This injunction to take seriously the history that has produced a situation where shacks are the best housing option for millions of people is an injunction to see poverty - and not the efforts of the poor to house themselves - as a social crisis.

### *Modderklip*

In May 2000, approximately 400 people evicted from the Chris Hani settlement by the Ekurhuleni Municipality moved on to an adjacent piece of land, a farm owned by Modderklip Boerdery. By October of that year the settlement had grown to constitute 4 000 shacks accommodating 18 000 people, and was now known as Gaborone.

<sup>236</sup> The judge held that: “In South African conditions, where communities have long been divided and placed in hostile camps, mediation has a particularly significant role to play. The process enables parties to relate to each other in pragmatic and sensible ways, building up prospects of respectful good neighbourliness for the future. Nowhere is this more required than in relation to the intensely emotional and historically charged problems [of eviction and homelessness].” *PE Municipality (supra)*, para 43.

<sup>237</sup> 2006 (2) SA 311 (CC) para 627 (“*New Clicks*”)

<sup>238</sup> *Doctors for Life International v. The Speakers of the National Assembly and Others* 2006 (6) SA 416 (CC) paragraph 111.

<sup>239</sup> *PE Municipality (supra)* para 18.

<sup>240</sup> This is how it was summed up by A J Van der Walt in *Constitutional Property Law* (2005), 426.

The Municipality gave Modderklip notice to institute eviction proceedings against the occupiers. But Modderklip argued that it was the Council's responsibility to do so. The Council did not act and Modderklip then laid charges of trespass against the occupiers. Some people were convicted and warned by the court. On their release, however, they returned to the farm. The head of the local prison requested the police not to charge residents of Gaborone with trespass as it would be impossible to accommodate them all in the prison. Modderklip offered to sell the occupied portion of the farm to the Council, but it did not respond to this offer.

Modderklip then approached the Johannesburg High Court seeking an eviction order. The court granted the eviction order - but it was not carried out, as the sheriff required a deposit of R1,8 million. This was more than the value of the property, and Modderklip was not in a position to provide the sum. The police refused the request to enforce the eviction order as they regarded the matter as a private civil dispute between Modderklip and the occupiers.

By 2005, 40 000 people were occupying 50 hectares of Modderklip's farm. The Constitutional Court held<sup>241</sup> that Modderklip was entitled to the protection by the state, under the right to property. But the Court also held that the state could not surrender its burden of providing housing for the illegal occupiers to Modderklip. While the Court thus compelled the state to evict the occupants, it also stated that the occupants could not be evicted unless alternative land was found for them by the state. The Court emphasised that the duty to provide housing was constitutionally imposed on the state rather than on private entities. As a remedial measure in this case, the court recommended that the state pay compensation to Modderklip for the continued use of the land by the illegal occupiers.

An important aspect of this case is that it lays clear stress on the obligations of the state in instances where rights of private property holders to their property and the rights of illegal occupiers to access housing have to be balanced. The conclusion of the Court was that while the government is obliged to protect private property rights, it must do so in a manner that respects the rights of illegal occupiers to housing. In practice this means that an eviction from private property cannot take place without the provision of alternative accommodation - and this is the responsibility of the state.

#### *Moreleta Park*

On Friday 31 March 2006, the nature conservation division of the Tshwane Metropolitan Municipality, the immigration control office of the Department of Home Affairs, the South African Police Services and the Garsfontein Community Policing Forum carried out a pre-dawn raid on a shack settlement in Moreleta Park in Garsfontein, Pretoria. Approximately 100 people were forced out of around 50 shacks. These were then demolished, following which the building materials were torched. Many people lost their belongings. During the eviction, a request by a neighbour to see a court order in terms of PIE was responded to with a threat of arrest. Sixteen undocumented migrants were arrested and deported. The rest of the community was left homeless.

Ten days later the community association – Tswelopele - brought an urgent application in the Pretoria High Court requesting the three respondents (Nature Conservation, Home Affairs and the SAPS) to provide the community with interim temporary shelter and to restore their possession in terms of common law and PIE. The Court found that the eviction had been illegal but that because the building materials had been destroyed the occupiers could not have their

---

<sup>241</sup> *President of RSA & another v. Modderklip Boerdery* [2005]  
<http://www.concourt.gov.za/site/modderklip.html>

shacks rebuilt. After this, they returned to Moreleta Park and rebuilt to the extent that they could. Four weeks later, however, their shacks were demolished again. Tselopele returned to court on 19 May 2006, and was granted an order compelling the police to accommodate the community over the weekend and to move them to a homeless people's shelter on Monday, where they would be registered for the housing subsidy programme. Fifty people with South African identity documents were given accommodation and a further 15 placed on the housing subsidy waiting list - five of whom were eventually granted houses.

The remainder of the community returned to court, and on 20 May 2007 Judge Edwin Cameron declared that "in its lack of respect for the poor and the vulnerable, and in the official hubris displayed, what happened displays a repetition of the worst of the pre-constitutional past."<sup>242</sup> The Judge also said that "if the Constitution is to be more than merely rhetoric, cases such as this demand an effective remedy" and cited Judge Ackerman as follows:

Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated.<sup>243</sup>

Noting that the 1997 Constitutional Court decision had determined that "an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced", Cameron then examined various possible remedies.<sup>244</sup> He stated that although the evictions were a criminal offence, a criminal prosecution would not provide any benefit to the occupiers. The judge also pointed to a previous instance when Tswelopele had laid charges against a private security company at the Garsfontein police station. In this case, the police had simply ignored the charges; it was therefore unlikely that a criminal prosecution would succeed in future. The possibility of remedy via an interdict was examined and it was concluded that while an interdict may possibly help to stop future unlawful conduct by the police, it would not provide any remedy for the injustice already suffered.

The judgment concluded by citing Judge Kriegler, arguing that "a constitution has as little or as much weight as the prevailing political culture affords it." In view of this, the remedy granted in this case "should aim to instil recognition on the part of the government agencies that participated in the unlawful operation that the occupiers, too, are bearers of constitutional rights, and that official conduct violating those rights tramples not only on them but on all."<sup>245</sup> The judge decided to follow the example of a 1977 case<sup>246</sup> and instructed that:

The respondents are ordered, jointly and severally, to construct for those individual applicants who were evicted on 31 March 2006, and who still require them, temporary habitable dwellings that afford shelter, privacy and amenities at least equivalent to those that were destroyed, and which are capable of being dismantled, at the site at which their previous shelters were demolished.<sup>247</sup>

---

<sup>242</sup> *Tselopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality* [2007] SCA (RSA), p. 12.

<sup>243</sup> *Ibid.*, p.13.

<sup>244</sup> *Fose v Minister of Safety and Security* [1997] (3) SA 786 (CC) para 69.

<sup>245</sup> *Ibid.* p. 22.

<sup>246</sup> *Fredericks and another v Stellenbosch Divisional Council* [1977] (3) SA 113 (C).

<sup>247</sup> *Tselopele*, p.24.

The police and the municipality ignored the interdict and on 20 August 2007 Tswelopele won another interdict. This ordered the police to rebuild the shacks within 12 hours and interdicted them from further harassing the community and from destroying their homes. The police failed to comply with the order, however, and later filed an application to appeal. Tswelopele responded by returning to court to have the order enforced. On 29 August 2007 Judge Bill Prinsloo ordered that the Minister be committed to jail immediately “until his contempt of the court order had been purged” and fined him R10 000 for contempt, but suspended the order for two weeks. At this time the Minister was instructed to appear personally before the court to show that he had complied with the court order.<sup>248</sup> Although this instruction from the court is currently being appealed, this judgment was successfully used by the LRC in Durban in July 2007 to win an order against the eThekweni Municipality, compelling the municipality to provide temporary tented accommodation for 35 people on the site of the Crossmoor shack settlement, from which they had been illegally evicted.<sup>249</sup> In December 2007 the Blouberg Municipality left nearly 10 000 residents homeless in Desmond Park near Mogwadi in the Limpopo Province after it illegally demolished their shacks. In February 2008 the Pretoria High Court instructed the Municipality to rebuild the shacks.<sup>250</sup>

### *Concluding remarks on post-apartheid housing rights jurisprudence*

Nonetheless it is clear that the courts have remained intent on taking the rights to housing in the Constitution and associated legislation like PIE very seriously. Over the years the practical application of these results has been elaborated in growing detail. It is now clear that evictions without a court order are unlawful, and indeed criminal, and that applications for a court order to allow an eviction are unlikely to be granted if plans have not been made by the state for alternative accommodation.

There has been a tendency to overstate the practical social significance of judgments that affirm the rights to housing guaranteed in the Constitution. The Grootboom judgment has been deservedly celebrated internationally but apparently Mrs. Grootboom herself remains without a house. A decision in support of housing rights for the poor in the courts does not necessarily translate into practical benefits on the ground. The cautionary note struck by Judge Cameron highlighted both the tremendous difficulties that poor people have in accessing the courts, and the extent to which the enforceability of a constitutional right is determined by the surrounding political culture. There is a limit to what the courts can achieve if their commitment to housing rights is not shared by politicians, officials and the police and if this absence of commitment is not seen as a crisis by the media and civil society. Recent attempts by the courts to assert their authority over the police and politicians have not been well received by either. If this trend continues, the support for a political culture that respects the rights based values in the constitution will have to be built in popular civil society, as will the support for the jurisprudence of the courts that seek to integrate those values into ordinary life. A note on the practicalities of accessing the protection of the courts

In the extensive interviews undertaken by COHRE with hundreds of shack dwellers and residents in municipal housing developments in eThekweni, it swiftly became clear that the various levels of government are widely held to be obligated to provide secure and decent

---

<sup>248</sup> See ‘Judge threatens Nqakula with jail,’ *Pretoria News* (29 August 2007)

[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=nw20070829183505977C233283](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=nw20070829183505977C233283)

<sup>249</sup> See the Notice of Motion in the High Court of South Africa between Vusimuzi Robert Michael Ngcobo and 34 others and the eThekweni Municipality, Friday 6 July, 2007 and the Founding Affidavit by Vusimuzi Robert Michael Ngcobo in the same matter.

<sup>250</sup> Alex Matala ‘Municipality Instructed to Rebuild Shacks’ *The Sowetan*, 28 February 2008  
<http://www.sowetan.co.za/News/Article.aspx?id=715853>



housing. Most people did not assert their claims to housing rights with reference to the law, but rather with reference to either a debt of loyalty owed to them for popular participation in the struggles against apartheid, promises made to them in various elections, or via simple affirmations of human dignity.

The crucial importance of concretising gains with regard to housing and other rights in law should not lead to an assumption that progress in law necessarily equates to progress in practice. On the contrary, it is clear in eThekweni that various social forces - including private landowners, municipal authorities, the police and local political elites - routinely act against the rights of shack dwellers, in violation of the law. Such acts routinely (although certainly not invariably) receive the implicit or explicit social sanction of some of the media, NGOs and political elites. It is also clear that - outside of the highly organised shack settlements in parts of the suburban core of the city - awareness of the legal guarantees in support of housing rights (as well as associated rights such as those to protest, to access information, etc.) is generally very poor. However it is important to be very clear that this is not unique to shack dwellers. Awareness is equally poor amongst police officers, municipal officials, the media, many NGOs and sometimes even judges.<sup>251</sup> Moreover when people are aware of their rights as guaranteed in law it often remains time consuming, expensive, dispiriting and generally very difficult for poor people to find a lawyer that will act for them at no cost, or at a rate that they can afford.<sup>252</sup> It is often very difficult to organise a thorough legal case in the immediate aftermath of an eviction.<sup>253</sup> Preparing such a case usually requires careful collective discussion and decision making followed by the painstaking process of drawing up detailed affidavits - both of which require time and become difficult when people are scattered. In addition, the demands of preparing a legal case are not the only pressures on people's time and resources. Coping with an eviction inevitably requires urgent action to find shelter, arrange childcare and secure what property remains. There is often also urgent pressure to secure medical attention for people who have been injured and support for people that have been arrested. People often either rush home from work or do not leave for work on the day of the eviction, and are then not willing to risk dismissal by taking another day off to consult with lawyers. Moreover the institutions that do exist for the specific purpose of providing a high quality of committed legal services to the poor tend to be radically under funded and overstretched.

Encouragingly, general awareness of some basic legal rights - such as the illegality of evictions that are implemented without a court order and the illegality of arbitrary declarations of protests as illegal gatherings - has begun to improve quite rapidly, due in part to the experience gained in shack dwellers' struggles. This has resulted in a major increase in legal knowledge amongst shack dwellers, as well as a few very significant court victories - some achieved in very difficult circumstances. Most shack dwellers in the Municipality are not involved in these struggles, but the extensive popular media attention given to them has very successfully broadened their lessons. It is clear, however, that for this progress to be sustained and developed to the point where rights asserted in law become a popularly accessible point of practical and effective

---

<sup>251</sup> Mahendra Chetty of the Legal Resources Centre in Durban told COHRE that "often people on the bench are not familiar with the housing law." Interview, 13 September 2007.

<sup>252</sup> See Marie Huchzermeyer's 'The struggle for in situ upgrading of informal settlements: Case studies from Gauteng', Paper presented at the *Southern African Housing Foundation Conference & Exhibition*, Cape Sun (9-11 October 2006) & forthcoming in *Development Southern Africa*. She argues that in most instances shack dwellers who are threatened with illegal eviction are not aware of the legal protection given to them by PIE and do not have access to legal support.

<sup>253</sup> This point was made very strongly to COHRE by Mahendra Chetty and also by former residents of the Juba Place settlement, who had been left homeless in an illegal eviction carried out by the eThekweni Municipality on 11 November 2006. (Focus Group with Former Residents of the Juba Place Settlement, Pema Ridge Settlement 18 March 2007)

leverage for ordinary people, there will have to be significant investment in both public education around these rights and a significant extension of popular access to quality *pro bono* and pro-poor legal support.

### **State attempts to curtail housing rights**

In recent years there has been a marked shift on the part of the state away from a rights-based approach to the urban poor, often expressed in a shift in language. Increasingly the urban poor, shack dwellers and people living in inner cities, are being spoken of and treated as if they formed a criminal or political threat to the well being of society. It is often assumed that all of a city's residents have a stake in that city becoming 'World Class'. However a 'World Class City' is a city in which poor people are not visible outside of their role as workers and do not occupy valuable land or buildings. The President, the national Minister of Housing and a number of provincial Housing MECs have all been quoted in newspapers using metaphors better suited to warfare than rights based support when discussing the urban poor. Instead of promising strong support for advancing the housing rights of the urban poor and working towards decent housing for all in integrated cities this language speaks of 'declaring war on shacks' and promises the 'eradication of shacks' by 2014. The now widespread use of this language by politicians and officials must be considered in the light of the state's acknowledgment that despite the very large numbers of houses built by the South African government since the end of apartheid - the housing backlog has in fact grown:

South Africa's housing backlog has widened due to growing urbanisation and demand despite the building of 1,9-million new homes for the poor since the end of apartheid in 1994, the government said.

Of the total figure, 1,6-million houses worth about R37-billion have already been transferred to poor households, according to a review released late on Tuesday by the national treasury.

"Despite these delivery rates, the housing backlog has grown," it said, adding that the number of dwellings classified as "inadequate" -- mostly shacks -- had grown 20% from 1,5-million in 1996 to 1,8-million in 2001.

"This is because of the increased demand and the pace of urbanisation, with urban populations growing at 2,7% per year," it said.<sup>254</sup>

At a time when housing delivery is not keeping pace with the increase in the demand for urban housing, the declaration of a 'war on shacks' suggests that the state is embarking on a new approach to housing. Instead of simply providing formal housing, as was previously the case, the new thinking appears to be that shacks should be 'eliminated'. This will be achieved via both the provision of formal housing and a new attempt to criminalize shacks and shack dwellers, thus effectively banning this method of accessing cities. This marks a clear return to attempts to ring-fence cities against the poor and their demands for social inclusion.

The militarized language of 'waging war on slums' is in very sharp contrast to the pro-poor language of poverty alleviation that was typical in the first years after apartheid. Marie Huchzermeyer, the leading academic expert on housing in South African and a former government consultant, traces the emergence of the increasingly militarised anti-slum rhetoric to the launch of the United Nations Millennium Development Project in 2000. This includes a commitment (stated in Goal 7 Target 11) to improve the lives of 100,000,000 slum dwellers (10%

---

<sup>254</sup> SAPA-AFP 'Housing backlog increases despite new homes,' *Mail & Guardian* (18 October 2006) [http://www.mg.co.za/articlePage.aspx?articleid=287072&area=/breaking\\_news/breaking\\_news\\_national/](http://www.mg.co.za/articlePage.aspx?articleid=287072&area=/breaking_news/breaking_news_national/)

of the global population of slum dwellers) by 2020. Huchzermeyer notes that UN-Habitat, the United Nation's Human Settlement Programme based in Nairobi, officially refers to this Millennium Development Goal (MDG) as the 'Cities Without Slums MDG.' She explains that it was:

drawn from an inappropriately titled programme, 'Cities Without Slums', of Cities Alliance, a UN-Habitat and World Bank supported initiative. Its promotional material, which advocates for participatory city- and country-wide informal settlement upgrading, is branded with the 'Cities Without Slums' slogan. As any marketing expert could have predicated, the brand said more than the content. Many country governments have failed to differentiate between the normative principle of the slogan, that cities should not have slums, and the operational target of improving the lives of 10% of slum dwellers. Instead, tragically, the slogan became the target, namely to eradicate slums.<sup>255</sup>

In South Africa, President Thabo Mbeki mandated the national Department of Housing to work towards achieving 'shack-free cities.' In 2001, Durban was chosen as a pilot project for the 'Cities Without Slums' project, and the eThekweni Municipality declared that it would 'clear the slums' by 2010.<sup>256</sup> In July 2003, Durban was selected as one of seven African cities that would participate in New Partnership for Africa's Development's Cities Programme. This programme's stated aim is "to address urbanization and its consequences in order to make African cities more attractive to economic investment."<sup>257</sup> Although this statement is not overtly hostile to shack dwellers, its implications are clear. The problem with urbanization is not a combination of insecure tenure, appalling living conditions and an acute lack of supportive social services for ordinary people -- it is that the consequences of this urbanization of the poor are not attractive to the rich.

This shift in language has been accompanied by a proposal to amend the PIE Act and, in KwaZulu-Natal, the promulgation of a Slums Act that both seek to significantly curtail legal advances in housing rights.

#### *The proposed amendment to the PIE Act*

Controversy has arisen around the lobbying process that led to the proposed amendment to the PIE Act. The Congress of South African Trade Unions commented, for example, in response to an earlier draft of the proposed amendment, that the

draft amendment Bill aims to tighten the law to protect landowners, and thereby protects the rights of the 'haves,' to the exclusion of the 'have-nots'. If indeed it is the case that intensive lobbying by landlords and banks is what motivated government to amend legislation, it reflects the worrisome trend that business is increasingly holding government to ransom.<sup>258</sup>

---

<sup>255</sup> Marie Huchzermeyer, 'Elimination of the poor in KwaZulu Natal,' *Pambazuka News*. (4 July 2007) <http://www.pambazuka.org/en/category/comment/42386>

<sup>256</sup> However in early 2007 the City admitted that this would not be possible. Carvin Goldstone, 'Building 2.4m Units By 2014 Will Need a Miracle,' *The Mercury* (6 March 2007) p. 5.

<sup>257</sup> UN Habitat *NEPAD City Programme* <http://www.unhabitat.org/content.asp?cid=652&catid=234&typeid=13&subMenuId=0>

<sup>258</sup> COSATU, *Submission on the Draft Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill*. (2003) pp. 4 - 5. <http://www.cosatu.org.za/docs/2003/PIEAmendmentBillfinal.pdf>

No shack dwellers' organisation made comment on the first draft of the Bill. There was, however, extensive input from The Banking Council, various provincial and municipal governments, the South African Property Owners' Association and Agriculture South Africa.

The proposed amendment has met an enthusiastic reception from organised landowners. It has been welcomed by the Institute of Estate Agents in South Africa<sup>259</sup> and the South African Property Owners Association (SAPOA). The Association stated in a press release that:

The Prevention of Illegal Eviction From and Unlawful Occupation of Land (PIE) Amendment Bill of 2006 reflects certain key interventions recommended by SAPOA (South African Property Owners Association) to safeguard the rights of land and property owners in South Africa....SAPOA applauds the Housing Department for its willingness to address the commercial and industrial property industry's concerns so constructively... "We are pleased to see that the Department has taken note of our input," says [SAPOA CEO Neil] Gopal.<sup>260</sup>

The Centre for Applied Legal Studies (CALS) submitted an extensive analysis of the current draft of the Act.<sup>261</sup> It noted that - from a constitutional rights-based perspective - the proposed amendment contains two positive aspects. The first is that it seeks to undo the current distinction between people who have lived on land for less than six months and those that have lived on land for more than 6 months. The current distinction weakens rights for the former group. The second positive aspect of the proposed amendment, is the inclusion of a definition of 'constructive eviction' as:

any act or omission, including the deprivation of access to land or to essential services or other facilities related to land, which is calculated or likely to induce a person to vacate occupied land or refrain from exercising access to land.<sup>262</sup>

The CALS submission states that this would be a very welcome development because:

the disconnection of a property's water or electricity supply is often a tactic employed by unscrupulous landlords or organs of state in order to encourage occupiers to vacate land without having to go to the effort of obtaining an eviction order.<sup>263</sup>

However the CALS submission remains concerned that "the Bill should be strengthened to prevent explicitly the disconnection of water and other essential services to a property by an owner or a person in charge without a court order."<sup>264</sup>

In eThekweni, the City took a decision to discontinue the electrification of shack settlements in 2001.<sup>265</sup> This decision is directly linked to the increase in the frequency of shack fires: these fires

---

<sup>259</sup> See 'Landlord Protection to Improve', *Institute of Estate Agents of South Africa Press Release*. (31 January 2007) <http://www.ieasa.co.za/news/item.asp?Region=&ItemID=385&CategoryID=2>

<sup>260</sup> 'Sapoa Champions Property Owners in the Amended Pie Act', *Press Release from the South African Property Owners' Association*. (14 February, 2007). <http://www.eprop.co.za/news/article.aspx?idArticle=8458>

<sup>261</sup> Comment on General Notice 1851 of 2006. Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006 by Centre for Applied Legal Studies, University of the Witwatersrand. (20 February 2007) <http://www.law.wits.ac.za/cals/CALSPIESUBMISSION.pdf>

<sup>262</sup> *Government Gazette* (22 December 2006) p. 6.

<sup>263</sup> Comment on the General Notice 1851 of 2006, p.13.

<sup>264</sup> Comment on the General Notice 1851 of 2006, p.13.

are often cited by shack dwellers as forcing them to reluctantly accept relocation to housing developments on the periphery of the city. In addition to the discontinuation of electrification, it is routine for City officials to threaten to<sup>266</sup> - and on occasion to actively proceed to - destroy toilets, water connections etc<sup>267</sup> to force people to leave a settlement, when that settlement is slated for relocation. The definition of 'constructive eviction' contained in the proposed amendment to the PIE would allow people who have reluctantly accepted relocation - whether due to fear of fires caused by the refusal to continue to electrify settlements, or due to the threatened or actual removal of basic services - to oppose eviction. They could then instead demand electrification, or the protection of extant services and the return of removed services.

The CALS submission also expresses very serious concerns about various aspects of the Bill, and goes so far as to assert that "the PIE Bill, if passed, will contribute to an increasing cycle of poverty, desperation and homelessness in South Africa." A key concern is that - should the amendment be passed - the PIE Act would no longer apply to an occupier who is a lease or bond defaulter or to one who occupies land in terms "of any other agreement."<sup>268</sup> Although the fate of lease and bond defaulters is not relevant to this particular report, the plan to exclude people who occupy land in terms of 'any other agreement' is, as CALS note, "frighteningly broad". There appears to be a real danger that this clause of the amended PIE Act could be interpreted to exclude shack dwellers from the protection of Section 26 (3) of the Constitution. These "other" agreements could include, for instance, informal agreements between back yard shack dwellers and landlords, as well as collective, informal arrangements between shack settlements and land owners. Moreover, a high proportion of people living in shack settlements do so as tenants who pay rent to other shack dwellers and this dangerously broad formulation could conceivably result in attempts to exclude this extremely vulnerable group of people from constitutional protection.

A further concern is that one of the main objectives of the Bill is "to amplify the provisions relating to the prohibition of certain acts and to create offences in that regard."<sup>269</sup> The Bill criminalises - and provides prison sentences for - a range of behaviour including:

- directly or indirectly receiving or soliciting a payment of any money or other consideration (including membership fess, administration costs etc) as a fee or charge for arranging or organising or permitting a person to occupy land without consent of the owner or person in charge of that land, and
- arranging or permitting any person to occupy land without the consent of the owner or person in charge of that land.

There have been several high profile instances in South Africa where individuals or organisations in pursuit of private profit have occupied land and then sought to sell it off. It is unlikely that many people will consider the proscription of such behaviour a threat to human rights. However, the formulation of this Bill is so broad that it is likely to criminalise all shack dwellers' organisations.

---

<sup>265</sup> In 1990 the City had committed itself to electrify shack settlements under a policy known as 'Electricity for All'. However the 2001 electrification policy states that "in the past (1990s) electrification was rolled out to all and sundry. Because of the lack of funding and the huge costs required to relocate services when these settlements are upgraded or developed, electrification of the informal settlements has been discontinued," *eThekweni Electrification Policy* (2001).

<sup>266</sup> For instance, this has been the experience in the Motala Heights and Shannon Drive settlements.

<sup>267</sup> For instance, this was the experience in the Juba Place and Lusaka evictions.

<sup>268</sup> *Government Gazette* (22 December 2006) p. 7.

<sup>269</sup> *Ibid.*, p. 5.

This Bill may create a legal situation in which simply permitting someone to occupy land without the consent of the owner is a criminal activity. Receiving membership fees or fees for particular costs from people living in a particular settlement may also then be criminalised. If this is the case, then all shack dwellers' organisations will become potentially criminal. This is deeply disturbing in and of itself – but its consequences may go yet further. Given the well known tendency of many police stations<sup>270</sup> to treat all shack dwellers as automatically criminal under the present legal dispensation – and thus to act as if the protections provided by in the law (e.g. the right not to be evicted without a court order, the right to stage a protest etc.) do not apply to shack dwellers – it is clear that this overly broad formulation of new offences may create the conditions for a major increase in police abuse of shack dwellers, as well as contribute to the increasing degree of often unlawful and violent harassment of shack dwellers' organisations by the state.

This legislative criminalisation is being presented to parliament at the same time as a martial discourse is being presented to the general public – shacks and shack settlements appear in this language as a social pathology that must be 'eradicated' by a 'war on shacks.' As when evictions were being popularly contested under apartheid shack dwellers' leaders are automatically assumed to be – and are presented as – 'slum lords,' even when this is patently not the case.<sup>271</sup> Neither this public language, nor the formulations of the Bill, fit with the values of either the Constitution or of the progressive parts of various policy documents.

Furthermore, making the arranging of the unlawful occupation a criminal offence will – especially when considered together with the ban in eThekweni on building new shacks or extending existing shacks – have the result of reducing the total housing stock (which includes state sanctioned and non-state sanctioned or 'formal' and 'informal' housing). This, in turn, will result in worsening overcrowding and the *de facto* exclusion of poor people from cities.

### *The Slums Act*

A Prevention and Re-emergence of Slums Act was first proposed by KwaZulu-Natal Housing MEC Mike Mabuyakulu in April 2006. He told the KwaZulu-Natal legislature that he had recently returned from a UN-Habitat Conference for African Housing Ministers held in Nairobi, and that there he had "visited Kibera, arguably the biggest slum in the continent... This starkly brought home the fact that we will never win the war on the eradication of slums if we do not vigorously maximize our housing options and prevent the erection of new slums."<sup>272</sup> He added that "the aim of the legislation, expected to be passed before the year end, was to eradicate shack settlements by 2010, ahead of the 2020 target set by the Millennium Development Goals."<sup>273</sup>

---

<sup>270</sup> In eThekweni, the Sydenham Police station has become internationally notorious in this regard. See for instance Nigel Gibson 'Introduction: A New Politics of the Poor Emerges from South Africa's Shantytowns,' *Journal of Asian & African Studies*, Vol. 43, 2007 pp.5-19. Moreover after careful investigation of its own, Amnesty International is supporting Abahlali baseMjondolo in two civil cases against the Sydenham Police and, at the time of the final editing of this report, Human Rights Watch was just beginning its own investigations into allegations by Abahlali baseMjondolo of various serious abuses by the Sydenham Police. These include the use of torture, the use of potentially fatal violence against lawful and peaceful public protest, and routine harassment of journalists. Allegations of unlawful harassment of shack dwellers and, also, of witnesses of this harassment have also been levelled against the Sydenham police by a number of journalists, local and visiting academics and senior church leaders including two bishops.

<sup>271</sup> See Lennox Mabase, 'Slums bill not a Zimbabwe-style 'Operation Murambatsvina,' *The Witness* (18 July 2007) <http://www.witness.co.za/default.asp?myAction=sdet&myRef=53841&myCat=feat>

<sup>272</sup> Chris Khumalo, 'KZN considers anti-slums law,' *Bua News Online* (21 April 2006) <http://www.buanews.gov.za/view.php?ID=06042114151003&coll=buanew06>

<sup>273</sup> Bheko Mdlala, 'Legal slums remedy in the works,' *Daily News* (24 April 2006) <http://www.dailynews.co.za/index.php?fArticleId=3216793>

Mabuyakulu's announcement was immediately welcomed by the owner of one of the biggest estate agencies in the province, who said: "If the minister is to do this, it can only bode well for the province and for the economy. It will enhance the value of property."<sup>274</sup>

In October 2006, the Slums Bill was introduced into the provincial parliament. The Bill used startlingly hostile language, stating that it sought to 'eliminate slums' in KwaZulu-Natal by 2014. It proposed to do this by criminalizing the occupation of land without permission from the landowner, and by exerting statutory force to compel landowners and municipalities to seek evictions. (It did state that these evictions should be undertaken in terms of PIE, and also enabled municipalities to set up 'transit camps' for people evicted from their homes.) Beyond this, the Bill also criminalized all attempts to stop evictions.

The Bill was consistently justified by the Provincial Housing Department on the grounds that its primary objective was to 'deal with slum lords'. For example, Mike Mabuyakulu stated that: "Primarily the Bill is being drafted to also address the problem of slum lords. These unscrupulous people practise 'shack farming' where they own a number of informal settlements and charge people desperate for accommodation exorbitant rents."<sup>275</sup> The Bill, however, made no reference to 'slum lords' and sought instead to criminalise all shack dwellers equally. Furthermore, while the slum lord phenomenon is known to be a serious problem in Kibera, research in South Africa has consistently revealed that it is not pervasive in this country. On the contrary, many settlements were founded on explicitly democratic commitments during the anti-apartheid struggles in the 1980s.<sup>276</sup> Where 'slumlordism'<sup>277</sup> has emerged it tends to be vigorously, and often courageously, contested from below.<sup>278</sup>

The Slums Bill was immediately opposed on legal, human rights, humanitarian, and development grounds by academics, lawyers, NGOs and shack dwellers' organisations, amongst others.<sup>279</sup> This opposition was expressed both through popular mass action and in formal submissions to the legislature. Abahlali baseMjondolo concluded its formal submission by declaring that:

A World Class city is not a city where the poor are pushed out of the city. A World Class city is a city where the poor are treated with dignity and respect and money is spent on real needs like houses and toilets and clean water and electricity and schools and libraries rather than fancy things for the rich like stadiums and casinos that our cities can just not afford.<sup>280</sup>

---

<sup>274</sup> Ibid.

<sup>275</sup> Bongani Mthembu, 'New Bill to deal with land invasions,' *The Daily News* (20 June 2007) <http://www.dailynews.co.za/index.php?fArticleId=3893861>

<sup>276</sup> Marie Huchzermeyer's research has been particularly important in this regard.

<sup>277</sup> The gendered nature of the term 'slumlord' is inaccurate. Two serious cases of this phenomenon were drawn to the attention of COHRE during the research for this report, one in Durban and one in Pietermaritzburg. In one instance the 'slumlord' was a woman, ruling a settlement with armed force in order to extract rent.

<sup>278</sup> This is certainly the case in the Ash Road settlement in Pietermaritzburg where people have risked death threats in the struggle to democratise the settlement. David Ntseng, In-depth interview, 11 October 2007.

<sup>279</sup> Of all the individuals and organisations interviewed by COHRE for this report the only representative of a non-state body that endorsed the Slums Act was Bunjiwe Gwebu from the international NGO Shack Dwellers International - which has an official partnership with the eThekweni Municipality. She argued that the Act, and the language of 'eradicating slums' that has surrounded it is "very useful because it gives focus...and motivates all government sectors programmes to prioritise slums." In depth interview, 11 October 2007

<sup>280</sup> Abahlali baseMjondolo, 'Submission on the *Comment on KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Bill*, 2006,' (21 June 2007) <http://abahlali.org/node/1629>

In her own submission, Huchzermeyer argued that the Provincial Housing Department - instead of recognising the important social function of shack settlements and seeking to offer support to shack dwellers - had simply “pulled apartheid legislation off the shelf and are proposing conservative and repressive measures to wipe slums off the surface of our cities and clamp down harshly on any attempts at their re-emergence.”<sup>281</sup>

The Provincial Government dismissed the extraordinary amount of criticism levelled at the Bill. It did this by consistently insinuating that the popular opposition was being fermented by ‘slum lords.’<sup>282</sup> In June 2007, the Slums Act then became law in the province of KwaZulu-Natal.

The Act has been strongly criticised on legal grounds. It has been widely suggested that the Act is exceptionally poorly drafted and contains many technical errors. A number of legal experts, for example, have argued that the Provincial Legislature was not competent to enact the Act as it deals with land issues, which are an exclusive national government competence. The Act is therefore *ultra vires* and unconstitutional.<sup>283</sup> A number of more substantive issues have also been raised, however, some of which indicate a profound retreat from the legislative progress achieved in the first years after apartheid. Three of these issues will be mentioned here.

First, the Act is in conflict with the PIE Act. Kirsty McLean and David Zeffertt argue that:

[T]he intention of the PIE Act is to provide for fair procedures which need to be followed where a land owner (or person in charge) or organ of state chooses to institute eviction proceedings against unlawful occupiers. The procedures in no way encourage the institution of eviction proceedings and probably have the opposite effect, of discouraging them, particularly where it would not be just and equitable to carry out an eviction. The Act, however, has a different aim: ‘the elimination and prevention of re-emergence of slums’, and places obligations on both public and private actors to carry out these aims. This is, in our view, a patent conflict between the two pieces of legislation.<sup>284</sup>

Second, it has appears that Section 16 of the Act actively undermines the requirements set by the Constitutional Court in the *Grootboom* case. As Mclean and Zeffertt explain:

[I]t requires property owners to evict unlawful occupiers from their homes, which would usually result in their being rendered homeless (and probably occupying land elsewhere illegally), even where they have no inclination to do so. Section 16 thus has the effect of instantly undermining the tenure security (which admittedly was not ‘secure’ initially, but more secure than it was before the enactment of the Act) of all unlawful occupiers in KwaZulu-Natal, and does not seek to progressively realise their right to adequate housing.<sup>285</sup>

---

<sup>281</sup> Marie Huchzermeyer *Comment on KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Bill*, 2006 (14 May 2007)

<sup>282</sup> No evidence has ever been provided for any of these assertions and until such time as this changes they are best considered simply as slander. See, in particular, comment by Provincial Housing Department Spokesperson Lennox Mabaso in various newspaper articles and statement such as, as just one example, *Bill to prevent emergence of slums to be tabled* Compiled by the Government Communication and Information System (20 June 2007) <http://www.buanews.gov.za/view.php?ID=07062015451005&coll=buanew07>

<sup>283</sup> See, for instance, *Opinion by Kirsty McLean & Professor David Zeffertt on the KwaZulu-Natal Prevention and Re-emergence of Slums Act, Act No. 6 of 2007*, (September 2007)

<sup>284</sup> *Opinion by Kirsty McLean & Professor David Zeffertt on the KwaZulu-Natal Prevention and Re-emergence of Slums Act, Act No. 6 of 2007*, September 2007

<sup>285</sup> *Ibid.*



Third, there is widespread concern about the creation of offences (punishable by a fine of up to R 20 000 or imprisonment of up to five years, or both) with regard to land occupation and opposing evictions. Mclean and Zeffertt argue that “the failure to spend money to improve land, or to institute evictions and to spend money in order to institute evictions may be subject to constitutional challenge as they are not the types of matter which should be criminalised and subject to potential imprisonment.”<sup>286</sup> Given the general and growing tendency by politicians to speak of shack dwellers and their leaders as criminal, and given the sustained (and often illegal) police harassment of shack dwellers’ organisations, it appears that the prospects for serious abuse of this general criminalization are very real. This is a matter of urgent and grave concern.

Beyond these points, concern has also been expressed about the degree to which the Act violates international law. COHRE described the Slums Act as a “regressive and highly dangerous piece of legislation”<sup>287</sup> in a letter written to the Provincial Premier to express “deep concern” about the fact that the Act:

is likely to be in conflict with international law, as well as international instruments that South Africa has ratified. One example is the African Charter on Human and Peoples’ Rights. We wish to remind you that the African Commission on Human and Peoples’ Rights, in 2002, found that the African Charter guaranteed the right to adequate housing, including the prohibition on forced eviction (see SERAC and CESR v. Nigeria, ACHRP 2002).<sup>288</sup>

A further key concern has been the reduction in security of tenure implied by the Act. In the same letter to the premier, COHRE noted that:

By passing the Bill, the Provincial Legislature of KwaZulu-Natal has instantly reduced the tenure security of millions of South Africans by making it mandatory for land owners and municipalities to instigate eviction procedures wherever people are unlawfully occupying land or buildings. We wish to remind you that this was one of the objectives of the Apartheid State’s Prevention of Illegal Squatting Act, 1951.

Leap (a voluntary national association of tenure practitioners committed to the advancement of tenure security through action research, learning and policy development) has also drawn parallels between the Slums Act and apartheid practices. Speaking of the various measures to prevent the re-emergence of slums, Leap argued that: “The practical difficulties of achieving this purpose imply a return to the draconian and repressive measures of the past.” It concluded that: “Instead of eliminating, eradicating and preventing informal settlements from emerging, shack dwellers should be provided with security of tenure.” In Leap’s view, then: “People driven shelter should be developed and upgraded, not eradicated or eliminated” and “People driven land supply systems should be recognized and supported, not controlled or prevented from (re)emerging.”<sup>289</sup>

---

<sup>286</sup> Ibid.

<sup>287</sup> COHRE, *South Africa*

[http://www.cohre.org/view\\_page.php?page\\_id=261](http://www.cohre.org/view_page.php?page_id=261)

<sup>288</sup> COHRE *Letter to KwaZulu-Natal Premier* 4 July 2007

[http://www.cohre.org/view\\_page.php?page\\_id=261#article745](http://www.cohre.org/view_page.php?page_id=261#article745)

<sup>289</sup> Leap, *World Class Cities? World Class Slums? No place for the poor in the KwaZulu Natal’s Elimination and Prevention of Re-emergence of Slums Bill, 2006* (12 July 2006)  
<http://abahlali.org/node/1629>

The proposal to set up 'transit camps' has also led to serious concern. Ranjith Purshotum, of the Legal Resources Centre in Durban, told the *Mail & Guardian* that: "Instead of saying that people will be evicted from slums after permanent accommodation is secured, we have a situation where people are being removed from a slum, and sent to another slum. Only this time it is a government-approved slum and is called a transit area. This is the twisted logic of the drafters of the legislation".<sup>290</sup>

Marie Huchzermeyer, in an article in *The Mercury*, strongly condemned the "anti-poor approach of the KwaZulu-Natal government." She argued that the language used in the Bill marked a break with the language in national housing policy documents and suggested a return to the language "used in the 1951 Prevention of Squatting Act of the apartheid government." She also argued the new "onus on land owners to prevent informal occupation and in cases of existing informal occupation, to institute eviction procedures" has a "worrying commonality with apartheid's 1951 Prevention Squatting Act."<sup>291</sup>

The rhetoric of 'elimination and prevention of re-emergence of slums' has been widely rejected and characterized as, in Huchzermeyer's words, a "harsh language that signals measures of repression and control, and, irrespective of its content, will result in widespread fear among households who find themselves without alternatives to the shack or other inadequate quarters they inhabit."<sup>292</sup> When considered beside the increasingly hostile language towards housing rights for shack dwellers used by national government<sup>293</sup> this trend suggests that South Africa is entering a potentially dangerous period in which housing rights for the urban poor may be placed under serious threat.

There has also been serious concern about the use and definition of the word 'slum.' Abahlali baseMjondolo has rejected the term out of hand, arguing that:

In America black community organizations have opposed the use of the word 'slum' to describe their communities because they say it makes it sound like there is something wrong with them and their places rather than the system that makes them poor and fails to develop their places. They also say that once a place is called a 'slum' it is easy for the rich and governments to say that it must be 'cleared' or 'eliminated' but if a place is called a community then it is easier to say that it must be supported and developed.

In addition to this, Huchzermeyer argues that:

there is a fundamental problem with the way 'slums' are defined, and this fundamental problem is reflected throughout the Bill. The discrepancy between the definition of 'slum' in the Bill and the definition promoted by UN-Habitat, e.g. in

---

<sup>290</sup> Niren Tolsi, 'State's cure for shack farms,' *Mail & Guardian*. (1 June 2007)

[http://www.mg.co.za/articledirect.aspx?articleid=310165&area=%2finsight%2finsight\\_national%2f](http://www.mg.co.za/articledirect.aspx?articleid=310165&area=%2finsight%2finsight_national%2f)

<sup>291</sup> Marie Huchzermeyer 'Durban has an anti-poor approach to housing' *The Mercury* (13 March 2007)

<http://www.themercury.co.za/index.php?fArticleId=3727931>

<sup>292</sup> Marie Huchzermeyer, *Comment on KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Bill, 2006*

<sup>293</sup> Such as, for example, National Housing Minister Lindiwe Sisulu's thoroughly unconstitutional warning to shack dwellers in Cape Town resisting forced removals from the Joe Slovo settlement to Delft: "If they choose not to cooperate with government, they will be completely removed from all housing waiting lists." Waghied Misbach and Kingdom Mabuza 'Sisulu plan under fire' *The Sowetan*. (12 September 2007)

<http://www.sowetan.co.za/News/Article.aspx?id=562180> Also see 'Joe Slovo Burns Smoulders Erupts,' *InternAfrica*. (15 September 2007) <http://www.internafrika.org/2007/09/joe-slovo-burns-smoulders-erupts.html>

'The Challenge of Slums: Global Report on Human Settlements 2003', is that UN-Habitat adds a critical characteristic of slums: insecurity of tenure. It is necessary to highlight the importance of including this characteristic in any definition of slums, particularly in a Bill that is directed at addressing slums in a non-repressive and democratic manner. The term 'insecurity of tenure' refers to the direct or indirect threat of eviction. In the late 1990s UN-Habitat launched a 'Global Campaign on Secure Tenure'. To date this is UN-Habitat's main campaign in its support to country governments in their endeavours to meet UN Millennium Development Goal Target 11 'to improve the lives of 100 million slum dwellers by 2020'. According to the global campaign for secure tenure, a first step to improving the lives of slum dwellers, that is, of transforming a dwelling from a slum to something better, is to remove threats of eviction. The Bill, by mandating municipalities and landowners to institute evictions, does the exact opposite. If passed, it will by UN-Habitat's definition, overnight, create more and worse 'slums' by removing de facto security of tenure of settlements or slums that have been tolerated for years or even decades. It will reverse South Africa's acclaimed advances towards improving the lives of slum dwellers, by immediately imposing insecurity of tenure on hundreds of thousands of households.<sup>294</sup>

Opposition to 'slum eradication' has also come from perspectives other than those of the left, or those premised on human rights. A recent study by Urban LandMark, a think tank committed to market driven solutions to the urban crisis, was widely reported in the media as clearly indicating that the Slums Act would have a negative effect on the economic well being of the urban poor.<sup>295</sup> As with other research, the Urban Landmark study into the housing market in shack settlements did not find that these settlements were governed by slum lords, intent on extracting maximum rents. On the contrary it found that: "Markets in the case study settlements do not conform to the rules of supply and demand, which are essentially mediated by price. Instead, social relations dominate."<sup>296</sup> It concluded that:

Socially dominated land markets work for poor people. They allow them to access the city and contribute to the urban economy, as evidenced by the finding that most respondents obtain their income from salaries and wages. This access is relatively quick, easy and cheap, even though they are often peripheral or marginal, mainly determined by forces of the financially dominated land market... They are vital and must be accommodated in any land and housing plan for the city.<sup>297</sup>

On 1 October 2007, the Slums Act came into legal force. By 4 October the first Slums Act eviction in Durban had taken place in the Siyathuthuka settlement in Sea Cow Lake. Fifty families were held at gun point while their homes were demolished. They were left homeless. Following this, a protest by 400 people was held; in the course of this protest a number of people were badly injured by the police, and 11 protesters were arrested. Lennox Mabaso, spokesperson for the Provincial Minister of Housing, told the *Mercury* that: "We want to reiterate that it is illegal to erect new shacks at this stage, because it contravenes the Prevention of the Emergence of Slums Act, which states that, as from October 1, any shacks erected would be considered illegal."<sup>298</sup>

---

<sup>294</sup> Marie Huchzermeyer, *Comment on KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Bill, 2006*

<sup>295</sup> See, for instance, Greg Ardé, 'Eradication of slums could hurt poor,' *The Mercury* (5 October 2007) <http://www.themercury.co.za/index.php?fArticleId=4065373>

<sup>296</sup> Urban LandMark, *Urban Land Markets*. (October 2006) <http://www.urbanlandmark.org.za/archive.html>

<sup>297</sup> *Ibid.*, p. 17-18.

<sup>298</sup> Nthokozo Mfusi, 'Police fire rubber bullets,' *The Mercury*. (5 October 2007) <http://www.themercury.co.za/index.php?fArticleId=3895043>

Couglan Pather, the Head of the eThekweni Housing department, told the *Sunday Tribune* that, in keeping with the provincial Slum Clearance Act, the municipality did not allow the building of new shacks, and it was these newly-built shacks that had been targeted. “The old shacks can stay until we can find low-cost housing to accommodate these people... The municipality will take down only new structures.”<sup>299</sup>

When COHRE visited the Siyathuthuka settlement, the 50 homeless families had been accommodated in their neighbour’s overcrowded shacks. Alex Mhlakwane said that the families that had been subject to forced eviction had in fact lived there for eight years. He added that: “The eviction was not legal they did not show us a court order. This is how people who live in the margins of the society are being treated, we are not worthy of legal process.”<sup>300</sup> The absence of a court order means that these evictions were unconstitutional, illegal and, indeed, criminal. This is in no way contradicted by the fact that the Slums Act has become law as it does not override the Constitution or the PIE Act.

The KwaZulu-Natal Government has argued that the Slums Act is a model for other provinces. Indeed, in his June 2007 Budget Speech, the Western Cape Housing Minister Richard Dyantyi announced that his department was working on an ‘Elimination and Prevention of the Re-Emergence of Slums Act’ and that it would be “completed by the end of this year.”<sup>301</sup>

At the time at which the writing of this report was being concluded Abahlali baseMjondolo announced that they have, with the support of CALS, initiated legal action with a view to having the Act declared unconstitutional. The legality of the Act will thus soon be tested in court. This is certainly a welcome development.

## Conclusion

If an eviction will lead to homelessness, then it is *prima facie* inconsistent with the Constitution. South African housing law and policy is largely compliant with the ICESCR and the South African Constitution. An indispensable requirement of all evictions of people from their homes is that they may only take place under judicial control. This expresses the constitutional commitment to make a decisive break with the regime of summary forced evictions authorised under apartheid-era legislation such as the Prevention of Illegal Squatting Act.<sup>302</sup> The procedures set out in the PIE Act are broadly compliant with General Comment 7 on the Covenant. Evictions at the instance of an organ of state under the PIE Act are seldom granted without the provision of alternative accommodation. Where the PIE Act leaves room for interpretations which could depart from the requirements of General Comment 7, there is little evidence to suggest that South African judges in the higher courts have made decisions contrary to the spirit of the Covenant. Once again, the test lies largely in implementation.

This legislative compliance is to be applauded, but has yet to systematically impact on implementation, and implementation is the true test. Serious departures from Covenant requirements occur when the South African state circumvents or does not adequately follow PIE Act procedures.

---

<sup>299</sup> Doreen Premdev, ‘Residents caught up in protest chaos,’ *Sunday Tribune* (Herald Supplement) (7 October 2007) <http://www.sundaytribune.co.za/index.php?fArticleId=4068172>

<sup>300</sup> Alex Mhlakwane, in-depth interview, Siyathuthuka Settlement, 13 October 2007.

<sup>301</sup> Richard Dyantyi, *Budget Speech 2007/2008: Department of Local Government and Housing*. (7 June 2007) <http://www.capegateway.gov.za/eng/pubs/speeches/2007/jun/156939>

<sup>302</sup> *Municipality v Sunridge Estate and Development Corporation (Pty) Ltd* 1997 (4) SA 597 (SE)

While progressive legislation remains on the statute books, while the state has not formally repudiated its more progressive policies and while jurisprudence rapidly advances, the current discourse from the state, not to mention new legislation, indicate that there is a clear danger that those limited pro poor initiatives adopted in the first years after apartheid are rapidly giving way to the outright criminalization of the poor and their survival strategies that marks a fundamental break with a commitment to housing rights.

If existing laws are to be given force, the current degree of access to *pro bono* and pro poor legal support will have to be radically extended. Donor support will be crucial in this regard. An effective challenge to the general degeneration of the elite consensus around housing rights will require a vigorous and sustained counter movement from civil society, including elite civil society organisations and popular grass roots organisations.

## Chapter 3: Housing Policy after Apartheid

### Introduction

This chapter aims to explain the larger international, national and provincial policy contexts within which the eThekweni Municipality's housing policy principles are formulated. The Municipality's specific policies are not examined here, but are taken up in the following chapter.

In many - although not all - of the interviews undertaken for this report it was clear that policy experts in government, academia and NGOs often give considerably more analytical weight to statements of government policy than to the practical realities of its implementation. Practice can differ considerably from policy, and this needs to be taken more seriously. For this reason, it is important to sound three notes of caution before beginning a basic overview of the development of government housing policy since 1994.

First, it is important to note that governments do not have a monopoly over planning. The Brazilian urbanist Marcello Lopes de Souza makes the point that: "Curiously, even progressive planners usually share with their conservative counterparts the assumption that the state is the sole urban planning agent."<sup>303</sup> This is not, however, the case as both private and popular interests also participate in planning. The actual development of cities is inevitably a result of actions undertaken from below - by ordinary people - as well as of planning from above - by the state, as well as by other social forces, such as private developers. These various modes of planning are usually interdependent in that they respond to and change each other, as well as responding to all kinds of other pressures and opportunities. This has most famously been theorised by Manuel Castells, in a sweeping study in 1983.<sup>304</sup> He recently summarized its findings as follows:

[T]he decisive contribution of social struggles to the actual forms and meaning of urban space, and to the cultural construction of cities throughout history, was generally overlooked in social sciences, as well as in planning and architectural practice. Citizens were considered to be consumers of the city, not its producers. I believe the historical record, when carefully examined, provides evidence to the contrary.<sup>305</sup>

Second, it is important to note that the general understanding of policy is not restricted to the detailed prescriptions contained in policy documents. Policies are often understood by officials - as well as by other actors such as the police, journalists, social workers and so on - in terms of a general 'common sense' rather than the details in policy documents. This form of 'common sense' is shaped by competing interests and their rhetoric and by the public statements of politicians and other influential people which can often count for more than the written prescriptions buried in largely unread policy documents.

Third, as a number of the people interviewed for this project pointed out, there is a strong government tendency to evaluate the success of housing policy and practice by counting the number of houses that have been 'delivered'. This tendency is driven by an assumption that the provision of a formal house automatically marks an improvement in the general circumstances of

---

<sup>303</sup> Marcelo Lopez de Souza, 'Together with the state, despite the state, against the state: Social movements as 'Critical urban planning' agents,' *City*, Vol. 10, No.3. (2006) pp. 327-342.

<sup>304</sup> Manuel Castells, *The City and the Grassroots*. (University of California Press: Berkeley, 1983)

<sup>305</sup> Manuel Castells, 'Changer la Ville: A Rejoinder,' *International Journal of Urban and Regional Research*, Vol. 30, No.1. (March 2006) p. 219.

the beneficiaries. It was striking, however, that - with only one exception<sup>306</sup> - those policy experts not directly employed by the state who were interviewed for this project all argued that this approach is fundamentally mistaken. Mark Misselhorn, CEO of the Project Preparation Trust in Durban, lamented, for example, that: “Success is being measured in terms of the number of new houses being built instead of the number of sustainable housing opportunities being created or protected.”<sup>307</sup> He noted that: “People often struggle to maintain workable livelihood strategies in many relocation sites because of poor access to work and other opportunities there” and suggested that policy success should rather be measured by the discernable degree of “improvement to people’s lives.”

All levels of government have designed numerous policies and programmes that are intended to give effect to the right to housing, as it is elaborated in Section 26 of the Constitution. There is not space to explain and evaluate them all here, and therefore this chapter will examine only the most important of these numerous policy initiatives.

### **The international policy context<sup>308</sup>**

International organisations - such as the World Bank, the United Nations and the United States Agency for International Development, along allied donors, NGOs and research institutes - have to a considerable degree created an international set of shared ideas and practices around housing policy. This network is neither static nor monolithic, however, and there are vigorous internal debates. Moreover, some governments do not accept this policy consensus, and produce independent approaches. These can be progressive, as with the 1997 Kaantabay sa Kauswagan Ordinance (Partners in Development Empowerment Ordinance) in Naga City in the Philippines or the 2001 City Statue in Brazil. They can also be deeply reactionary, as with the 2005 Operation Murambatsvina (Operation Drive Out Trash) in Zimbabwe. The policy consensus of international institutions is also often challenged by independent researchers in and outside of the academy and by membership based and directed shack dwellers’ organisations with some autonomy from mainstream donors.

Some people think that the international policy consensus is producing a slow but steady enlightenment. For example, Janice Perlman, an internationally influential researcher and consultant, warns that: “Experience has shown that there is often a 20-25 year time lag between new ideas and their incorporation into public policy.”<sup>309</sup> She suggests that ideas trickle from shack dwellers to researchers, from them to international agencies and then down to national governments and, lastly and often only partially, to local governments. Others, however, caution about an assumption that such a slow and steady progress exists. Sarah Charlton and Caroline Kihato argue that progression and regression both occur, and conclude that continuing pressure from shack dwellers’ organisations is essential to balance the pressures brought by other forces, with different interests in, and visions for, cities:

Examples across the developing world show that some countries have progressed from repressive to transformative policies, while others have reverted back to repression. This indicates that informal settlement policy is an area of continuous political contestation, with civil society groups engaged in an ongoing struggle to

---

<sup>306</sup> Bunjwe Gwebu, Shack Dwellers’ International, interview. (11 October 2007)

<sup>307</sup> Mark Misselhorn, Project Preparation Trust, interview. (11 September 2007)

<sup>308</sup> This is a very basic overview. For a more detailed account of this with a very interesting comparison between Brazil and South Africa see Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil*. (Africa World Press: New Jersey, 2004)

<sup>309</sup> Janice Perlman, ‘A dual strategy for deliberate social change in cities,’ *City*, Vol. 7, No. 1. (2006) p. 6.

oppose repressive policies, achieve progress towards transformative policies, or contest reversion back to repression.<sup>310</sup>

There are essentially four broad policy frameworks within which governments mandate their officials to respond to shack settlements: simple demolition, relocation to an alternative informal site, relocation to a semi-formal site or to formal housing, and legalisation and integration via some form of *in-situ* upgrade.

A clear international consensus holds that simple destruction, often referred to as forced eviction, is a fundamental violation of international law and human rights, as enshrined in many charters, statements and agreements. However governments continue to - in the phrase famously used by Wole Soyinka to condemn Operation Murambatsvini – ‘turn bulldozers into instruments of governance’. Voluntary relocation from one site to another may be considered acceptable in terms of international law and human rights, so long as there is an urgent need for the relocation, there has been genuine and respectful consultation about the process, and the new site is deemed suitable for the relocated residents. When there has not been genuine consultation, or when the new site is disadvantageous to the relocated residents, the relocation can be considered a forced removal - and thus a violation of human rights and international law.

#### *A brief history of the international policy consensus*

From the passing of the first Public Health Act in England in 1848 until the 1970s, there has been a strong tendency amongst global policy making elites to pathologise shack dwellers as socially backward and as posing a threat to the health and political stability of the rest of society.<sup>311</sup> The problem with shack settlements was thus understood to be shack dwellers, and their self-built homes and communities, rather than the conditions that had made building and living in shack settlements their best option. In some instances this pathologisation was highly racialised. The research that informed these kinds of policy assumption was generally undertaken by people who observed settlements from the outside, and did so with a significant degree of anxiety.

But at the same time there was also a modernising optimism among these policy-making elites. They assumed that shack dwellers could be socialised into becoming productive and obedient citizens by being moved to formal housing. This optimism - which (as mentioned in chapter one) Diane Scott describes as simultaneously utopian and authoritarian - probably reached its peak in the 1950s and 1960s, although it certainly continued into the 1970s. It held that scientific planning and policing methods could prevent new settlements from being built, as well as calculate the housing deficit, and lead to the mass production of public housing that would allow existing shack settlements to be demolished and their occupants moved to new housing.

The apartheid state was not the only government committed to a programme of ‘slum eradication’ linked to the mass provision of low-cost housing on the urban periphery. In 1964, the military dictatorship that took power in Brazil in a *coup* set up a National Housing Bank to “direct, discipline, and control the financing of a housing system aimed at promoting home ownership for Brazilian families, especially among the low income groups.”<sup>312</sup> The Bank made

---

<sup>310</sup> Charlton and Kihati, op cit, p.258, and Marie Huchzermeyer and Aly Karam, ‘The Continuing challenge of informal settlements,’ in Marie Huchzermeyer and Aly Karam (eds.), *Informal Settlements: A perpetual challenge?* (University of Cape Town Press: Cape Town, 2006) p. 7.

<sup>311</sup> In this regard see Janice Perlman’s classic study, *The Myth of Marginality: Urban Poverty & Politics in Rio de Janeiro*, (University of California Press: Berkeley, 1976) and Robert Neuwirth’s more recent study, *Shadow Cities: A Billion Squatters: A New Urban World*. (Routledge: New York, 2004)

<sup>312</sup> Perlman, op cit, p. 201.



loans, which the relocated occupants were expected to repay. The dictatorship aimed at full-scale 'slum eradication,' and insisted that there would be "no more people living in slums in Rio de Janeiro by 1976."<sup>313</sup> The creation of the National Housing Bank was lauded by the United Nations Committee on Housing, Building and Planning as "the most advanced system of housing finance in Latin America at the present time."<sup>314</sup>

The Brazilian housing finance model did provide a major state subsidy for the construction industry, but, despite the state's rhetoric, 'slums' were not 'eradicated' by 1976. Most people could not pay back their loans, and surveys showed that more than three quarters of favelados dreaded removal from their well located - and very cheap - housing and supportive communities to peripheral, expensive and socially isolating modern housing projects.<sup>315</sup> Most of those who embraced relocation were financially better off, and better able to afford the transport and loan costs of the new settlements. By 1966, removals had to be implemented at gun point and organised opposition by shack dwellers was being violently repressed. In some instances, settlements refusing relocation were burnt down. Research indicated a "widespread dissatisfaction with relocation efforts and [their] devastating economic, social, cultural, political, and physical repercussions."<sup>316</sup> Perlman described relocation as being "ruinous" for favelados.<sup>317</sup> She noted that - when she returned to Brazil some years later and revisited those favelas that had been left to develop on their own - striking dynamism, progress, and good spirits were in evidence."<sup>318</sup>

At the same time as the Brazilian relocation programme was active, an experimental donor-funded project was developing three settlements in Rio on a different basis. These settlements were first given security of tenure, so that people could safely remain where they were, and then given basic infrastructure development (water, sanitation, electricity, paving, drainage and lighting). Occupants were also given training in construction, and loans were made available at low cost for those who wanted to improve their homes. Where the land was too densely populated for everyone to remain, residents were given the opportunity to decide who would stay in the area, and who would move from it. The residents of these three favelas were doing substantially better than those in settlements that had simply been left alone, and vastly better than those who had been relocated from their homes.<sup>319</sup> The government responded to this experiment, however, by continuing with the relocation programme, and by shifting the date by which all 'slums' would be 'eradicated' forward to 1983. At the time Perlman concluded that: "If some of the disastrous consequences of the initial government policy could be attributed to naïve altruism, it now should be evident that favela removal is essentially intended to further improve the condition of the upper sector in Brazil at the expense of the poor."<sup>320</sup>

Around the world grassroots urban planners in shack settlements have always contested forced evictions and forced removals, but from the late 1960s many expert planners also became increasingly critical. Researchers, especially those who had lived in settlements and learnt the languages of their residents, quickly realised that the stereotypes about shack dwellers had little connection to their reality, and that shack settlements served an important function for their residents. Perhaps the best known study, that undertaken by Janice Perlman in Rio in the early 1970s, concluded that:

---

<sup>313</sup> Ibid., p. 202.

<sup>314</sup> Ibid., p. 204.

<sup>315</sup> Ibid., p. 196-197.

<sup>316</sup> Ibid., p. 212.

<sup>317</sup> Ibid., p. 222.

<sup>318</sup> Ibid., p. 233.

<sup>319</sup> Ibid., p. 235.

<sup>320</sup> Ibid., p. 240.

The evidence strongly indicates that favelados...are not economically marginal, but are exploited and repressed; that they are not culturally marginal, but are stigmatized and excluded from a closed social system...Favela removal is perversely creating the marginalized population that it was designed to eliminate. After removal...the favelados found themselves literally cast out of the city – rejected and punished for being poor, and geographically isolated from the myriad opportunities of urban life that had initially attracted them.<sup>321</sup>

Although the language of exploitation and repression is associated largely with the left, the idea that shack settlements could be a route for the poor to achieve urban inclusion had a wider purchase. Even the apartheid state made reference to Perlman's study in 1986, when it decided to finally grant some permanence to the Crossroads settlement in Cape Town.

The policy recommendations that stemmed from this kind of research - often based on the experience of living in shack settlements - tended to suggest that shack settlements should be understood as an imperfect solution to the problem of housing the poor - i.e. that they were solutions that the poor had generated for themselves within the context of radically unequal societies. This recognition should not, however, be seen as allowing society to abrogate its responsibilities. However these researchers argued that in the absence of a fundamentally transformative social project away from massive inequality "giving land tenure to the squatters and providing urbanized lots in peripheral areas yielded better results than the bulldozer."<sup>322</sup> Housing was also understood as a process to be undertaken in specific and changing circumstances, rather than as a standardised product 'delivered' once to each beneficiary. But researchers differed on whether popular involvement in housing should take the form of collective community processes, or whether individuals should work towards the ownership of a house as a private asset.

By the 1970s, the earlier modernising optimism about the prospects of eradicating 'slums' and re-housing people in formal -serviced, rated and taxed - accommodation was under severe pressure. It was simply not working. Governments were either unwilling or unable to invest enough money in the development of mass formal housing and were therefore unable to build houses at the necessary scale. Moreover, the houses that were built were often located too far from cities to make them viable for their occupants. Often, the new occupants could not pay for the housing and it was not unusual for 'beneficiaries' to simply abandon housing in relocation sites and return to better located shacks. Furthermore, the continuing decline in the viability of peasant farming in the wake of the increasing capitalisation of agriculture<sup>323</sup> meant that people were coming to cities in ever greater numbers. In many cities and countries, the number of people living in shacks continued to grow despite massive housing projects.

In response to the failure of the 'formal housing for all' model, a process of 'slum upgrading' was recommended. This aimed to enable existing shack settlements to slowly formalise. To prevent the formation of new settlements, the provision of 'sites-and-services' on the urban peripheries was recommended. In both instances the state would only cover basic costs, often in the form of a loan, while the residents would be expected to cover the majority of the costs as well as to repay the loan from the state. Scholars on the left have tended to reject these approaches, arguing that shack settlements were a consequence of systemic inequality and thus that the resolution of the housing crisis lay in a deep social transformation towards equality. Some also saw shack

---

<sup>321</sup> Ibid., p. 195.

<sup>322</sup> Janice Perlman, 'A dual strategy for deliberate social change in cities,' op cit., p. 6.

<sup>323</sup> See Raj Patel, *Stuffed and Starved*. (Portobello Books: London, 2006)

dwellers as a potential base for developing this transformative project - but there has also been a strong current of leftism that shares elite prejudices about shack dwellers, and has assumed that they are unfit to lead - or even take part in - such a major social project.

But the left did not gain the global initiative. Rather, developments in Chile led the way. In 1978, American academics, advising the military dictatorship that had come to power in the 1973 *coup d'état*, developed a new model for financing 'slum clearance'. The model of loans developed by the Brazilian military dictatorship was replaced with a once-off capital subsidy system. This model was then widely replicated in other Latin American countries,<sup>324</sup> and later became the standard World Bank model.<sup>325</sup> The World Bank argued for this model to be adopted as international best practice on the grounds that it brought an end to illegal land occupation, that it restricted expenditure (because the subsidy is set at a certain figure per household) and that it successfully provided housing to the poorest segment of the population.

Although the use of the subsidy system, along with a relatively large dedication of total government expenditure to housing, significantly reduced the housing backlog in Chile, various failures were nonetheless identified. A report by Warren Smit for the Development Action Group in Cape Town discusses a number of these failures. They include: the poor location of most new housing developments on the urban periphery, an increase in social problems (including family violence) in relocation settlements, a failure to integrate housing development with other forms of development, and the dominance of large construction companies in driving housing policy. Smit refers to surveys of people relocated in Santiago in the 1980s to show that more than half of the people in the formal relocation settlements wanted to return to their former shack settlements. Smit, writing in 2004, also noted that around 6% of Chile's national budget has been dedicated to housing - the average for developing countries, however, was only 2%. He argued that in South Africa the 1.3% of the national budget dedicated for housing would have to be significantly increased if there was to be any chance of reducing the housing backlog via this subsidy model.

During the 1970s, the World Bank largely promoted peripheral site-and-service development via the capital subsidy model. At the 1976 Vancouver Habitat conference, the Bank presented "preliminary results" of its experiments with upgrading projects as "a revolutionary turn in the handling of the squatter problem."<sup>326</sup>

By the 1980s, relocations were no longer seen as good practice in even the most mainstream policy circles. Two schools of thought had developed about *in-situ* upgrades, however. Huchzermeyer explains them as follows:

One is concerned primarily with technological deficiencies, thus packaging a once-off physical intervention...referred to as comprehensive externally designed upgrading. The other is socially...inspired, concerning itself primarily with the people that experience the many and changing dimensions of poverty...referred to as support-based intervention.<sup>327</sup>

---

<sup>324</sup> Warren Smit, *International Trends and Good Practices in Housing: Some Lessons for South African Housing Policy*. (Development Action Group, 2005)  
<http://70.86.182.34/%7Edag710e/docs/4.pdf>

<sup>325</sup> Warren Smit, *Review of International Trends and Best Practice in Housing*. (Development Action Group, 15 May 2003)  
<http://70.86.182.34/%7Edag710e/docs/19.pdf>

<sup>326</sup> Huchzermeyer, 2004, p. 31.

<sup>327</sup> *Ibid.*, p. 53.

Both forms of upgrade acknowledge the importance of location, while having key differences. The second, socially inspired, model has been used in countries such as Zambia, Sri Lanka and Brazil. It requires a major paradigm shift from experts. Academics in Sri Lanka have argued that it requires a “non-dominating and sensitive professionalism...the opposite of the traditional, packaged, all-knowing professionalism, where the bureaucrat and technocrat have all the answers.”<sup>328</sup> It is certainly more time consuming than the first, formal and technological, model. The rates of satisfaction and well being amongst residents are significantly higher, however. Although the World Bank has moved away from recommending the first model, it still continues to finance these types of project and they remain common in many countries.

### *The return of the ‘slum’*

The word ‘slum’ had a strong currency amongst global policy makers from 1848 to the late 1970s. Then, as part of the broader shift towards recognising the functionality of shack settlements, they were more usually termed ‘informal settlements.’ In recent years, however, the term ‘slum’ has returned to the language of global policy making. A strong critique of the return of the discourse of the ‘slum’ has been made. For example, Tom Angotti began a recent paper with the following quote from V.S. Naipul’s *Miguel Street*: “A stranger could drive through Miguel Street and just say ‘Slum!’ because he could see no more. But we who lived there saw our street as a world, where everybody was quite different from everybody else.” Angotti went on to remark that:

Boston’s Mel King, prominent African-American community activist, once said that for him the term *slum* meant that ‘somebody else defined my community in a way that allowed them to justify destruction of it’. *Slum clearance* was the high-minded objective of the federal urban renewal program in the US, the program that displaced millions of people, disproportionately poor and African-American. Around the world today, working people are evicted by governments and private developers who have determined that their neighborhoods are hopeless ‘slums’ filled with disease, crime, and unemployment, problems which they claim will go away once the people are out of sight and cities stop growing.<sup>329</sup>

The return of this language is often traced to the Habitat 2 meeting in Vancouver, in 1999, at which the Cities Alliance was formed by UN Habitat and the World Bank. At this meeting, the new Cities Alliance developed a ‘Cities Without Slums’ campaign. The Alliance provides six criteria for the definition of a ‘slum,’ the presence of any one of which results in an area being designated as a ‘slum’. They are: a lack of basic services, inadequate building structures, overcrowding, unhealthy and hazardous conditions, insecure tenure, and poverty and exclusion.<sup>330</sup>

The Millennium Development Goals were endorsed in 2000. Each goal is focused on a concrete outcome. They are all to be achieved by 2015 with the exception of target 11, which is to be achieved by 2020. Its goal is to “have achieved a significant improvement in the lives of at least

---

<sup>328</sup> Ibid., p. 65

<sup>329</sup> Tom Angotti, ‘Apocalyptic anti-urbanism: Mike Davis and his planet of slums,’ *International Journal of Urban and Regional Research*, Volume 30.4. (December 2006) p. 967. For a detailed study on how ‘slum clearance’ programmes were used to force working class black people out of American cities see in the 1940s to the 1960s see Andrew Wiese, *Places of Their Own: African-American Suburbanization in the Twentieth Century*. (University of Chicago Press: Chicago, 2004)

<sup>330</sup> Charlton and Kihati, p. 258 and Marie Huchzermeyer and Aly Karam ‘The Continuing challenge of informal settlements,’ in Huchzermeyer and Karam (editors) *Informal Settlements: A perpetual challenge?* Op cit., p. 2.

100 million slum dwellers as proposed in the “Cities Without Slums” initiative.”<sup>331</sup> The target will be achieved once 100 million ‘slum dwellers’ have received an improvement in any one of the six criteria used to define a ‘slum’. So, for instance, if water and sanitation are provided, the target would be considered to have been achieved, even though tenure may still be insecure.

Huchzermeyer points out that, according to UN statistics, the figure of 100 million ‘slum dwellers’ represent no more than 10% of the world population currently living in ‘slums.’ The figure for global ‘slum’ population is expected to double to 2 billion people by 2030, making this a very modest target. She adds that this is especially so, given that the UN estimates that two out of five of Africa’s slum dwellers are estimated to be living under life-threatening conditions. It is therefore clear that:

Achieving the modest Target 11 would hardly result in ‘Cities Without Slums’, and a closer look at the *Cities Without Slums* Programme suggest that its slogan was not intended directly as a target – it promoted only the modest improvement of 100 million slum dwellers’ lives by 2020, subsequently incorporated into the Millennium Development Goals. As one of the programmes under UN-Habitat’s Global Campaign for Secure Tenure, the intention of the ‘*Cities Without Slums*’ Programme is to strengthen institutions and partnerships for slum upgrading initiatives at citywide level, with decision-making that is inclusive of the organisations of slum dwellers and their supporting NGOs. *Cities Without Slums* is referred to as the most successful and best resourced programme under the Global Campaign for Secure Tenure.<sup>332</sup>

However, as Huchzermeyer shows, the misleading slogan - ‘Cities Without Slums’ - for the project to create secure tenure for shack dwellers has been widely misunderstood as indicating that ‘slum eradication’ is a Millennium Development Goal. Politicians and the media have both presented it in this way, to the point where this misunderstanding has considerable popular currency. In fact, reducing the tenure security of shack dwellers in the name of ‘slum clearance’ would create more ‘slums’ - as tenure insecurity is one of the project’s definitions of a ‘slum’.

Despite this misunderstanding, the high water mark of international policy remains support based intervention, which begins by securing tenure and then enabling governments to up-grade settlements, in partnership with credible community representation. However, although this is vastly preferable to ‘slum clearance,’ many people from across the political spectrum have argued that these interventions do not go far enough.

#### *Assessments of the international policy consensus*

In India, Gita Verma - who defines herself as politically conservative - notes that housing standards for the poor (in terms of plot sizes, location, services and so on) have consistently worsened over the years while, at the same time, a development industry has celebrated its own progress and innovation with equal consistency. She diagnoses a policy merry-go-round in which new policies are celebrated and old ones are realised to have failed<sup>333</sup> - no one, however, grasps the nettle of the fundamental problem which is that: “It is widely accepted that inequitable land distribution is a major factor in the emergence of slums...[and therefore] the root cause of urban slumming seems to lie not in urban poverty but in urban wealth.”<sup>334</sup> In her view, India’s Draft

---

<sup>331</sup> United Nations (2000) United Nations Millennium Declaration. Resolution adopted by the General Assembly. (United Nations: New York, 18 September 2000)

<sup>332</sup> Marie Huchzermeyer, *The global governance response to informal settlements – relieving or deepening marginalisation?* <http://www.cchla.ufm.br/igumeeting/Natal-conference%20paper%20MARIE.htm>

<sup>333</sup> Verma, op cit., p. xix

<sup>334</sup> Ibid., p. 17.

National Slum Policy (DNSP), which was circulated in 1999, and which strongly advocated *in-situ* upgrades rather than relocation, carried the seeds of inevitable failure. Despite all the rhetoric about justice, rights and participation it includes, it does not challenge the inequitable distribution of land and thereby implicitly but “wholeheartedly advocates an option that directly endorses the notion that a majority section of the urban population must live in a very small share of urban land.”<sup>335</sup> She notes that although the policy of *in-situ* upgrades was better for shack dwellers than one of relocation - and although the right to stay was vastly better than compulsory eviction - nonetheless, these victories only translated into an acceptance of the *status quo*. In Delhi, this meant that “one-fifth to one-fourth of the city’s population [were] living on just 5 percent of the city’s land.”<sup>336</sup> The next year, however, the Supreme Court ruled that ‘slums and litter’ must be removed from Delhi, on the grounds that they constituted a ‘health hazard.’ The share of urban land available to the very poor thus declined still further. Verna’s conclusion is that the essence of the problem lies with the distribution of urban land, and that “there just has to be land reservation for the poor”<sup>337</sup>

In Turkey, Çağlar Keyder - who approaches the global housing crisis from the left - also insists that the critical question is that of the allocation of securely tenured land. His work shows that an “illegal process of land occupation and allocation” had been tolerated for many decades in Istanbul, and that this process had “contributed to the strengthening of networks” of migrants and thus enabled them to counter their social exclusion in the city. The rapid integration of Istanbul into global markets, however, coinciding with a shift from “national developmentalism to neoliberal capitalism” under which “land has finally become a commodity,” has now resulted in the physical exclusion of the poor from the city.<sup>338</sup> Perlman, a consultant to the World Bank, seems to concur, and has recently written that marginality - once no more than a myth about the culture of shack dwellers - is now increasingly gaining a concrete spatial reality.<sup>339</sup>

The nature of tenure security is as much a matter of debate as the question of the location of land on which that tenure is offered. The Peruvian economist Hernando de Soto, a consultant to the National Department of Housing in South Africa, has famously argued that shack dwellers should be awarded individual titles to their shacks. This, he argues, will enable them to immediately gain an asset against which they could secure credit and thus enter the formal economy.<sup>340</sup> However, some researchers have argued that de Soto radically overstates the degree to which credit can be raised against shacks. Other researchers, such as Mike Davis, have also argued that giving individual title is often disastrous to the poorest shack dwellers, as this incorporation into the formal sphere involves costs, such as taxes, that they simply cannot afford. Moreover, this tends to undermine solidarity in shack settlements, as it separates the poorest from their neighbours who can afford the costs of legal formalisation.<sup>341</sup> Grassroots controlled and directed shack dwellers’ movements, such as Abahlali baseMjondolo<sup>342</sup> in South Africa and the Movimento dos Trabalhadores Sem Teto<sup>343</sup> in Brazil, have tended to argue strongly against

---

<sup>335</sup> Ibid., p.17.

<sup>336</sup> Ibid., p. 73.

<sup>337</sup> Ibid., p. 150.

<sup>338</sup> Cited in Marie Huchzermeyer, *The global governance response to informal settlements – relieving or deepening marginalisation?* <http://www.cchla.ufm.br/igumeeting/Natal-conference%20paper%20MARIE.htm>  
Also see Robert Neuwirth’s *Shadow Cities*, op cit., for an interesting account of the situation in Turkey.

<sup>339</sup> *The Myth of Marginality Revisited: The Case of a Favela in Rio de Janeiro, 1969-2003*. (World Bank: Washington, 2005)  
<http://www.worldbank.org/urban.urscd/papers/perlman.pdf>

<sup>340</sup> Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. (Basic Books: New York, 2000)

<sup>341</sup> Mike Davis, *Planet of Slums*, op cit., pp. 80-83.

<sup>342</sup> See <http://www.abahlali.org>

<sup>343</sup> See <http://www.mst.info>

individual titling. They suggest, instead, that collective tenure security arrangements be preferred. They argue that individual titling tends to disadvantage the very poor and, also, often results in 'downward raiding.' The term 'downward raiding' is used to describe the situation where wealthier people displace poorer people in an area once property there becomes part of the formal housing market.

### *International innovation*

In Brazil, there has been an important step towards the kind of innovation that recognises the urgent need to secure well located land for the urban poor outside of the exclusionary logic of the market, as called for by Verma in India. It is important not to be overly optimistic about the situation in Brazil, however. As Huchzermeyer notes there have long been

two tendencies in the Brazillian debate on informal settlements, one seeking to humanise favelas, the other unrealistically wishing to eliminate the phenomenon... The intervention ideas they produce are opposed – one seeks improvement and integration, and the other wishes to remove the phenomenon of informal settlement from the middle class existence.<sup>344</sup>

Nonetheless, in 2001 the City Statute was promulgated in Brazil, after many years of activism by shack dwellers. The Statute has been described recognising the 'right to the city' as a collective right within a legal framework governing urban development and management.<sup>345</sup> In other words, it sees Brazilian cities as "fulfilling a social function, particularly with regard to the access, usage and the fair and equitable distribution of the opportunities and wealth."<sup>346</sup> It includes regulations designed to guarantee the social function of property, to regularise land occupation and to achieve the democratic management of cities. This means that the City Statute not only commits Brazil to guaranteeing tenure security - what Verma calls the 'right to stay' - but also commits the state to prioritise the social use value of urban land and the value of that land for the poor, over the commercial value of that land for the rich. The commitment to democratic city management adds a commitment to substantive political inclusion alongside the commitment to physical inclusion.

However, the implementation and the development of associated policies has been uneven. A 2003 COHRE report on housing rights in Brazil concluded that: "State-level policies range from those that have achieved great success in fulfilling the right to adequate housing to those that are clear and intentional violations of that right."<sup>347</sup> It also argued that:

the status of housing rights in Brazil continues to be plagued by gross inequalities and inconsistencies with respect to the full enjoyment of the right to adequate housing. These disparities not only have a geographical correlation, but a racial and ethnic dimension as well. Indeed, the disparities are especially striking with respect to the Afro-Brazilian and indigenous populations.<sup>348</sup>

In 2004 Miloon Kothari, Special Rapporteur of the United Nations, carried out a mission to Brazil. In his findings he described the City Statute as a "tool for participatory design of

---

<sup>344</sup> Huchzermeyer (2004), p. 90.

<sup>345</sup> Edésio Fernandes, 'Constructing the 'Right to the City in Brazil,' *Social Legal Studies*, 16 (2007) p. 201-219.

<sup>346</sup> COHRE Housing Rights in Brazil: Gross Inequalities and Inconsistencies (2003), p. 17.  
[http://www.cohre.org/view\\_page.php?page\\_id=120#i244](http://www.cohre.org/view_page.php?page_id=120#i244)

<sup>347</sup> *Ibid.*, p.4.

<sup>348</sup> *Ibid.*, p. 7.

development plans and allocation of resources...[that]...is unique in the world and is binding by law.” But he also noted, on a more sobering note, that insecurity of land tenure remained particularly acute amongst indigenous and black people. In addition, there was an urgent need to elaborate a national policy for the regularisation of ongoing land invasions, while the Government should also adopt measures and national legislation ensuring both protection against forced evictions and that, when such actions are genuinely unavoidable, they are carried out in strict conformity with existing international obligations.<sup>349</sup>

One of the most successful Municipal level innovations has been developed in Naga City in the Philippines. In the late 1970s, Naga, like other cities in the Philippines, began to face an acute urban crisis brought upon by the high rate of urbanisation and the lack of affordable housing. The state often attempted to recast the housing crisis as a policing problem rather than as a welfare problem or a social justice problem. The result was that, by the early 1980s, Naga was well known for the adversarial relationship that had developed between poor communities and their organisations, on one side, and private landowners and the City, on the other. Evictions and demolitions were common. These failed to resolve the housing crisis, however, and in fact worsened it. People evicted from one place simply moved to another - even more marginal and unsuitable - location. This led to a situation of growing animosity and social conflict.

By the late 1980s, the poor had become increasingly organised and began to forcefully articulate their concerns. In 1986, the success of the People’s Power movement opened up the society to popular participation. Shack dwellers in Naga City took this opportunity to step up their level of organisation. In 1988, Jesse Robredo was elected as the new mayor. The new administration pursued a programme of “growth with equity” through its own initiatives and using its own resources, mostly without support from the national government. The programme was founded on the recognition that although many were benefiting from the steps that had been taken to improve the business climate, an equal number were also being forced to pay a *social cost* as a consequence of this growth. Robredo also made a decisive break with the long entrenched practice of categorising the housing strategies of the poor as policing problem, and thus considering organisations of the poor as threats to be crushed or co-opted.

Over time, various strategies to avoid evictions and to secure the right of the poor to the city were developed in a partnership between the Mayor’s office and popular organisations. These innovations have been institutionalised in various ways.

A key moment in the institutionalising of innovation was the passing of the Empowerment Ordinance of 1997. This landmark legislation was known as ‘The Kaantabay sa Kauswagan Ordinance’ (Partners in Development Empowerment Ordinance) and mandated the city government to initiate the establishment of a system of partnership with popular poor people’s organisations into the *Naga City People’s Council (NCPC)*. The NCPC was empowered to:

- appoint civil society representatives to various special bodies of the city government
- observe, vote and participate in the deliberation, conceptualization, implementation and evaluation of projects, activities and programmes of the city government,
- propose legislations, participate and vote at the committee level of the city council,
- act as the people’s representatives in the exercise of their constitutional right to information on matters of public concern and access to official records and documents.

---

<sup>349</sup> Graciela Dede, *Report of the UN Special Rapporteur on adequate Housing, Miloon Kothari, on the Official Mission to Brazil* [http://www.socialwatch.org/en/noticias/documentos/Informe\\_brasil\\_SW\\_eng.doc](http://www.socialwatch.org/en/noticias/documentos/Informe_brasil_SW_eng.doc)



Naga City also implemented a programme known as Naga Kaantabay sa Kauswagan (Partners in Development) Program. The programme is a social amelioration project designed to empower the urban poor by addressing two key linked problems. The City government was mandated to allocate ten percent of its annual budget to the programme. The programme's key goals are to resolve two central aspects of the urban crisis:

- (1) the absence of security of land tenure, and
- (2) the lack of basic infrastructure and facilities in their communities.

The programme focuses on two main responses to these problems:

- (1) land acquisition which provides a sense of permanence to the urban poor's occupancy of a property, and
- (2) on site urban upgrading which provides practical improvements to people's lives where they live.

The programme has both short and long term objectives. Its short term objectives are too:

- Provide permanent solutions to all land tenure problems involving the urban poor;
- Uplift the living condition of urban poor residents in the city;
- Eradicate arbitrary ejection and minimize the incidence of eviction/demolition; and
- Explore alternative modes of land acquisition.

Its long term objectives are to:

- Empower the urban poor sector in Naga City by providing homelots, basic infrastructure and services, as well as livelihood opportunities to all in need;
- Strengthen the urban poor sector and heighten their participation in local governance;
- Integrate the urban poor in the mainstream of development and make them more productive members of society.

Practical action has been taken to achieve both sets of objectives. A Municipal office was been set up solely for dealing with the concerns raised by organisations of the urban poor (The Urban Poor Affairs Office), and a mechanism for permanently settling land tenure conflicts between landowners and land occupants has been set up. When it has been possible to avoid evictions, this mechanism also establishes relocation sites on well located land in the city.

The programme has adopted a range of pro-active strategies to ensure that land can be allocated by a social or rather than market logic. These include the release of publicly owned land, the direct purchase of squatted land by the city government, the exchange of privately owned squatted land for a similar lot of roughly equal value purchased by the city government, and the working out of mutually-beneficial land sharing arrangements for a single property for both private landowners and squatters.

The success of the Naga Kaantabay sa Kauswagan programme has been anchored by the adoption of a "partner-beneficiary" perspective in dealing with organisations of the urban poor. This approach sees the urban poor both as programme partners and beneficiaries, compelling them to actively participate in every step of problem resolution. It is rooted in a policy of dealing with organisations of the urban poor, and not with individuals. The value of this strategy is that it compels interested applicants to take the initiative in organising themselves, thus facilitating

community organising and ensuring that the urban poor have an effective and credible voice in policy-making.

On 5 December 2007, COHRE awarded its annual Housing Rights Protector Award to the government of Naga City, in recognition of its exceptional commitment to the human right to adequate housing. A statement by Jean du Plessis, deputy director of COHRE, said that:

COHRE commends the Government of Naga City for assisting over 6,000 families to obtain legal title to their land, thereby safeguarding them from the threat of forced eviction, and for improving the living conditions of 27 urban poor communities by providing and upgrading infrastructure...The Naga City Government's consultation with civil society and urban poor associations in the development and implementation of housing policies has produced effective remedies for thousands of inadequately housed people. The Kaantabay sa Kauswagan Programme's success in implementing housing and poverty alleviation policies, anchored in the understanding that the participation of the urban poor is vital to sustainable development, is commendable...COHRE praises the proactive initiatives undertaken by the Government of Naga City to effectively guarantee the protection and progressive realisation of the human right to adequate housing. Its efforts provide a powerful example that governments can implement practical policies to realise housing rights and that these are integral to fighting poverty.<sup>350</sup>

### **South African national housing policy after 1994**

#### *One million subsidies in five years*

In 1994, South Africa's first democratically elected government confronted an acute housing crisis. It estimated the urban housing backlog at 1.5 million, and estimated that this was increasing by 178 000 households per year. There was also an acute poverty crisis: the first post-apartheid census would report that unemployment was at 34% and that 39% of the population lacked sufficient food.<sup>351</sup> The new government had committed itself to building one million houses in 5 years and it moved very quickly to establish and begin implementing a national housing policy. The 1994 Housing White Paper declared that "The time for policy debate is now past – the time for delivery has arrived."<sup>352</sup> The White Paper moved from the deal struck at the National Housing Forum and committed the new government to a new plan in which the state would grant subsidies to private business that would then provide serviced houses on freehold tenure sites. This was essentially the old Urban Foundation site-and-services model with the addition of a house on the serviced site. The White Paper looked forward to the creation of "viable, integrated settlements where households would have convenient access to opportunities, infrastructure and services."<sup>353</sup> Along with this commitment to the rapid 'delivery' of housing there was a general consensus amongst policy elites, in and out of government, that the popular strategies of accessing and decommodifying urban land that had been developed in the apartheid era were now unacceptable - to the point of being criminal.<sup>354</sup>

---

<sup>350</sup> 'Protector Award, Naga City Philippines' COHRE. (5 December 2007) [http://www.cohre.org/view\\_page.php?page\\_id=281](http://www.cohre.org/view_page.php?page_id=281)

<sup>351</sup> Mark Smit, 'The Impact of the Transition from Informal Housing to Formalized Housing in Low-Income Housing Projects in South Africa,' paper Presented at the Nordic Africa Institute, *Conference on the Formal and Informal City: What Happens at the Interface*. (Copenhagen, June 2005)

<sup>352</sup> Cited in Charlton and Kihato, p. 67.

<sup>353</sup> Cited in Charlton and Kihato, p. 255.

<sup>354</sup> For instance, see Huchzermeyer (2004) p.171.

By far the biggest subsidy programme has been the National Housing Subsidy Scheme (NHSS).<sup>355</sup> This makes capital subsidies 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 stand pipe in the yard. People have complained that 'Mandela's houses are half the size of Verwoerd's'<sup>356</sup> and, indeed, houses this small would have been classified as 'slums' under the 1934 Slums Act.

Subsidies have been provided in various amounts, according to the level of household income. NHSS assistance has worked on a sliding scale. People earning less than R3 500 per month, but more than R2 500, have been entitled to R8 600; those earning less than R2 500, but more than R1 500, for a subsidy of R15 700; those earning less than R1 500 for a subsidy of R25 800. As of 2002, a compulsory beneficiary contribution (savings or credit) was introduced to make up the difference between the subsidy amount and the cost of the minimum standard house. The beneficiary contribution did not apply to beneficiaries earning less than R800 per month, or the aged or disabled. The full subsidy amount of R28 279 was allocated in these cases.<sup>357</sup> Apart from the income requirements, beneficiaries must be:

- married, co-habiting, or have at least one proven financial dependant;
- lawful residents of South Africa;
- 21 or older.

This scheme was used to finance the construction of over 1.5 million households across South Africa between 1994 and 2003.<sup>358</sup> In March 2007 the National Department of Housing announced that a total of 3 043 900 subsidies had been approved and 2 355 913 houses had been built since 1994.<sup>359</sup> This is widely regarded as a significant achievement. But the government has often noted that despite the impressive rate at which houses are being built the backlog is actually increasing. It currently estimates the backlog at around two million.<sup>360</sup> However that figure is generally based on the number of people living in shacks and does not take sufficient account of people living in overcrowded township housing and municipal flats. Around 300 000 subsidies have been made available over the past two years, and the national government aims to increase housing delivery to a peak of 350 000 units a year until the backlog is overcome. It has been argued, however, that this will have to be increased to 420 000 delivered houses per annum over the next ten years.<sup>361</sup>

---

<sup>355</sup> See Chapters 3 and 4 of the National Housing Code.

<sup>356</sup> Charton and Kihato, p.267.

<sup>357</sup> Lindiwe Sisulu, Minister of Housing, *Tabling the Budget Vote for the Department of Housing for to 2004/2005 Financial year, National Assembly* (10 June 2004)

<sup>358</sup> David Gardener, 'Getting South Africans Under Shelter: an Overview of the South African Housing Sector', *Housing Finance Resource Programme* (2003), p. 21.

<sup>359</sup> See the National Department of Housing website at <http://www.housing.gov.za/>

<sup>360</sup> SA housing backlog at two million, *SABC News*. (8 October 2007) [http://www.sabcnews.com/south\\_africa/land\\_affairs/0,2172,157125,00.html](http://www.sabcnews.com/south_africa/land_affairs/0,2172,157125,00.html)

<sup>361</sup> IDASA Budget 2007: Poverty Amidst Plenty <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1784>

But the weaknesses of the system relate to the quality as well as to the quantity of housing. NHSS assistance has usually been provided through project-linked subsidies for large-scale housing developments. However, it has been widely noted that both the quality and the location of these developments has often been very poor. The new townships were, in fact, often built on land first acquired or zoned for township development under apartheid.<sup>362</sup> This was usually on the periphery of existing townships and so these new townships generally reinforced the spatial segregation of cities, the isolation of the poor from livelihood opportunities and social services, as well as the tendency towards urban sprawl. This problem has often been exacerbated by the fact that there has also been little co-ordination between government departments to ensure that public transport, schools, clinics, libraries and police stations are provided for the new community. Other well-known problems with the housing subsidy programme include widespread local corruption<sup>363</sup> in the allocation of low-cost housing units and subsidies, as well as in the allocation of construction contracts. There have also been major problems with the quality of the houses. According to Gardener: “Defects are common, and have worsened as increased minimum standards, and the erosion of the subsidy due to inflation have squeezed [private] developers’ [profit] margins.”<sup>364</sup> It has also been argued that the subsidy system can have negative impacts on the poor, as its individualising effects reduce community cohesion and as its commodifying effects can make people poorer. Finally, there have also been problems with people struggling to meet the savings requirement. As David Gardener notes, given that the average household with an income of R1 500 or less spends around 5 per cent of its income on housing, it could take up to three years to meet the NHSS savings requirement.

In response to complaints about quality, the national Department has introduced a five-year warranty on all low-cost housing units, paid for by a once-off compulsory beneficiary contribution. And to deal with the problems around the savings requirement, provincial departments of housing have usually allocated much of the subsidy ‘budget’ to households that are not able to meet the savings requirement.<sup>365</sup>

### *The Housing Act (1997)*

The Housing Act 107 of 1997 and, later the National Housing Code (promulgated in 2000, under Section 4 of the Housing Act), 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. Provincial government, through Provincial Housing Development Boards set up in terms of Section 8 of the Housing Act, allocates housing subsidies to municipalities. It also facilitates the privatisation of council housing via provision to occupiers. Under Section 9 of the Housing Act, policy implementation, settlement planning and the initiation of housing developments are left to municipalities.

The Housing Act paved the way for the greater involvement of local government in housing development. An announcement in 1998 allowed local government to become developers from April 2002.<sup>366</sup> Some saw this as a positive move that would reduce the interest of the private construction industry in housing and also enable the development of a strong development

---

<sup>362</sup> See Charlton and Kihato, p. 268.

<sup>363</sup> See, for instance Andile Sokomani, ‘Stones unturned in crackdown on housing graft,’ *Business Day* (26 November 2007)  
<http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A639698>

<sup>364</sup> *Ibid.*, p.20.

<sup>365</sup> *Ibid.*, p. 21.

<sup>366</sup> Charlton and Kihato, p. 263.

orientated local state. It was suggested that shoddy construction and fleecing the system had inspired the shift.<sup>367</sup> But others argued that the shift was due to the fact that private developers were struggling to make profits from low-cost housing projects<sup>368</sup>. Other commentators cautioned that the motivation for the shift included a desire for local councillors to gain control over housing developments.<sup>369</sup> They expressed concern that this could lead to local clientelism and political patronage, undermining the development and allocation of housing on the basis of need.

Some have argued that it was the shift of housing development to an overburdened local government that led to a downturn in 'delivery rates' after a peak in 1998.<sup>370</sup> This view was also expressed by the Department in its 2004 Breaking New Ground policy document.<sup>371</sup>

The Urban Development Framework, which was South Africa's response to Habitat 2, and which was also launched in 1997, made no mention of the urban poverty alleviation approaches promoted in Habitat 2, and returned to the pathologisation of shack dwellers typical of the developmental language of the 1970s.<sup>372</sup> Since then this has been a recurring trend.

#### *The People's Housing Process (1988)*

The People's Housing Process (PHP) was adopted by the Minister of Housing in 1998. The formal adoption of the PHP was preceded by the establishment of the Peoples' Housing Policy Trust (PHPT) by the Housing Department in June 1997. The PHPT was funded by UN Habitat and the United States Agency for International Development (USAID) and was supported by the lobbying of some NGOs. Its stated aim is "to develop capacity at all levels of government, non-governmental and community-based organisations, and communities to support the PHP."<sup>373</sup>

The stated aim of the PHP itself is to assist communities to supervise and drive the housing delivery process by building their homes themselves. Support organisations are to be established (often through NGOs active in the housing sector, such as Shack/Slum Dwellers International - SDI) to assist communities in planning and implementing the construction of their own housing settlements.

The labour provided through this processes is termed a 'sweat equity.' and can be offset against the NHSS savings requirement, meaning that poor households need not wait years to access housing finance. It is often argued that the PHP could and should be central to the amelioration of some of the more pernicious effects of the savings requirement.

The UN supports the PHP on the basis that it results in more response and effective delivery. But critics have argued that it is a way to shift part of the cost of housing on to the poor, and that there is a fundamental dissonance between the collective nature of community based processes and the individualised - and often random and therefore individualising - nature of plot allocations by the state.<sup>374</sup>

---

<sup>367</sup> Ibid., p. 264.

<sup>368</sup> Ibid., p. 264.

<sup>369</sup> Ibid., pp. 263-264.

<sup>370</sup> Ibid., p. 265.

<sup>371</sup> Breaking New Ground, p. 5.

<sup>372</sup> Huchzermeyer (2004) p. 44-45.

<sup>373</sup> Peoples' Housing Policy Trust, [http://www.housing.gov.za/content/housing\\_institutions/phpt.htm](http://www.housing.gov.za/content/housing_institutions/phpt.htm)

<sup>374</sup> See Charlton and Kihato, p. 265.

A number of Municipalities, including the eThekweni Municipality, have formal partnerships with the global NGO Slum/Shack Dwellers International (SDI) and its membership based affiliate the Federation of the Urban Poor with a view to moving forward with the PHP process. By 2003, PHP projects had been allocated 184 728 housing subsidies. Institutional capacity has remained a problem, however, as there are few support organisations with either the expertise or the financial resources necessary to initiate and drive PHP processes. This is despite the existence of extensive state grants to aid support organisations. However, the state has kept faith with this process. In late 2003 Nomatyala Hangana, Deputy Minister of Provincial and Local Government, argued that while

municipalities tend to opt for a 'Massive Housing Development Approach', in addition to that I am just saying even a drop in an ocean does make a difference, and so does the PHP... Without necessarily attacking the municipalities but it is true that their involvement in the PHP has been extremely minimal. There have been delays with regard to the issuing of title deeds, there have been delays with regard to the approval of plans, and there has been complete lack of technical, administrative and financial support... And yet experience shows that with little or none of the above, the PHP beneficiaries have managed to produce bigger houses for less money (only women can do that) with all these kinds of support I have mentioned the process of building houses could be much more quicker.<sup>375</sup>

But even amongst those who welcome the increase in beneficiary participation, it is widely noted that, as Charlton and Kihato phrase it, "this is largely limited to housing construction, with little influence by beneficiaries over key issues that may have a bearing on poverty such as the location of housing projects."<sup>376</sup> Huchzermeyer argues that:

The South African [PHP] framework has only allowed for a people-centred house construction process once an informal settlement has been externally redesigned to a standardised layout, and conventional infrastructure has been delivered by external and usually commercial civil contractors. Community decision making over layout dimensions around the existing patterns of land occupation, as in the case of Sri Lankan Community Action Planning, has had no space in the South African framework. Nor has the identification and management of infrastructure projects by organised communities been possible in South Africa.<sup>377</sup>

In May 2006, the Department pledged a sum of R185 million (which represents 5 000 subsidies) to the Federation of the Urban Poor (FEDUP).<sup>378</sup> In November 2007, Shack Dwellers' International (SDI) - the Cape Town based global NGO which manages FEDUP and similar federations around the world - announced that it had received a donation of U.S. \$10 million from the Bill and Melinda Gates Foundation, some of which would become available to the South African federation. However despite top level support for the partnership between various levels of government and SDI and FEDUP to take forward the PHP process it has often failed at local level. In eThekweni there was some early success, resulting in over a thousand houses being built from 2002 to 2004, but no houses at all were built through this process in 2005 and in 2006,

---

<sup>375</sup> Nomatyala Hangana, Speech at People's Housing Process Workshop. (10 September 2003) <http://www.capegateway.gov.za/eng/pubs/speeches/2003/sep/10828>

<sup>376</sup> Charlton and Kihato, p. 266.

<sup>377</sup> Huchzermeyer, (2004) p. 48.

<sup>378</sup> Minister Sisulu's Address at FEDUP Conference. (May 2006) <http://www.sdinnet.org/documents/doc17.htm>

and the numbers were negligible in 2007.<sup>379</sup> Possible reasons for this failure are explored in the next chapter. In late 2007 the National Department of Housing announced that it intended shifting from PHP to a Community Driven Housing Initiative (CoDHI) programme. It was explained that “CoDHI is where the community members decide what type of houses they want and how they plan to build these houses; as well as providing some form of community contribution to the process, such as labour (not necessarily free), savings, material, land, community projects, etc.”<sup>380</sup> There are plans to create a new and distinct subsidy type for CoDHI that would enable more flexibility in terms of the actual buildings constructed as well as the mode of construction and the partnerships planning and carrying out the construction. However the details of this were not clear at the time at which this report was concluded.

### *Initial assessments of the subsidy system*

By the end of 1999 housing subsidies had been approved for 1.17 million households and 920 000 houses had been built,<sup>381</sup> bringing the government very close to its target of a million houses in five years. This success in producing housing at scale has been widely praised.

It is also widely recognised that in South Africa, as elsewhere,<sup>382</sup> many shack dwellers live in life-threatening conditions. Fire and diarrhoea are usually the two most immediate dangers. These conditions can be easily ameliorated within current budgetary limits by the immediate provision of basic support to shack settlements, and therefore a strong case can be made for the view that a failure to provide this support is unconstitutional. However, it seems that a major reason for this failure is that the housing subsidy system has created a widespread view that shack settlements are temporary phenomena that will soon be replaced by formal housing. Indeed many government officials have stated this directly. However despite the large numbers of houses built via the subsidy system in the first five years there was not a decline in the number of people living in shacks. There is, therefore, no rational basis for the assumption that, under current policies and practices, shacks will soon be eradicated. For this reason the failure to provide basic life saving services to shack settlements - such as electricity, toilets, sufficient water, fire hydrants and so on - must be deemed a major failure on the part of the state that is more than likely unconstitutional. Indeed a key criticism of the policy - often made by shack dwellers’ organisations - is that it has resulted in government housing development being seen as a one-off event in which people are moved from shacks to houses, rather than as a process of ongoing support. This has meant both a lack of support for people after they have been moved to new housing developments, and a lack of support for communities who have not yet been moved to formal housing.

In 2000 Mark Smit presented important research findings on the impact of the transition from shack settlements to low-cost housing projects. His study revealed that there were certain clear benefits to formalization. For a start, access to water and sanitation was vastly improved. Access to water and sanitation has clear benefits to health – for example, households in which water has to be stored are 4.6 times more likely to have diarrhoea than households with their own taps. Diarrhoea is the leading cause of death for children aged 1-5 in South Africa.<sup>383</sup> Moreover the

---

<sup>379</sup> Interview, Bunjwe Gwebu, Shack Dwellers’ International. (11 October 2007)

<sup>380</sup> Ronald Eglin, ‘In support of New Community Driven Housing Initiative (CoDHI) Programme’ *Afesis-corplan* 12 October 2007 [http://www.afesis.org.za/index.php?option=com\\_content&task=view&id=300&Itemid=66](http://www.afesis.org.za/index.php?option=com_content&task=view&id=300&Itemid=66)

<sup>381</sup> Smit, (2000) p. 2. However on *ANC Today* it was stated that the 5 million mark was reached in August 1999. ‘Providing the landless poor with shelter: Government’s approach’ *ANC Today* Volume 1, No. 37. (5 - 11 October 2001)  
<http://www.anc.org.za/ancdocs/anctoday/2001/at37.htm#art2>

<sup>382</sup> For example, see Mike Davis, *Planet of Slums*, op cit.

<sup>383</sup> Smit, (2000) p. 5.

collection of water is a task that often, although not inevitably, falls to woman. Although it has been argued that communal water taps create an important social and political space for women, it is clear that collecting water can also be very time consuming and that it can also be dangerous in shack settlements with steep muddy paths. Sanitation does not only provide clear health benefits but it is also very important for people's dignity and, as Mike Davis's study<sup>384</sup> has noted, toilets are a crucial women's issue as it is very often unsafe for women to seek privacy at night. This point has been consistently made by Abahlali baseMjondolo, and the demand for toilets has been central to its activism from its first protest onward. The former shack dwellers interviewed in Smit's study reported very high levels of satisfaction with their new access to water and toilets in their homes, although in the Waterloo relocation site in Durban people did complain of poorly constructed and malfunctioning toilets and water tanks. It is important to note, however, that the provision of these valued services does not require people to be moved into full scale formal housing projects. Shack settlements can be immediately provided with water and sanitation by the construction of well lit and well located communal ablution blocks.

Shack settlements are often at acute risk of fire due to the use of candles, highly flammable building materials, the close construction of the shacks, the failure to provide fire hydrants as well as the difficulty that the fire department has in accessing the settlements. There was a very high level of satisfaction with regard to the reduced risk of fire in the relocation sites. In part this is due to electrification, but it is also to do with the greater space between the dwellings as well as the access roads that can be used by emergency vehicles. Again, this progress is not entirely dependent on full scale formalisation and can be achieved to a significant degree via the provision of various forms of immediate fire prevention support to shack settlements.

The response to electrification was more muted, however, because many people could not afford to pay for it. But for some, it provided a major boost to their livelihoods, enabling things like refrigeration, the use of small tools and so on. It is necessary to note again that electrification is not dependent on full scale formalisation. On the contrary, in the early 1990s the experimental Urban Foundation upgrade projects electrified a number of settlements in Durban.<sup>385</sup>

Many shack settlements do not have any drainage, and become extremely uncomfortable and sometimes dangerous during the rainy season. However, Smit's study found that in some instances the increase in impermeable surface area and the disturbance of natural drainage patterns in relocation sites produced high risks of flooding. Smit reports that: "New housing projects in Durban commonly turn into quagmires in the rainy season, and residents have to erect wooden gangplanks to get from the road to their house. In Waterloo, even on a hot day in the middle of the dry season, there were some sites that were permanently waterlogged."<sup>386</sup> In this regard it seems that, in some cases, new housing developments were not significantly better than shack settlements.

Smit also found that a good number of people saw their new houses as 'modern' - as opposed to shacks, which were often seen as 'rural and 'old-fashioned.' For these people, living in a modern house created a sense of dignity and of having achieved a 'properly' urban life. But there were also widespread and serious complaints about the quality of the construction, with many houses already displaying serious structural defects such as cracks. During rain, many leaked through the

---

<sup>384</sup> Mike Davis, *Planet of Slums*, op cit.

<sup>385</sup> In early 2007 the eThekweni Municipality, without warning or explanation, removed some of these electricity connections from the Kennedy Road settlement at gun point. Given the direct connection between the lack of electricity and shack fires this action could well cost lives. It is almost certainly unconstitutional.

<sup>386</sup> Smit, 200, p.6



roof and became water logged through the floor. Most houses were single or double roomed, and a study in the Western Cape found that about a third of households were living in houses smaller than their former shacks. Smit notes that research has shown that overcrowding leads to “the breakup of extended families, inconvenience and lack of privacy” and that there is also “a strong link between overcrowding and psychological distress, especially amongst women.”<sup>387</sup> This emerged very strongly in the random door to door interviews undertaken by COHRE for this report in the Welbedacht, Nazareth, Park Gate and Waterloo housing developments. In these settlements it was not at all unusual to find three or four generations, often up to 12 people, living in one roomed homes. Questions about this were often answered with a breakdown into tears. However, young couples without children, or with young babies, were often proud of their houses and were positive and optimistic. This was especially so in the more centrally located settlements, where people had a much greater chance of earning a decent livelihood.

Formal housing results in secure tenure, which can be a major relief for people living under the constant threat of eviction and can enable investment in a home where this is affordable. But in the interviews undertaken by COHRE it became clear that the focus on individual ownership was sometimes problematic for many poor people, who engage in labour mobility as a survival strategy. Moreover it is well known that rates of legal marriage are very low amongst the poor, and that one consequence of the inability to afford marriage is that women can be disadvantaged when the property is registered in the name of a male partner. Tenure security is a critical part of people’s security, and its absence is one of the United Nation’s definitions of a ‘slum’. But it does not require a fully formalised housing project to guarantee such tenure security, nor does this tenure have to be individualised and marketised. In many countries, such as Brazil, the Philippines, Indonesia and Turkey, collective guarantees around tenure have been given to shack settlements as a whole. In these instances, shack dwellers have often then developed the settlements themselves to the point where it becomes difficult to tell where ‘informal’ areas end and ‘formal’ areas start.<sup>388</sup> In South Africa, many municipalities do not allow shack dwellers to extend or formalise their shacks. These regulations do not allow people to substantially improve their homes, or their settlements, themselves as their circumstances improve, threatening them with demolition and/or arrest. This forces shack settlements to remain ‘slums’ even when their residents are steadily accruing the resources to improve them themselves.

Another problem that emerged strongly in Smit’s research and the COHRE interviews is that living in a shack is much cheaper than living in a formal house. In a formal house, rates and service charges can be onerous and repairs cannot always be undertaken by the residents themselves. And while it is perfectly possible to buy a single tea bag or a single painkiller or cigarette in a shack settlement, this can become difficult in a formal housing project.

It has been widely recognised, more or less from the beginning, that a key problem with formal housing developments is that they are often located on the urban periphery. Many shack settlements, although certainly not all, are well located from their residents’ point of view. A survey in the Smithfield settlement in Durban showed that 96% of people were happy living there and that 67% cited its location as their reason for liking it.<sup>389</sup> Numerous research projects have shown that although people with better jobs and incomes usually do well in relocation sites, poorer people often suffer a calamitous drop in income, and struggle to access schools, clinics, policing and so on. This can be associated with increased rates of depression and family violence. COHRE’s findings in the relocation housing developments visited during the research for this report were very similar. It was very striking that in the peripheral developments, people with

---

<sup>387</sup> Ibid., p.9.

<sup>388</sup> See Neuwirth, 2006 for more on this.

<sup>389</sup> Smit, (2000) p. 12.

good jobs tended to be happy with the move from a shack to a house. People with no work, or a precarious livelihood, however, often experienced the relocation from a better located shack to a house on the urban periphery as disastrous.

Across the country it has not been unusual for people to simply abandon relocation houses and move back to better located shacks or to refuse to leave shacks for relocation houses, as often happened under apartheid and has often happened with forced removals to peripheral relocation sites the world over. For example, in the low-cost housing development of 'France' near Imbali, outside Pietermaritzburg, more than 100 houses built at the cost of over R2 million have been vacant since their completion in 2002. The intended 'beneficiaries' have refused to take occupation or transfer on the grounds that the houses are too far away from Pietermaritzburg and from their present settlements close to the city. In the words of one community member: "We want to stay here because we don't pay for transport to the city. It is better for us to stay in our mud houses rather than be forced to relocate to a place that we don't like."<sup>390</sup> The Ward Councillor of the area commented that: "The situation is beyond our control. People are rejecting the houses even though they applied for them. We have contacted people in the informal settlement and requested that they take occupation of the houses but they have refused."<sup>391</sup>

In Johannesburg, most of the major new housing settlements are concentrated to the south and west of the city, distant from most of the major economic growth areas. Examples of particularly poorly located low-cost housing settlements include Diepsloot<sup>392</sup> and serviced sites such as Vlakfontein.<sup>393</sup> The latter is so poorly located that there has been significant resistance to relocation there, even from relatively poorly serviced - but better located - informal settlements.<sup>394</sup> Even the better located housing development areas, such as the Braamfischerville<sup>395</sup> and the Durban Roodepoort Deep<sup>396</sup> developments lack social amenities, and are at the outer edges of established townships.

In Durban, people have refused relocation from shacks to houses in peripheral developments like Park Gate. Houses have stood empty in Park Gate.<sup>397</sup> The same thing has happened in Pietermaritzburg with the peripheral relocation site of France.<sup>398</sup> Similarly in Cape Town, the residents of the Joe Slovo settlement have refused, *en masse*, to accept relocation to the peripheral site of Delft.<sup>399</sup>

A less well recognised problem with low-cost housing projects is that they have often undermined community solidarity. In part this is because of the random nature of house allocation. Shack settlements are often developed through careful collective processes in which

---

<sup>390</sup> 'Millions lost as housing rejected', in *The Witness Echo*. (25 Nov. 2004).

<sup>391</sup> Ibid.

<sup>392</sup> Diepsloot is located around 20 km north-north west of the Johannesburg Central Business District, and is a conglomerate of informal settlements, low-cost formal subsidised housing, and serviced shack settlements.

<sup>393</sup> Vlakfontein is located approximately 30 km to the south-south west of the Johannesburg Central Business District. It is 8 km South East of Thembelihle's current site.

<sup>394</sup> Largely from Thembelihle, most of whose residents successfully resisted a court application to evict and relocate them to and Vlakfontein.

<sup>395</sup> Braamfischerville is located on the north-western edge of Soweto, adjacent to Dobsonville, a notoriously poverty stricken area.

<sup>396</sup> Efforts to relocate informal settlements to Durban Roodepoort Deep, which is equidistant from Dobsonville in the south and Roodepoort centre in the north, have also met with fierce, if ultimately unsuccessful, resistance.

<sup>397</sup> See Fazel Khan, PhD Proposal, School of Development Studies, UKZN. (2006)

<sup>398</sup> Mark Butler, personal communication, 18 September 2008

<sup>399</sup> See Alyssa Huff *Itemba liyaphilisa: Redefining Development Through the Joe Slovo Anti-Eviction Struggle*. (2007) (As yet unpublished)

new residents are vouched for and undergo a period of probation and can be asked to leave if they behave in anti-social ways. But in formal housing projects, houses are simply allocated to individuals with little regard to their social networks. This causes severe set backs for people who relied on social networks for survival. For example, it was found that in the Marconi Beam settlement in Cape Town most 'tenants' "did not pay rent – there was more of a reciprocal relationship in which both landlord and tenant helped each other out".<sup>400</sup> Considerable tensions may also often develop when outsiders are relocated to areas where local people have been expecting housing.

The breaking up of established social networks can also lead to an increase in crime. Smit also notes that the individualization that accompanies formalization "can result in a decrease in the strength of geographically-based community organizations and the rise of new types of organizations that represent particular interest groups within an area."<sup>401</sup> Given the vast body of international research that has confirmed that importance of poor people's organisations to the poor,<sup>402</sup> and also to the long term social viability of cities in general,<sup>403</sup> this is a serious problem.

Moreover while shack settlements "have organic layouts suited to pedestrians and with communal spaces for social interaction and economic activity," sociality is not taken into account in the development of low-cost housing projects:

In new housing projects, the quality of communal spaces is such that it discourages social interaction. At Waterloo, for example, the houses are all separated from each other on their individual little plots. The outdoor space is bleak, barren and windswept and is little used. There are no communal spaces where people can meet on a daily basis.<sup>404</sup>

This can be exacerbated by the simple ugliness of most of the housing projects. Smit reported that: "It has long been noted that some informal settlements are more aesthetically pleasing than new housing projects in Durban".<sup>405</sup> Shack settlements tend to be more responsive to local topography, vegetation and micro-climatic conditions than large housing projects. For example, the first step in developing a new project is usually to remove all the vegetation. In the Smithfield settlement 70% of respondents reported being happy with the vegetation in the settlement, while in the Waterloo relocation site 76% of residents reported being unhappy with the lack of vegetation.

A final point of concern is that not everyone living in a shack settlement may necessarily qualify for a relocation house. So when the relocations happen a group of people - including people without documents, young single men, women without children, and older widows with adult children - may be left homeless, forming an underclass excluded both from their old shacks and the new houses.

---

<sup>400</sup> Smit, op cit., p. 14.

<sup>401</sup> Ibid., p. 13.

<sup>402</sup> See for instance Frances Priven and Richard Cloward, *Poor People's Movement*. (Vintage: New York, 1979)

<sup>403</sup> See for instance Manuel Castells, *The City and the Grassroots*. (University of California Press: Berkley, 1984) Castells shows that across time and space "urban social movements have been among the sources or urban forms and structures throughout history...the historical conditions peculiar to our societies make their impact much more evident than ever before." (xix) In his analysis the key demands are for "self-management and autonomy" (xix). Also see Andy Merrifield, *Dialectical Urbanism*. (Monthly Review Press: New York, 2002)

<sup>404</sup> Ibid., p. 12.

<sup>405</sup> Ibid., p. 16.

The South African government's housing subsidy initiatives have been successful in delivering dwellings at scale for poor people. But state housing policy has not been implemented in such a way as to help beneficiaries meet these broader socio-economic needs. This is largely because the in principle commitment to compact urban settlement patterns has been supplanted at a municipal level by cost considerations. Nonetheless, if the marginal location of many housing settlements significantly limits the livelihood opportunities and access to social services of housing subsidy beneficiaries, this may be seen as a failure to fulfil state obligations under the Covenant, read with paragraph 8 of General Comment 4. It is difficult to see how a peripherally located low cost housing settlement far away from schools, clinics and job opportunities can hope to satisfy the Covenant's requirement that housing should be adequately serviced and well located.

One response from the government to some of these critiques is the Emergency Housing Programme. This programme was published in April 2004, at least in part as a response to the *Grootboom* declaration that state housing policy was failing to cater for people living in crisis situations. The main objective is to provide temporary - but secure - access to land and basic municipal services to people who have been left without a home through no fault of their own. This usually means evicted persons, or victims of fire, flood or other natural disasters. Assistance is provided through grants to municipalities, administered, like all other subsidies, through provincial housing departments. However it appears that it has not been widely used. A far more comprehensive response was issued, also in 2004, in the form of a new policy, *Breaking New Ground*.

*Breaking New Ground, April 2005*

The 'Breaking New Ground' (BNG) policy<sup>406</sup> was published in August 2004 and approved by Cabinet a month later to be effective from April 2005. It was worked into Chapter 13 of the Housing Code<sup>407</sup> in October 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."<sup>408</sup>

It also acknowledged that there had been a slow down in delivery, that the spatial location of housing programmes had largely conformed to apartheid segregation, that the pernicious effects of this had not been moderated by the simultaneous development of transport and other infrastructure at the relocation sites, and that the 1.6 million houses that had been built had not become valuable assets to the poor because people simply didn't have the income to pay for services and taxes. The BNG document stated that: "The dominant production of single houses on single plots in distance locations with initially weak socio-economic infrastructure is inflexible to local dynamics and changes in demand."<sup>409</sup> However, it remained committed to the view that: "Housing primarily contributes towards the alleviation of asset poverty."<sup>410</sup>

---

<sup>406</sup> See *Breaking New Ground* (2 September 2004)

<http://web.wits.ac.za/Academic/EBE/ArchPlan/Research/informalsettlements/Home.htm>

<sup>407</sup> See 'Chapter 13: Upgrading Informal Settlements', *National Housing Code*

<http://web.wits.ac.za/Academic/EBE/ArchPlan/Research/informalsettlements/Home.htm>

<sup>408</sup> *Breaking New Ground*, p. 3-4.

<sup>409</sup> *Ibid.*, p. 8.

<sup>410</sup> *Ibid.*, p.11.

Some welcomed it as “a radical departure,”<sup>411</sup> while others argued that it “does not seem to have essentially departed from the original housing policy.”<sup>412</sup> There are a number of clear shifts, however, in terms of both the process and outcomes of housing provision.

Government policy has always recognised the importance of ensuring that the poor are housed on well located land, but committing to this in principle is not the same thing as taking concrete steps to realise it in practice. BNG observed that: “The acquisition of land to enhance the location of human settlements constitutes a fundamental and decisive intervention in the Apartheid human space economy.”<sup>413</sup> 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. With regard to the former, BNG introduced a new funding mechanism to support the development of social inclusion and the integration of re-housed communities into the city by providing community facilities in housing projects. With regard to the latter, plans to access well located land included greater co-ordination between various Departments and planning processes, the transfer of state land and land owned by parastatal organisations at no cost, and, when such land is not available, the negotiated purchase of privately owned land which could also “be expropriated at market value as a final resort.”<sup>414</sup> It also sought to introduce policy mechanisms to promote the densification of urban areas - which is a critical strategy for ensuring that more people have access to the benefits of cities. New taxation measures were envisaged to promote densification and discourage sprawl. The plan also took the innovative and proactive step of proposing that new commercial residential developments be authorised only on the condition that they provide 20 per cent low income units. It suggested that initially these units could be located on alternative land, but that increasingly the requirement would be for these to be spatially integrated into higher income developments.

BNG made another important innovation by insisting that upgrades must be flexible, should cater for local circumstances, and should be undertaken as community projects. This commitment was not merely rhetorical. A new funding mechanism was implemented “to support upgrading on an area-wide as opposed to an individual basis.”<sup>415</sup> 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. This was an important break with the individualising aspects of the prior policy. An allied innovation was that there was a commitment to actively supporting the ability of communities, organised as communities, to engage with municipalities around strategies to identify and to meet their housing needs. Moreover BNG also sought to enhance housing quality, housing design and settlement design. However, undocumented migrants, if detected in the informal settlement, were to be referred to the Department of Home Affairs. It was planned that the first two years (2005 and 2006) would be devoted to steering this new approach through a pilot project in each of the provinces.

Another important innovation in the BNG document is that it declares that the beneficiary support for the People’s Housing Process should take the form of intellectual equity rather than sweat equity, and that it should in future be funded on “an area-wide or community, as opposed

---

<sup>411</sup> Khan, cited in Charlton and Kihato, *op cit.*, p. 254.

<sup>412</sup> Charlton and Kihato, p. 258.

<sup>413</sup> Breaking New Ground, p. 14.

<sup>414</sup> *Ibid.*, pp. 13-14.

<sup>415</sup> *Ibid.*, p. 17.

to individual approach” and be undertaken with community organisations “in accordance with locally constructed social compacts.”<sup>416</sup> This moved the PHP policy away from simply demanding labour from beneficiaries, and took seriously the role and value of grassroots planners. It also acknowledged that doing so would require micro-local negotiations, rather than the generalised imposition of a standardised model.

BNG also acknowledged that current inhabitants of areas undergoing urban renewal “are often excluded as a result of the construction of dwelling units that they cannot afford.” It tried 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.

The Emergency Housing Policy is meant to release funding to deal with imminent crises, caused by natural disaster, mass eviction, or relocation for health reasons. But there are an untold number of people in South Africa who are not quite ‘in crisis,’ but whose lives and livelihood strategies are precarious, insecure and essentially ‘survivalist.’ These people are the very epitome of informality. Unable to secure a formal job, they eke out a precarious living as best they can. Many live in shack settlements in unhealthy and intolerable conditions, and with extremely insecure tenure. But often they do not want another place to live, as their current dwelling has been chosen for its ability to assist them to sustain a livelihood strategy. It is also often the case that they do not want a low cost house located on the urban periphery, as they may have deep connections with the rural areas in which most of their family live. They may thus be using what little money they can save to contribute to the building of a rural home. They often migrate between rural and urban areas, and require a basic standard of safety and tenure security where they currently live. Low cost rental housing may well be an option for people in this class, as may be a shack settlement upgrading strategy, but neither of these options have, until recently, been given enough attention at a national level.

The upgrading instrument in the new housing plan was intended to cater for those households not assisted through the Emergency Housing Policy, and those whose ‘emergency’ consists of the fact that they are poor and unable to adequately house themselves or gain access to land. It did not apply subsidy qualification criteria to these households. Instead it allowed various tenure forms, including a form of rental, to apply to shack settlement upgrading. However, it was decided that this programme would be introduced gradually - with the result that, until 2007, the main interventions would continue on the basis of the previous policy.

BNG also committed the state to developing a rural housing programme, and to taking proactive steps to make rural life more viable by targeted interventions to defend tenure and enhance livelihood options.

Throughout the document there is a clear commitment to placing:

greater emphasis on the process of housing delivery (emphasizing planning and engagement), the quality of the housing product (both in terms of location but also in terms of final housing form) and the long-term sustainability of the housing environment (leading to a focus on institutional capacity).<sup>417</sup>

The School of Architecture and Planning at the University of the Witwatersrand summed up Chapter 13 of the Housing Code as follows:

---

<sup>416</sup> Ibid., p. 18.

<sup>417</sup> Nana Ndlovu, ‘A Comprehensive Plan for the Development of Sustainable Human Settlements, ‘BNG’ Strategy,’ *Project Preparation Trust briefing note.*, (2007)

Under Chapter 13 of the Housing Code, municipalities can apply for a community-based or area-based subsidy that is not linked to individual households, but based on the actual cost of improving an informal settlement. The programme has no ceiling for the cost of purchasing and rehabilitating land. It encourages municipalities to stop relocating informal settlements from expensive or geotechnically unsuitable land to new housing developments on the outskirts of cities and towns. Instead, it enables already occupied land to be made habitable, even if technically and economically deemed unsuitable. Relocation is treated as a very last resort, and in such cases, funding can be applied to purchase land in close proximity to the existing informal settlement. The programme includes funding for interim services, and for community empowerment:

- Informal settlements should not be seen as a ‘housing problem’, but as a far more complex problem
- Even if some think that upgrading rewards unlawful occupiers, all informal settlements should be dealt with under the Informal Settlement Upgrading Programme.
- The target should be to improve people’s lives.
- Informal settlement dwellers should be central to initiatives to improve their lives.
- Every effort must be made not to destroy people’s fragile livelihoods.
- The constitutional rights of informal settlement dwellers must be respected, particularly where relocation is being considered.<sup>418</sup>

While most researchers welcomed BNG with considerable enthusiasm, three problems have been pointed to in the literature. The first is that it makes references to the ‘eradication of informal settlements.’ This raised concern about the measures municipalities may resort to in order to ‘eradicate’ existing settlements and to stamp out any attempts at new informal settlement formation. However, the plan’s intention was clarified as a “shift” from “conflict and neglect” to the integration of settlements “into the broader urban fabric to overcome spatial, social and economic exclusion” via “a phased in-situ upgrading approach.”<sup>419</sup>

While the language of ‘eradication’ is problematic, the actual content appears welcome. However, just as the ‘Cities without Slums’ 1999 initiative<sup>420</sup> aimed at proving conditions in ‘slums’ but was widely misunderstood as being a commitment to ‘eradicate slums,’ there has been concern its language of ‘eradication’ could loom larger than the policy’s detailed content in the general understanding. Charlton and Kihato note that in the speeches around BNG there was an “energetic focus on the eradication of existing informal settlements.” For example, Minister Sisulu commented that:

The Premier of Gauteng has fired the first salvo in our war against shacks. His bold assertion that informal settlements in his province will have been eradicated in ten years, is the best news I have heard in my tenure as Minister.<sup>421</sup>

---

<sup>418</sup> See: <http://web.wits.ac.za/Academic/EBE/ArchPlan/Research/informalsettlements/Governmentpoliciesandprogrammes.htm>

<sup>419</sup> Breaking New Ground, p. 12.

<sup>420</sup> See Charlton and Kihati, p. 258, and Marie Huchzermeyer and Aly Karam, ‘The Continuing challenge of informal settlements,’ in Huchzermeyer and Karam (eds.), *Informal Settlements: A perpetual challenge?* op cit., p. 2.

<sup>421</sup> Charlton and Kihati, p. 258.

The KwaZulu-Natal Department of Housing's Strategic Plan for 2004-2007<sup>422</sup> ignored almost all of the innovations in BNG, and listed 'eradicating slums' in the province by 2010 (within the next 6 years) as the first of its strategic objectives. In its report to the March 2005 Housing Summit, held specifically to discuss ways of implementing BNG in the province, the 'eradication of slums' remained a key priority, although the timeframe remained at 6 years pushing the target date forward to 2011:

The need for housing in the urban centres in the province are [sic] reflected in the increase in densities (thereby leading to overcrowding in existing townships), emergence of informal settlements and also mushrooming of slum areas due to the locational opportunities presented by areas that are in close proximity to employment opportunities. It is in the light of this background that the slum clearance projects have become the priority programmes for the Department. The Provincial target for clearance of all slums is 6 years from the 2005/06 financial year.<sup>423</sup>

All the democratic innovations contained in BNG are ignored, and instead the Summit recommends coercive strategies to keep poor people without access to formal housing out of the cities:

The municipalities must be urged and assisted to introduce and enforce of municipal legislative and policy instruments such as by-laws, especially with regard to the clearance of slum areas. Municipalities must secure their environments against new invasions. They should also monitor the destruction of the shacks once beneficiaries have been allocated houses.<sup>424</sup>

The illegal occupation of land by illegal occupants has to be addressed by the Department. This will require close cooperation between the Department and the law enforcement agencies such as the South African Police Services (SAPS), the National Intelligent [sic] Agencies, amongst others<sup>425</sup>

Following the launch of the policy, a number of newspapers carried sensationalist articles about the prospect of low cost housing in elite suburbs - creating what Charlton and Kihato described as an "uproar". But they report that:

The Minister of Housing, however, was quick to allay fears: "There is no intention by the Department of Housing to build a 'low cost house on the doorstep of R3 million house' as claimed by the Sunday Times...there is no reason for the Department of Housing to negatively affect the high income market."<sup>426</sup>

Statements of this nature led some researchers to conclude that there was insufficient political will to address seriously the need to increase the density of cities and to ensure that poor people could access well located housing. Experience throughout the world has shown that allowing the market to determine housing patterns will result in the exclusion of the poor. A government that is serious about avoiding this simply has, to at least some degree, to put the social function of urban land before the market function.

---

<sup>422</sup> KwaZulu-Natal Department of Housing *Strategic Plan 2000-2007*  
<http://www.kznhousing.gov.za/stratplanfinal.doc>

<sup>423</sup> KwaZulu-Natal Housing Summit Held on 24<sup>th</sup> and 25<sup>th</sup> of March 2005, p. 6.

<sup>424</sup> Ibid, p. 34.

<sup>425</sup> Ibid, p. 35.

<sup>426</sup> Cited in Charlton and Kihato, p. 256.



Concerns were also expressed about a lack of political will to take the new policy forward. For instance, Huchzermeyer cautioned that “while a policy shift is occurring in 2004, there may not be mainstream political interest in, nor bureaucratic support for, such progressive innovation.”<sup>427</sup> These concerns proved to be well founded. Although BNG remains official policy, most of the policy innovations in the document have not been implemented. However, some positive steps were taken. For example, in 2005 an intra-government agreement was made with municipalities to adopt a moratorium on the sale of municipal-owned land. Although it was entirely voluntary, a number of Municipalities passed Council resolutions to effect the agreement. Minister Sisulu remarked that: “We are more than happy that many of our progressive municipality understands [sic] that the poor have a right to stay close to areas of both economic and social amenities.”<sup>428</sup>

### **The return of the language of ‘slum clearance’ in South Africa**

While BNG remains the official policy of the National Department of Housing, in practice the language of ‘slum clearance’, ‘eradication’ and ‘elimination’ drives much of the current common sense around housing. This is often apparent in comments and actions by politicians, officials, police officers, social workers as well as in the understanding of the housing policy in the media. With the passing of the Slums Act in KwaZulu-Natal, this language has been translated into law.

Despite the historical association of this language with racism in South Africa and around the world, it has been present for some time in post-apartheid South Africa. In 2001, the year after the launch of United Nations Millennium Development Project in 2000, which includes as Goal 7 Target 11 the improvement of the lives of 100,000,000 slum dwellers by 2020, the South African president mandated the Department of Housing to eradicate informal settlements.<sup>429</sup> In that same year, the late Dumisani Makhaye, the then Minister of Housing in KwaZulu-Natal, introduced a Slum Clearance programme with the following remarks:

Today, we are announcing a R200 million slum clearance programme that is specifically targeted at slums in and around the Durban area. When you enter the city of Durban you are met by slums and when you leave it is slums that bid you farewell. Unfortunately, this phenomenon is not only exclusive to Durban. Almost all the cities in our province have the same problem. That is why, as a Department, we decided that certain drastic steps had to be taken.<sup>430</sup>

The fact that this ‘slum clearance’ project largely began with the shack settlements in the centre of the city, in areas reserved for whites, Indian and coloureds under apartheid, rather than in the peripheral settlements where the conditions are the worst, clearly indicates that it was not primarily aimed at meeting the needs of shack dwellers. A number of newspaper reports at the time noted that it was welcomed by local ratepayers associations (i.e. middle class and wealthy

---

<sup>427</sup> Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil*. (Africa World Press: New Jersey, 2004) p. 9.

<sup>428</sup> *Media Briefing Remarks by Housing Minister, Lindiwe Sisulu on the Occasion of the 2006/2007 Budget Vote Statement*. (May 24, 2006)  
[http://www.housing.gov.za/content/Media%20Desk/Speeches/2006/24%20May%202006\\_2.htm](http://www.housing.gov.za/content/Media%20Desk/Speeches/2006/24%20May%202006_2.htm)

<sup>429</sup> See Marie Huchzermeyer, ‘The global governance response to informal settlements – relieving or deepening marginalisation?’ *Paper presented at the IGU Conference in Natal, Brazil*. (18-22 September 2005)  
<http://www.cchla.ufrn.br/igumeeting/Natal-conference%20paper%20MARIE.htm>

<sup>430</sup> Speech by KwaZulu-Natal Minister of Housing, Mr Dumisani Makhaye, on the occasion of the announcement of the slum clearance programme in the eThekweni Municipality on 01 November 2001.  
[http://webapps.kzntl.gov.za/doh/Portals/0/docs/Speeches/Ethekweni\\_municipality\\_slum\\_clearance%20-%20Nov%202001.PDF](http://webapps.kzntl.gov.za/doh/Portals/0/docs/Speeches/Ethekweni_municipality_slum_clearance%20-%20Nov%202001.PDF)

residents). These reports were silent with regard to the views of shack dwellers.<sup>431</sup> Two years later the *Daily News* reported that:

Two years ago, former provincial housing minister Dumisani Makhaye announced an ambitious R200-million programme to rid Durban of its burgeoning informal shack settlements...It was hailed by many formal communities as a breakthrough in stemming the rapidly deteriorating status that many suburbs found themselves assuming. However, two years down the line, try convincing residents in... neighbourhoods surrounded by informal settlements that the rickety structures will soon be demolished. So slow has been the implementation of this slum clearance project that many home owners have stopped believing the promises of their local councillors that the informal settlements will be relocated to make way for urban renewal programmes. Kenville councillor Deochand Ganesh said that, while he sympathised with residents, there was not much councillors could do... "We only follow official channels and hope the process is speeded up," he said. Ganesh said there was "great unease" in communities that were surrounded by informal settlements.<sup>432</sup>

In 2006, when an attempt was made to implement the relocations, hundreds of shack dwellers in Kenville blocked a major road in protest. The police response left a number of people severely injured.<sup>433</sup> Residents reported that one person was killed and that another miscarried consequent to the police violence.<sup>434</sup> Government blamed a 'third force' instead of popular opposition to forced removal for the protest.<sup>435</sup>

There is a basic contradiction between BNG, with its focus on the holistic and consultative process based on the development of housing as a form of support for communities, and 'slum eradication' measures. BNG takes inadequate housing as the fundamental problem and seeks to take action to develop more adequate housing. 'Slum eradication' takes shack settlements as the fundamental problem and seeks to get rid of them. The distinction between these approaches lies in the fact that, in the absence of other viable options, shacks are the most adequate housing currently available to millions of people. In some circumstances they are more adequate housing options than small, poorly constructed houses in peripheral relocation projects. For many people they are also the only option for accessing the city or for setting up an independent household in the city. Using coercive policing and security strategies to forcibly eradicate shacks will inevitably result in the housing conditions of millions of people being radically worsened. The only way to get rid of shacks without doing major damage to the well being of millions of people is to develop better alternatives in terms of cost, location, services and the quality of the structures. However, despite the clear contradiction between BNG and 'slum eradication,' Huchzermeyer's studies show that in fact: "The 'slum eradication' rhetoric has increased with the new housing policy of 2004."<sup>436</sup> For instance Huchzermeyer reports that:

---

<sup>431</sup> See, for instance, Philani Makhanya and Sapa '69 Shack areas in KZN to make way for homes,' *Daily News*. (1 November 2001)

<http://www.dailynews.co.za/index.php?fSectionId=3532&fArticleId=ct20011101212951255S600831>

<sup>432</sup> Veven Bisetty, 'Is Durban getting a bum slum deal?' *Daily News*. (16 July 2003)

[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=vn20030716133535265C996039](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20030716133535265C996039)

<sup>433</sup> Carvin Goldstone, 'Protesters hurt as police fire rubber bullets,' *The Mercury*. (5 December 2006) <http://www.themercury.co.za/index.php?fArticleId=3576671>

<sup>434</sup> Interview, M'du Hlongwa, 17 December 2006.

<sup>435</sup> Heinz de Boer, 'Third force blamed for violent protest,' *Daily News*. (5 December 2006)

<sup>436</sup> Huchzermeyer, 2005, op cit..

In July 2005, the Gauteng Province MEC (Minister) of Housing stated that all illegal structures in the province will be demolished, as all homes, even in upgraded informal settlements, will have to have approved plans, in order to ensure shack-free cities by 2010. In the same breath, she was criticising the beneficiaries of state-subsidised houses on the periphery for renting these houses out 'for profit' and moving back into shacks, or constructing informal rooms in their backyards to rent out to others. This would be brought to an end, said the provincial minister. Alarmingly, the interview in which she made this statement took place on 18 July 2005, on the day that the report of UN's fact-finding mission to Zimbabwe was released, damning Mugabe's ruthless eradication of shacks in Harare and other urban centres.<sup>437</sup>

In 2006 the new KwaZulu-Natal Minister of Housing, Mike Mabuyakulu, announced that his Department would "eradicate slums by 2010."<sup>438</sup> The language of slum clearance is supported at the highest level. In May 2006 Housing Minister Lindiwe Sisulu told the media, while introducing her new Director General, that "his task is very clear, he will have to ensure that we eradicate informal settlements by 2014."<sup>439</sup> Huchzermeyer notes that the "South African Minister of Housing is regularly quoted in the media on the country's plan to 'eradicate informal settlements by 2014' which is 'in line with United Nations Millennium Development Goals'."<sup>440</sup>

The idea that 'slums' can and will be 'eradicated' soon - and that this is in line with the MDGs - is not unique to South Africa. For example, in Morocco, "Cities without slums," a programme started in 2003, seeks to eradicate urban slums by 2008.<sup>441</sup> In India, Jokin Arputhan, President of Shack Dwellers International, has warned: "The state talks about MDGs then demolishes people's homes."<sup>442</sup>

However, as has been pointed out, it is a fundamental misunderstanding to assume that the MDGs in any way recommend 'slum eradication.' As Huchzermeyer explains:

Many country governments have failed to differentiate between the normative principle of the slogan, that cities should not have slums, and the operational target of improving the lives of 10% of slum dwellers. Instead, tragically, the slogan became the target, namely to eradicate slums – through mass evictions in Zimbabwe in 2005 and Abuja, Nigeria, in 2006 and through slum elimination legislation in South Africa in 2007.

Measures taken in most provinces to eradicate informal settlements are not constitutional. Illegal evictions are rampant, be they through the use of force, in the absence of court orders, or in contempt of court interdicts. Very few informal settlement dwellers have access to legal representation and can fight for their rights

---

<sup>437</sup> Ibid.

<sup>438</sup> See, for instance, 2006/7 Budget Policy Speech by the Minister of Local Government, Housing and Traditional Affairs, the Honourable Mr. M. Mabuyakulu  
<http://www.dtlga.kzntl.gov.za/main/media/speeches/2006/2006/Housing%20budget%20speech%20%20mixed%20version%202006.pdf>

<sup>439</sup> Lindiwe Sisulu, *Media Briefing*, (24<sup>th</sup> May 2006)

[http://www.housing.gov.za/content/Media%20Desk/Speeches/2006/24%20May%202006\\_2.htm](http://www.housing.gov.za/content/Media%20Desk/Speeches/2006/24%20May%202006_2.htm)

<sup>440</sup> Huchzermeyer, 2005, op cit.

<sup>441</sup> Morocco: partial funding for the slum and shantytown clearance action program, Agence Française de Développement  
<http://www.afd.fr/jahia/Jahia/site/myjahiasite/lang/en/ConcoursFinancierMaroc#>

<sup>442</sup> Cited in Huchzermeyer, 2005, op cit.

in the courts. And yet, numerous court records exist to prove the proliferation of illegal and unconstitutional slum interventions.<sup>443</sup>

It seems that in South Africa there is a clear link between the escalation of this ‘slum eradication’ language and the 2010 World Cup. As the COHRE report on the Olympic Games and other ‘Mega Events’<sup>444</sup> has shown, around the world such events are most often accompanied by mass evictions. A number of politicians have clearly stated that ‘slum eradication’ and/or evictions are directly linked to 2010.<sup>445</sup> For instance, in October 2006 S’bu Gumede from the eThekweni Housing Department, commenting on unlawful and violent evictions<sup>446</sup> carried out in the Motala Heights settlement by the Thekwini Municipality, said that: “We have adopted a zero-tolerance attitude to control the amount of informal settlements, and with the pressure of 2010, we are trying to eradicate such settlements.”<sup>447</sup> The likely impact of the 2010 World Cup is dealt with more fully in chapter 5 of this report.

The fact that Slum Clearance, rather than the official policies, is, to a significant degree, becoming the *de facto* policy is a matter of profound concern. For a start, the confidence that shack settlements can be quickly eradicated within the current policy and legal frameworks is entirely misplaced.

*The shifting deadlines by which ‘slums’ are expected to be ‘eradicated’*

The date set for achieving the ‘eradication of slums’ in KwaZulu-Natal has shifted from 2010, to 2011, and then to 2014 - where it currently stands. However, in early 2007, S’bu Gumede of the eThekweni Housing Department noted that although it had taken 14 years to build 2.2 million houses nationally at a rate of 200 000 houses a year, nonetheless the backlog now stood at 2.4 million. He said that: “If we have built 2.2 million in 14 years, then we will be needing another 14 years to build the next 2.4 million houses.” This assumes, however, that the number of people needing new houses will not increase - which is clearly not the case - and that the rate of building houses, which has slowed down significantly, will not decrease. Gumede also noted that the council was building 16 000 homes a year and would now be required to build 32 000 a year to meet the 2014 target. The eThekweni Municipality had previously set its own target for ‘slum eradication’ at 2010 but that, Gumede said, seemed “far-fetched” and would “require a miracle” to achieve.<sup>448</sup> In fact, between June and December 2006 the Municipality was only able to build 4 402 houses<sup>449</sup> - indicating a slow down to a rate of around 8 000 houses a year. At this rate it would take 28 years (i.e. until 2035) to meet the current backlog, as estimated by the Municipality. However, that backlog is certain to increase significantly. Moreover the official estimate of the backlog does not take into account the acute and clearly very large so called ‘invisible demand’ from people living in overcrowded township houses and municipal flats. Therefore in reality, it could easily take up to twice as long (i.e. until 2063), if not considerably longer, to provide formal housing for all at current rates of construction.

---

<sup>443</sup> Marie Huchzermeyer, ‘Elimination of the poor in KwaZulu Natal,’ Pambazuka News. (27 April 2007) <http://www.pambazuka.org/en/category/comment/41386>

<sup>444</sup> “Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights” Centre on Housing Rights and Evictions (2007) [http://www.cohre.org/view\\_page.php?page\\_id=123](http://www.cohre.org/view_page.php?page_id=123)

<sup>445</sup> See for instance Nomfundo Mcetywa, ‘Hiding the shame of poverty for 2010,’ *Sunday Tribune* (11 November 2007) and Xolani Mbanjwa, ‘No shacks in KZN by 2010’ – minister,’ *Sunday Tribune*. (5 November 2006)

<sup>446</sup> See Filing Notice in the Durban and Coast Local Division of South Africa in the matter between Bhekuyise Ngcobo and the Motala Farm Development Committee and the eThekweni Municipality, Case no. 11981/2006

<sup>447</sup> See Anne Rall, ‘Council vows to get rid of shack dwellers,’ *The Mercury*. (30 October 2006)

<sup>448</sup> Carvin Goldstone ‘Building 2.4m Units By 2014 Will Need a Miracle,’ *The Mercury*. (6 March 2007) p. 5

<sup>449</sup> ‘What about the people?’ *Municipal Watch, Mail & Guardian*. (7 December 2007), p. 2.

Key decision makers are very well aware that it is impossible to achieve the ‘eradication of slums’ via building formal houses, under current budgetary regimes. For instance in September 2005 it was reported that Lindiwe Sisulu had:

acknowledged that at the current funding levels, the housing department was marking time. The department had discovered that with a growing backlog and rapid urbanisation “in ten years time we will be at the same place with the same backlog” of housing for the poor...Sisulu said that between 1999 and 2001 the number of households living in shacks in informal settlements and backyards increased from 1,45-million to 1,84-million -- reflecting an increase of 26% -- “a figure far greater than the 11% increase in population over the same period”...About 2,4-million households live in informal housing structures, she noted....”This is worsened by some major shifts in the housing need where households have become smaller and more numerous and have become more urbanised,” said Sisulu.<sup>450</sup>

*Making sense of the ‘eradication’ discourse in the context of a growing backlog*

And at the end of 2006 the government told the press that:

South Africa’s housing backlog has widened due to growing urbanisation and demand despite the building of 1,9-million new homes for the poor since the end of apartheid in 1994...”Despite these delivery rates, the housing backlog has grown,” it said, adding that the number of dwellings classified as “inadequate” -- mostly shacks -- had grown 20% from 1,5-million in 1996 to 1,8-million in 2001. “This is because of the increased demand and the pace of urbanisation, with urban populations growing at 2,7% per year,” it said.<sup>451</sup>

There is a fundamental contradiction, therefore, in what the government is saying about housing. On the one hand it acknowledges that the backlog is in fact growing, but on the other it says that ‘slums’ will soon be ‘eradicated.’ If it is assumed that this is not simple dishonesty or a case of outright denialism, then it can only be concluded that the plan is to ‘eradicate slums’ via coercive strategies as well as via building houses. This appears to be the best reading of the Slums Act.

The shift back to the language of ‘eradicating slums’ (the language of the 1930s and the 1950s) alongside open support for using coercive strategies to prevent new settlements and contain the growth of existing settlements is a cause for profound concern. Amongst other consequences, it encourages politicians not to worry about the immediate provision of life saving services to settlements because they are considered ‘temporary.’ It also leads to a failure to plan for the inevitable increase in people coming to the cities as well as for the equally inevitable increase of people already living in cities requiring adequate housing as they grow up and form their own households. The assumption that this can be dealt with as a police and intelligence problem amounts to a *de facto* attempt to exclude the poor from the cities and to criminalize the survival strategies of the poor. It is in fundamental conflict with basic human rights and is almost certainly unconstitutional. Moreover in eThekweni, as will be shown in the next chapter, many of the strategies already being used to ‘eliminate slums’ are unlawful and sometimes even criminal.

---

<sup>450</sup> Donwald Pressly, ‘Breaking the back of the housing backlog,’ *Mail & Guardian*. (22 September 2005) [http://www.mg.co.za/articlePage.aspx?articleid=251682&area=/breaking\\_news/breaking\\_news\\_national/](http://www.mg.co.za/articlePage.aspx?articleid=251682&area=/breaking_news/breaking_news_national/)

<sup>451</sup> SAPA, *New homes fail to dent SA’s housing backlog*. (18 October 2006) [http://www.int.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=qw1161176042227B225](http://www.int.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw1161176042227B225)

Another reason for concern is the close historical link between these kinds of measures and active exclusion. As has already been noted, it is not just in South Africa that the history of slum clearance is intimately tied to attempts to exclude oppressed people from cities. For example, in the United States of America slum clearance has been described as the process whereby “white suburbanites harnessed the power of the state to redraw the colour line and defend privileges associated with class and race.”<sup>452</sup> Amongst other pernicious consequences: “Elimination of these areas reduced the supply of affordable housing available to existing residents and newcomers alike, and since these areas often provided the first foothold for working families moving to the suburbs, their demolition foreclosed a pathway to further migration.”<sup>453</sup> The consequences of ‘slum elimination’ will inevitably be similar here. If shacks are removed from the cities, and then prevented from being rebuilt - without centrally located formal housing being built in their place, and made and kept accessible to the very poor - there simply will be not be sufficient space for the poor in the city.

Achieving sufficient formal housing for the poor would require radical changes in policy - changes that are not being made. For instance, creating the conditions whereby shacks are no longer the best option for people would require a massive increase in spending. As Mark Smit noted in 2006: “1.3% of total government expenditure on housing is just not enough.”<sup>454</sup> It would also require a willingness to directly challenge the marketised nature of urban land and the hostility of wealthy residents to the development of housing for the poor in or near their neighbourhoods. If well located and affordable formal housing for all cannot be achieved, then, as Marie Huchzermeyer and Aly Karam argue: “Simply securing tenure for the poor in informal settlements, thus effectively preventing displacement, may be a more effective form of poverty alleviation than provision of formal land titles and redevelopment to meet the physical standards of the formal urban environment.”<sup>455</sup>

But perhaps the most disturbing policy consequence of the language of ‘slum elimination’ is that it makes shacks, which are nothing more than the self built housing solution of the poor, appear as a threat to society. This implicitly justifies coercive actions against shack dwellers, their communities and their homes. It must be reiterated that it is poverty and the absence of viable housing support for the poor that is the threat to society, not shacks. Shacks are a material expression of a popular response to deeply entrenched social crisis - they are not the crisis.

## Conclusion

Official South African housing policy is largely compliant with the ICESCR and the South African Constitution. Where there are policy and programmatic gaps that inhibit compliance with Covenant requirements, the South African government has taken steps to address the situation. However significant gaps exist in provision for people who qualify for a subsidised house and are waiting in the queue for one. Huge problems occur while they wait. For example, their basic housing and tenure rights remain vulnerable for as long as they are waiting, which may take many years. People often live in life threatening conditions that could easily be ameliorated by the provision of basic services. The state’s emergency housing policy and its promised informal settlement upgrading programme could go some way to ensure a level of provision for these people. The development of these policies, while overtly an attempt to satisfy the South

---

<sup>452</sup> Andrew Wiese, *Places of their Own: African-American Suburbanization in Twentieth Century America*. (University of Chicago Press: Chicago, 2004)

<sup>453</sup> *Ibid.*, p. 109.

<sup>454</sup> Mark Smit, ‘International Trends and Good Practices in Housing: Some Lessons for South African Housing Policy,’ *Development Action Group*. (2006)

<sup>455</sup> Huchzermeyer, 2004, *op cit.*, p. 5.

African Constitutional Court, may also be seen as consistent with the requirement of paragraph 12 of General Comment 4, that ‘vulnerable members of society ... be protected by the adoption of relatively low cost programmes.’

The return of an elite consensus around the need to eliminate shack settlements by 2014 is, however, in the absence of any viable plan to provide adequate housing to the growing number of shack dwellers by this time, cause for profound concern. A number of documents, and in particular the Slums Act, indicate an increasing tendency for the state to seek to resolve the housing crisis with violence rather than through supporting poor communities. There is an urgent need to break this impasse. One solution would be a radical shift in government policy that would enable the building of vastly more houses on better located land more quickly. Another would be to accept that shack settlements are not a threat to society but, on the contrary, a positive popular survival strategy that is also a popular planning innovation - one that is desegregating South African cities from below. If shack settlements can be given tenure security as quickly as possible, and then be given support around services while strategies are developed to improve the quality of housing structures, there could also be a way out of the current impasse. As Huchzermeyer has concluded, there is an urgent need for innovative solutions that are not emerging from within the planning elite and so: “The demand for alternative intervention might well have to be made from informal residents themselves. In this regard, progressive long-term support for community organisations is required.”<sup>456</sup>

---

<sup>456</sup> Ibid., p. 234.

## Chapter 4: Slum Clearance in Durban

### Introduction

The first part of this chapter gives a brief overview of post-apartheid housing policy and practice in eThekweni focussing on the Municipality's Slum Clearance Project. The second part provides an evaluation of its successes, limitations and failures with regard to conditions in shack settlements and housing developments. The chapter shows that the City has invested considerably energy in driving a mass housing programme and has been relatively successful in achieving its aim of building houses quickly and at scale. However the Slum Clearance Project has failed to ensure that basic needs are being met in shack settlements and it has produced houses of inadequate quality that are often poorly located, sometimes replicating apartheid patterns of spatial marginalisation.

### The Slums Clearance Project in Post-Apartheid Durban

#### *The first years after apartheid (1994-2001)*

After the first democratic elections in 1994 there was a considerable expectation that the then Durban Metro Council, an interim structure that was replaced in 2000, would provide housing for the poor and there is wide agreement that there was considerable political will from the City to do so.<sup>457</sup> The Metro Council committed itself to build between 16 000 and 24 000 low cost houses annually through the national subsidy system in order to overcome the housing backlog. The backlog appears to have been largely calculated on the basis of the number of shacks in the city. It was often suggested to COHRE that the calculation of the backlog was flawed from the beginning and remains so because it does not take sufficient account of the fact that shacks are often shared by more than one family or the fact that there is widespread overcrowding in the township housing built under apartheid.

It is often remarked that in these early years the focus was on a large 'greenfield'<sup>458</sup> projects to which people living in shacks could be relocated. However the Cato Manor settlement, situated on centrally located urban land was, in an act with rich political symbolism, upgraded. Moreover some attempts, such as those begun by the Urban Foundation, to upgrade settlements were continued. It was, for instance, though difficult, still possible to get the City to install an electricity connection to a shack in some settlements and ablution blocks were built in some settlements.<sup>459</sup>

A single metropolitan municipal entity, the eThekweni Municipality, was formed in 2000. At the time there was some optimism about this being an opportunity for innovation. But, perhaps due to the pressure resulting from an increase in the number of households living in shacks increased by 13.3% between 1996 and 2001 (from 139 801 to 150 390)<sup>460</sup> despite the house building programme, the focus remained resolutely on building as many houses as quickly as possible without sufficient concern for the quality, size and location of the houses or to alleviating the often life threatening conditions in the city's more than 500 shack settlements. In

---

<sup>457</sup> For instance see Sarah Charlton 'The Integrated Delivery of Housing: A Local Government Perspective from Durban' in *Confronting Fragmentation: Housing and Urban Development in a Democratising Society* edited by Philip Harrison, Marie Huchzermeyer and Mzwanele Mayekiso UCT Press, Cape Town, 2003, p. 264.

<sup>458</sup> In development jargon the term 'greenfield' is used to describe new formal housing developments on previously undeveloped and unoccupied land.

<sup>459</sup> Kennedy Road focus group.

<sup>460</sup> 'State of the Cities Report', *South African Cities Network*, 2004



fact within a year the City took a clear step away from a housing rights perspective towards an unambiguous commitment to the slums eradication perspective.

*The Slums Clearance Project (From 2001 onwards)*

In his State of the Nation Address at the opening of parliament in 2001 President Thabo Mbeki mandated the Housing Minister to create 'shack free cities' by 2014 in accordance with the Millennium Development Goals.<sup>461</sup> As noted in chapter three, the MDGs include a global commitment to have achieved 'a significant improvement in the lives of at least 100 million slum dwellers' by 2020.<sup>462</sup> There is certainly no commitment to universal shack eradication or to any form of shack eradication that worsens the access to adequate housing of shack dwellers. In fact any form of coercive shack eradication that results in forced evictions and a worsening of people's access to adequate housing is in direct contrast with the human rights perspective driving the MDGs.

In October 2001 the Municipality launched a Slums Clearance Project after the then Provincial Minister of Housing, the late Mr. Dumisani Makhaye, approved R200 million in subsidies for the delivery of 14 000 30m<sup>2</sup> houses. The Municipality added another R70 million of its own funding.<sup>463</sup> The project aimed to do away with all shacks within 15 years (i.e by 2014). Since then the Municipality's housing programme has continued to be conducted in terms of Slums Clearance (or shack eradication). The Slum Clearance model constructs houses via the subsidy system which are then given to individual household heads. In principle a set amount of water and electricity is given free for the first month although it is not unusual for people to report that they had to wait up to a year for services to be connected after they were moved. Houses are either built in relocation sites or on the site of the pre-existing shack settlements. Developments on relocation sites are referred to as greenfield developments and developments on the site of pre-existing shack settlements are referred to as *in-situ* upgrades. However the upgrades do not take the form to which the phrase 'in-situ upgrades' usually refers, which is the participatory and incremental development of settlements in accordance with their existing design pioneered in Brazil.<sup>464</sup> In Durban upgrades are developed in the same way as developments at relocation sites the only difference being that they are built on the site where settlements used to exist.

The Slums Clearance Project adopted in 2001 and thereby introduced the idea that shacks would soon be 'eradicated'. One immediate consequence was that all shack settlements were now considered temporary. This resulted in an immediate exclusion of shack dwellers from certain substantive rights of citizenship resulting in, amongst other things, a decline in the levels of support offered to shack settlements. For instance, also in 2001, the City's Electricity Supply Policy declared that:

In the past (1990s) electrification was rolled out to all and sundry. Because of the lack of funding and the huge costs required to relocate services when these settlements are upgraded or developed, electrification of the informal settlements has been discontinued.<sup>465</sup>

---

<sup>461</sup> See Marie Huchzermeyer 'From 'contravention of laws' to 'lack of rights': redefining the problem of informal settlements in South Africa, *Habitat International*, (Vol. 28, pp. 333-347 2004)

<sup>462</sup> See <http://sw2.unhabitat.org/mdg/>

<sup>463</sup> Glen Robbins, Report to COHRE, p.17.

<sup>464</sup> See Marie Huchzermeyer *Unlawful Occupation: Informal Settlements and Urban Policy in South African and Brazil Africa* World Press, New Jersey, 2004, pp. 53-76.

<sup>465</sup> eThekweni Electricity Policy, 2005

The date by which ‘eradication’ is supposed to be achieved is currently set at 2014 by national government<sup>466</sup> which often incorrectly asserts that this will be “one year ahead of the Millennium Development Goals.”<sup>467</sup> For some time the provincial government set the date at 2010<sup>468</sup> but has now moved it to 2014.<sup>469</sup> The eThekweni Municipality initially set the date at 2010<sup>470</sup>, has it at 2015<sup>471</sup> in its Housing Department mission and vision statement adopted in 2005 (but in the same year said that “With an anticipated delivery of approximately 16 000 units per annum, the net backlog and growth in the EM would be met by 2017”<sup>472</sup>), but, to its credit, admitted in 2006 that the 2014 target was ‘unrealistic’ and that if the best annual rates of delivery were doubled it would take until 2020 years to overcome the current backlog.<sup>473</sup> However this figure does not take into account the fact that already existing demand for houses is widely believed to be radically under counted or the fact that it is rapidly growing due to an increase in population, migration to urban areas and a decrease in household size. In 2007 the City Manager said that 90% elimination would be achieved by 2022.<sup>474</sup> However across the country the number of people living in shacks is in fact growing and there are no grounds to believe that at current rates of housing delivery shacks will be eradicated in South Africa in the foreseeable future.

The rhetoric about the imminent eradication of shacks has four very worrying consequences. The first is that shack settlements now all appear (erroneously) to be temporary with the result that it seems irrational to invest in their development. The second is that criticism from shack dwellers about the material conditions in which they live tends to be very quickly dismissed on the grounds that eradication is imminent and so reality gets displaced by fantasy. The third is that housing projects are being rushed in an attempt to meet impossible deadlines with the result that their construction and location, as well as consultation around the developments, is often very poor. Finally there is an increasing perception that the primary point of the City’s Housing Policy is to eradicate shacks rather than to secure housing rights. For instance, in response to an ultimately successful application for an interdict to prevent demolitions in the Motala Heights settlement in late 2006, the City’s lawyers stated that:

“In order to ensure that the projects achieves its aims, participants must agree to the shacks which they are moved from being demolished and the materials which were used to be build them being disposed off. (sic)”<sup>475</sup>

The context for the importance of this statement is that the demolitions were leaving tenants homeless.

---

<sup>466</sup> See Key Note Address by LN Sisulu Minister of Housing at the Ceremony to Launch the Olievenehoutbosch Housing Project, 20 February 2006

<http://www.housing.gov.za/Content/Media%20Desk/Speeches/2006/20%20February%202006.htm>

<sup>467</sup> See ‘Housing agency to boost delivery’ *South Africa.info*, 20 February 2007

<http://www.southafrica.info/about/social/housing-190207.htm>

<sup>468</sup> For instance see Government Communication and Information System KZN *to discuss housing policies*, 8 September 2006 <http://www.buanews.gov.za/view.php?ID=06090811451005&coll=buanew06>; and Xolani Mbanjwa ‘No shacks in KZN by 2010’ - minister’ *Sunday Tribune*, 5 November 2006,

<http://www.sundaytribune.co.za/index.php?fArticleId=3521376>;

<sup>469</sup> Siphso Khumalo ‘KZN aims to eradicate slums by 2014’ *Mercury*, 18 April 2007

[www.kznhousing.gov.za/Portals/0/docs/publications/clippings/18april2007c.pdf](http://www.kznhousing.gov.za/Portals/0/docs/publications/clippings/18april2007c.pdf)

<sup>470</sup> Carvin Goldstone ‘Building 2.4m Units By 2014 Will Need a Miracle’ *Mercury*, 6 March 2007.

<sup>471</sup> eThekweni Housing Department, Mission and Vision Statement, 2005

<sup>472</sup> eThekweni Municipality, 2005: p.4.

<sup>473</sup> Goldstone, 2005.

<sup>474</sup> *The Right to Know*, a film by the Open Democracy Centre, 2007

<sup>475</sup> Paragraph 21 of the City’s Filing Notice in case 11981/2006

In 2005 the Breaking New Ground (BNG) policy was adopted by the national government. As was explained in chapter 3 the key innovations of the policy were that it enabled municipalities to apply for community-based or area-based subsidy finance that is not a subsidy linked to individual households but is rather based on the actual cost of improving a shack settlement. Furthermore the programme has no ceiling for the cost of buying land and preparing it for construction. It expressly encourages municipalities to stop relocating informal settlements from expensive or geo-technically unsuitable land to new housing developments on the outskirts of cities and towns. Instead, it enables already occupied land to be made habitable even if that land would have been deemed technically and economically suitable under the previous policy regimen. It treats relocation as a very last resort and, in cases where there is genuinely no alternative, municipalities are able to apply for funding to buy land in close proximity to existing shack settlements. Moreover because BNG provides financing to upgrade settlements collectively rather than subsidies for individual households its use would prevent the rendering homeless of people ineligible for subsidies homeless when settlements are upgraded. Crucially, the programme also includes funding for municipalities to provide interim services in settlements while people wait for housing to be built. It also provides funding for community facilities (such as parks, sports fields, centres etc) to be built as part of each development and for community empowerment.

The introduction of BNG enabled the municipality to resolve many of the problems associated with the first ten years of housing delivery in post-apartheid South Africa. However the eThekweni Municipality, like others, has not made use of the opportunities that came with BNG and continues to operate more or less as before. It is not entirely clear why this is so. Where interviewees working in the City or as independent housing professionals were prepared to hazard an explanation they tended to make two points with most focus on the first. The first point is that the rhetoric about slum eradication has largely displaced the formal policy with the result that the focus is on as building as many houses as quickly as possible and on reducing the number of shacks as quickly as possible rather than on the more consultative, locally specific, sometimes gradualist and generally time consuming processes envisaged in BNG. The second point made to COHRE was that the more consultative processes envisaged in BNG would shift some power away from African National Congress party structures and politicians and towards communities and that politicians were generally not comfortable with this.

#### *Assessing the slums clearance project on its own terms*

Assessing the Slums Clearance Programme on its own terms would require looking at the number of houses built, the degree of conformance to construction and service standards, the number of shacks eradicated and the time that it will take to complete the eradication process.

The City's 2005 Housing Department Mission statement commits the City to "Achieve the annual delivery of at least 16 000 to 24 000 housing opportunities in the EMA."<sup>476</sup> The document acknowledges a number of constraints on meeting the minimum annual target of 16 000 houses including the availability of developable land at an affordable price and the limitations of the national funding via the subsidy scheme. It makes no mention of the other funding options available through Breaking New Ground. The actual number of houses built under the Slums Eradication Programme is not clear. Accurate figures on actual annual delivery are hard to come by in publicly available documentation and those that are available do not always tally with other sources. However the following figures were provided directly by officials from eThekweni Housing Department and form part of reporting mechanisms to provincial and national departments. The breakdown between *in-situ* upgrades and relocations is not provided.

---

<sup>476</sup> eThekweni Municipality, 2005:

## eThekwini Municipality Annual Housing Delivery

Financial year (1 July - 30 June)	Delivery of completed units	Comment
2001/02	8 000	estimate
2002/03	10 000	estimate
2003/04	12 500	actual - audited
2004/05	15 172	actual - audited
2005/06	11 552	actual - audited
2006/07	16 000	Estimate (not audited)*

\* However Coughlan Pather, head of the City's housing department, reported that only 4 402 houses were built between June and December 2006<sup>477</sup> and an anonymous interviewee said that the number of houses built in 2006 and 2007 was between ten and fourteen thousand a year.<sup>478</sup> It seems clear that the scale of delivery has declined from its 2005 high water mark. This has been ascribed to the withdrawal of many of the private developers from the field, the fact that the subsidy has not kept pace with inflation, rising costs linked to the shortage of building materials due to the 2010 World Cup and the diversion of energies and resources into preparing for the 2010 World Cup

Although the average of 8 600 houses a year is just over half of the lower end of the target of between 16 000 and 24 000 houses a year the City had delivered more houses than most Municipalities and was widely commended for effective delivery. However this relative success at building large numbers of houses does not mean that eradication is imminent.

On the contrary, in 2006 Pather estimated that 155 000 families were still living in the city's 540 shack settlements and estimated the housing backlog at 205 000 houses taking into account people living in overcrowded formal housing and migrant labour hostels as well as shacks. (However he also reported the backlog at 250 000 in the same year.<sup>479</sup>) Pather said that if the target of building 16 000 houses a year was met then the municipality would be able to clear the backlog by 2022.<sup>480</sup> However this calculation does not take the ongoing growth in the numbers of people living in shacks into account. According to the South African Cities Network (SACA), an initiative of the Minister for Provincial and Local Government and nine city municipalities, in partnership with the South African Local Government Association, the number of households without formal shelter in Durban grew from 150 390 in 2001 to 213 465 in 2004. This is a 41.94% increase. At the same time there was only a 3.31% increase in people with formal housing.<sup>481</sup> Moreover while Pather set the number of people currently living in shacks at 155 000 families others set it at 250 000 families<sup>482</sup> (about 1 million people) and it is widely believe that the so called latent demand for housing from people living in over crowded formal housing is significantly larger than the City's estimates. Certainly every offer of housing to this sector has been instantly and massively over subscribed often leading to near riotous conditions – a clear sign of deep desperation. If we take the higher estimate of 250 000 shacks, assume that the City will reach its full target of 16 000 houses a year, and factor in the average increase in the number

<sup>477</sup> 2006 State of the Cities Report

<sup>478</sup> Anonymous interview, transcript with COHRE

<sup>479</sup> 2006 State of the Cities Report

<sup>480</sup> Coughlan Pather 'Durban is homing in on shacks' *My Property South Africa*, 5 June 2006 [http://www.myproperty.co.za/news/13747/Durban\\_is\\_homing\\_in\\_on\\_shacks.html](http://www.myproperty.co.za/news/13747/Durban_is_homing_in_on_shacks.html)

<sup>481</sup> South African Cities Network Reports 2004 & 2006 cited in Robbins, 2007

<sup>482</sup> Anonymous interview, transcript with COHRE

of households without formal shelter of just over 9 000 a year<sup>483</sup>, and add in a modest estimate of the latent demand at 100 000 then it becomes clear that it will take at least 50 years to clear the backlog. If, as widely expected, the calculation of the backlog is too low and if the City continues to fail to reach its target every year it could easily take significantly longer than this.

The situation in Durban is far from unique. In the Western Cape the province estimates its rapidly growing backlog at 400 000 houses. If it reached its target of 16 000 houses a year it would take 25 years to build 400 000 houses. Given the rapid rate of the increase of the backlog it could easily take 50 years. National government has often noted that despite building 1.8 million houses that house an estimated seven million people<sup>484</sup> between 1994 and 2005 the number of people on housing waiting lists was almost unchanged and in many instances backlogs had increased as a result of increasing rates of urbanisation and changing household dynamics (such as the drop in household size from close to 5 people per household to below 4 per household).

These realities render talk of the imminent eradication of shacks a deeply irresponsible form of denialism that functions to justify the failure to provide life saving services to the settlements – many of which will, under current arrangements, be around for many years. Indeed, many shack dwellers have already lived for up to 30 years in shacks and with a recent estimate for an average national life expectancy of 51 many are likely to live the rest of their lives in shacks.<sup>485</sup>

However in Durban, as elsewhere, there are crucial questions around housing policy and practice in Durban that go beyond the simple calculations of the numbers of houses built and shacks destroyed. Indeed some experts see the strictly qualitative logic of this view as a central barrier to developing a meaningful understanding of what is at stake. For instance Mark Misslehorn, the CEO of the Project Preparation Trust, a development NGO that is very much involved in the practical side of development, takes the view that “A central problem is that government is counting the number of new houses built instead of the number of sustainable housing opportunities being created or protected.”<sup>486</sup>

It is clear that there is widespread popular concern about housing policy and practice in the City. Organisations like the South African Shack and Rural Dwellers’ Organisation and Abahlali baseMjondolo have expressed serious concerns and the 2006 SANC report also noted that the eThekweni Municipality had had the highest number of street marches/service delivery protests in 2005/6 (65) and that only 40% of residents reported that they trusted the municipality and only 42% reported that they were satisfied with housing in the municipality.<sup>487</sup>

The eThekweni Municipality has tended to vigorously deny that there is a problem when speaking to the media. However in the SANC report the City acknowledged the limitations of its housing programme and noted that “Land invasions, evictions, household formation, and increasing migration are all manifestations of unsatisfied housing demand in eThekweni.”<sup>488</sup> In the Municipality’s view key constraints to effective delivery included the limits of the funding model

---

<sup>483</sup> In 2006 the South African Cities Network reported that between 1996 and 2004 the number of households in the city without formal accommodation increased from 139 801 to 213 465 between 1996 and 2004. However it should be noted that many people would consider this an under count. *State of the Cities Report*, Chapter 3, p. 42.

<sup>484</sup> Department of Housing, 2005.

<sup>485</sup> Study: Aids slashes South Africa’s life expectancy. Mail & Guardian 11 December 2006.

[http://www.mg.co.za/articlePage.aspx?articleid=293009&area=/breaking\\_news/breaking\\_news\\_\\_national/](http://www.mg.co.za/articlePage.aspx?articleid=293009&area=/breaking_news/breaking_news__national/)

<sup>486</sup> Misslehorn, in-depth interview

<sup>487</sup> *State of the Cities*, 2006 Chapter 3, p. 57

<sup>488</sup> *Ibid.* Chapter 4, p.36

and the difficulties in accessing land.<sup>489</sup> A number of practical suggestions for change were proposed including the accreditation of municipalities to fast track projects and better modes of interaction between national departments, provincial treasuries and municipal finance officers.<sup>490</sup>

### **Conditions in Shack Settlements**

The concern expressed by the United Nations Special Rapporteur on Adequate Housing with regard to the conditions in Durban's shack settlements has already been noted. Researchers have often observed that the focus on building as many houses as quickly as possible rather than on providing housing support to as many people as possible has meant that "large concentrations of people continued to live in very poor, unserviced conditions."<sup>491</sup>

COHRE observed profoundly unacceptable conditions in almost all of the settlements visited during the preparation of this report. In many instances the conditions are so bad as to be life threatening. They include no or inadequate sanitation, no or inadequate refuse removal, inadequate water supply, no or inadequate foot paths, stairs and access roads for emergency vehicle access, and no or inadequate electricity supply and fire prevention initiatives.

#### *Access to Water*

All the settlements visited by COHRE do have access to clean water from at least one stand pipe. Residents reported that they had had to pay for water, at a rate of 25 cents a litre until 2000 but that since then water has been free. This was widely welcomed. However the problem is that in many settlements there are many hundreds of people per stand pipe and, in some settlements, thousands of people per standpipe. This results in long queues that mean that people have to waste an inordinate amount of time waiting to collect water. COHRE often saw very long queues during visits to settlements and people regularly complained about the amount of time that they had to spend in queues.

Moreover in a number of settlements it was immediately clear that people have to walk considerable distances with heavy burdens to transport the water to their houses. Many of Durban's settlements are built on very steep slopes that become dangerously muddy after rain. In these settlements carrying water is dangerous and injuries resulting from falls are common during and after rain. This situation could easily be improved by installing more standpipes and by constructing drains, concrete paths and stairs. Although many men do collect water, some for a fee, the collection of water is clearly a burden that falls predominantly on women and policies that fail to recognise the burden placed on women by long queues, long distances and dangerous routes must be seen as policies that are anti-women.

#### *Sanitation*

The absence of adequate sanitation in shack settlements in eThekweni is a cause of tremendous popular anger that has often led to protest. Some settlements do have ablution blocks but these are often extremely poorly maintained and of a wholly inadequate size relative to the population of those settlements. This fact has led to considerable media attention with front page stories declaring '6 toilets for 6000 people'<sup>492</sup> and the like. However some settlements still have no toilets

---

<sup>489</sup> Ibid. Chapter 4, p.36

<sup>490</sup> Ibid. Chapter 5, p.8

<sup>491</sup> Colin Marx and Sarah Charlton *The Case of Durban, South Africa*

<sup>492</sup> Paul Kirk '6 Thousand People Have to Use 6 Toilets', *The Citizen*, 15 September 2005

at all. For instance the Arnett Drive settlement, in existence since 1971, does not have a single toilet.<sup>493</sup>

It is well known that sanitation is essential for good health. But in shack dwellers' protests, and in the interviews conducted by COHRE, it quickly became clear that the question of toilets is also a question of human dignity and the personal safety of women and children. Many shack dwellers pointed to the indignity of having to make do without toilets and many pointed out that it is very dangerous, particularly for women and children, to have to find private places. This is especially so at night. The connection was often made between the lack of toilets and the risk of rape.

The 2006 South African Cities Network (SACN) report noted that eThekweni, together with the Msunduzi Municipality, "still have one in three households without adequate access to sanitation." The report observed that the failure to provide adequate sanitation to shack dwellers threatens the wider health of cities: "Poor sanitation has serious implications for the sustainability of cities and the quality of natural water bodies. The absence of adequate sanitation impacts on health, and water quality – both in rivers and underground – and on pollution levels."<sup>494</sup> The report also noted that while the number of households not receiving weekly refuse collection in the 9 SACN cities has decreased between 1996 and 2001 it has increased by 13,3% since then and that with "an increase of 105 855 households, eThekweni seems to account for the largest increase in those without an adequate service."<sup>495</sup> This fact may have some connection with the recent highly publicised increases in faecal contamination of the ocean.

The eThekweni Municipality has acknowledged that there is a problem with sanitation. In March 2007 Deputy Head of the Municipality's Pollution Control unit, Siva Chetty, announced that R15 million has been set aside to build ablution blocks in shack settlements.<sup>496</sup> While this acknowledgement of the crisis is certainly welcome it does not appear to have been translated into affective action. The only settlement visited by COHRE in which any intervention has been made with regard to sanitation since this announcement was the Kennedy Road settlement where improvements had recently been made to an existing ablution block. But here the facilities remained woefully inadequate and maintenance of the block appeared to be non-existence. Residents estimated the ratio of toilets to people at around one toilet per eight hundred people. For some interviewees this was the single biggest cause of their unhappiness.

### *Electricity*

Some shack settlements were electrified in the 1990s but, as noted above, after the Slums Clearance Programme was announced in 2001 and all settlements were suddenly seen as temporary, the eThekweni Municipality took a policy decision to cease electrification.

Almost all of the shack settlements visited by COHRE do not currently have any formal access to electricity. However informal connections are common in settlements across the city irrespective of their political affiliations. These take two forms. The first is when corrupt current or former municipal officials unlawfully install prepaid meters. The average cost for this service is R2000. The second is when community organisations connect people directly to the mains at no cost.

---

<sup>493</sup> Site Visit and Focus Group Interview, Arnett Drive Settlement, 4 August 2007.

<sup>494</sup> *State of the Cities* Chapter 3, p. 39 [http://www.sacities.co.za/2006/pdfs/cities\\_2006\\_chapter3.pdf](http://www.sacities.co.za/2006/pdfs/cities_2006_chapter3.pdf)

<sup>495</sup> Ibid.

<sup>496</sup> 'eThekweni: Sanitation Plans for Informal Settlements', *South African Cities Network*, 30 March 2007 [http://www.sacities.co.za/2007/mar30\\_ethekweni.stm](http://www.sacities.co.za/2007/mar30_ethekweni.stm)

The Municipality presents all informal connections as theft and considers them to be a criminal matter. Shack dwellers with informal connections most often said that they had recently acquired them and often said that they had waited for years to receive electricity or houses but that they could not continue to wait. Again and again the connection between unsafe forms of heating and illumination (paraffin stoves and candles) and the regular shack fires was made and people argued that informal connections were necessary for their safety. Almost all the people currently making use of informal connections stressed that they would be willing to pay for electricity if they received formal connections.

The police regularly raid settlements to disconnect informal connections. People are arrested and residents report that assaults are common, that electrical appliances are confiscated and that cash is stolen. In one instance it was reported that police had eaten the food in someone's fridge.<sup>497</sup> Shack dwellers interviewed by COHRE indicated that they simply reconnected after the police disconnected. One interviewee stated that "I don't like to be arrested or to have the police steal from me but I can't afford to have my house burnt. I have a family. Therefore I will always reconnect until the government accepts that shack dwellers should also have electricity."<sup>498</sup> Other researchers have made similar findings.<sup>499</sup>

The Municipality's justification for withholding electricity from shack settlements would have some currency if all shack dwellers were about to access formal housing. But given the current ratio between the availability of affordable housing in Durban and rates of household formation this is highly unlikely to occur in the near future, quite possibly not within the next 30 or even 50 years. This justification therefore has no validity at all. Shack fires routinely result in death and injury, traumatise children in particular and cause major economic problems for people as a result of the loss of property including work tools and clothing and Identity (ID) Books (which are necessary for grants to be collected). Electrification is an urgent imperative.

Abahlali baseMjondolo informed COHRE that they are currently taking legal advice on the constitutionality of the decision to stop installing electricity in shack settlements so there is some possibility that this matter will be heard before the courts in due course.

### *The danger of fires*

It is a disturbing fact that only two of the settlements visited by COHRE had not had serious fires during the previous year and that some had had more than three major fires during that time. Shack fires are a major crisis requiring urgent attention that should include electrification, the provision of non-flammable building materials, the provision of fire hydrants and the development of access roads for emergency vehicles.

On 19 April 2008 most of the large Jadu Place settlements in Springfield Park burnt down after a candle was knocked over. More than 1500 people were left homeless. Residents<sup>500</sup> and newspapers<sup>501</sup> reported that KwaZulu-Natal Housing MEC Mike Mabuyakhulu had instructed the people left homeless not to rebuild their shacks and to, instead, move into five large tents. In effect this prohibition on rebuilding has turned the settlement into a transit camp rendering the residents' long standing occupation of the land less secure. In this way fires can have the dual

---

<sup>497</sup> Anonymous interview, transcript with COHRE. 11 January 2008.

<sup>498</sup> Ibid.

<sup>499</sup> See Clara Mike *More Than Service Delivery: The struggle for electrification in shack settlements in Durban*, unpublished monograph, 2008

<sup>500</sup> Interview, 2 May 2008.

<sup>501</sup> Lusando Doko 'Reaching Out' *Daily News*, 25 April 2008



effect of reducing the quality of people's housing and eroding their security of tenure. Similar concerns have been expressed in the Msunduzi Municipality where people were prevented from rebuilding in the Ash Road settlement in Pietermaritzburg and were, instead, moved into tents after flooding.<sup>502</sup>

Two housing professionals, speaking in separate interviews, argued that a key reason for the failure to provide basic life saving services to shack settlements was an official fear that provision of services to such settlements would amount to an implicit acceptance that they are acceptable forms of accommodation and are therefore here to stay. However, in the absence of viable plans to immediately provide formal housing for all shack dwellers, the refusal to provide adequate services to shack settlements clearly worsens the already unacceptable conditions under which people are forced to live. Even if we accept the debatable claim that the City's current plans will result in 90% of shack dwellers being re-housed within 15 years<sup>503</sup> it is profoundly unacceptable to expect people to live in life threatening conditions for 15 years. The refusal to provide adequate support to people who remain in shacks in the form of adequate water, sanitation, electricity, fire proofing and so on has clearly been a serious failing.

### **The Quality of Houses Provided by the Municipality**

In the one upgrade site<sup>504</sup> and four relocation sites<sup>505</sup> visited by COHRE the quality of the houses was very poor. Large cracks were often evident from a distance and in many houses there was no ceiling or plastic waterproofing under the roof tiles. On a sunny day the light comes streaming in through the gaps between the roof tiles and on a rainy day water rushes in. Drainage is often poor and many houses have problems with damp and are set in water logged ground. However it was noticeable that people who have been able to afford to fix up and maintain their new houses themselves were generally a lot happier while those that could not afford to fix things like large cracks and the common lack of an attempt to leak-proof the roofs were often rather bitter. In fact many people told COHRE that their shacks had been better living spaces. National government has certainly recognised the problems with poor construction and various steps have been taken to remedy the situation.<sup>506</sup> However judging from the sites visited by COHRE the quality of the houses built in Durban remains extremely and unacceptably poor.

All of the houses visited by COHRE were one room with a secluded toilet. Young couples with no children or very young children were generally happy with the size. However it is not unusual to find three or sometimes even four generations of one family living in a house and where household sizes are large there was invariably marked unhappiness. It is well known in the academic literature that over crowding often causes particular distress amongst women. On a few occasions interviews simply had to be abandoned after people asked about the size of the houses broke down in tears.

Thembinkosi Qumbela of the South African Shack and Rural Dwellers' Organisation told COHRE that:

When these houses are built there is no proper infrastructural foundation, they just put slabs, there is no foundation. The building material is of a low quality. Everything

---

<sup>502</sup> Personal communication with Mark Butler and Brother Filippo Mondini

<sup>503</sup> Interview with City Manager, Mike Sutcliffe, in the Open Democracy Advice Centre film *The Right to Know*, 2007

<sup>504</sup> Joe Slovo

<sup>505</sup> Mount Moriah, Parkgate, Waterloo & Welbedacht

<sup>506</sup> For instance see 'Shoddy Home Building is Being Stamped Out', *Statement Issued by the Department of Housing*, 6 November 2007 <http://www.housing.gov.za/default.htm>

immediately begins to break. The houses are too small to accommodate bigger families. This becomes a big problem in the situation where parents have grown children...who need their own privacy, who at certain situations have their own families. The allocation of these small houses will go to the parents only.<sup>507</sup>

Alex Mhlakwane of the Siyathuthuka Development Programme made a similar point about the size of the houses: “In the settlements people are able to build two bedrooms shacks and at least there is a privacy for the parents. In the small houses there is no privacy and no dignity for anybody.”<sup>508</sup>

The introduction of the People’s Housing Process in 1997 allowed for people to contribute their own savings or labour to increase the size of their houses. But this system is not working properly in Durban. Shack Dwellers’ International has a formal partnership with the City with a view to undertaking collaborative projects via the People’s Housing Process and there is plenty of financial support for this initiative. But although over a thousand houses were built through this process between 2002 and 2004 no houses at all were built through this process in 2005 or 2006 and only a few were built in 2007.<sup>509</sup> A former City official who wished to remain anonymous ascribed this failure to reluctance by party officials and local councillors to cede control of development to participatory processes.

### Conditions in Relocation Sites

The eThekweni Housing Department’s Missions Statement declares that the City is committed to:

Ensure that the provision of housing opportunities and the development of balanced neighbourhoods will become part of a broader strategy to re-structure and transform the present sprawling and inequitable urban form into a more compact, integrated and accessible environment.<sup>510</sup>

All levels of government have often made and continue to make clear statements in favour of developing housing for the poor on well locate urban land. And, without exception, all the housing professionals in and out of government interviewed by COHRE on and off the record stressed the importance of developing housing on well located land. As noted Mark Misselhorn from the Project Preparation Trust put the issue plainly: “People often struggle to maintain workable livelihood strategies in many relocation sites because of poor access to work and other opportunities there.”<sup>511</sup>

However a key finding of the 2006 *State of the Cities* report was that:

New housing developments built since 1994 have perpetuated...low-density urban patterns. Housing schemes, generally using project-linked housing subsidies, have promoted the familiar one-house per plot housing typology – often on the urban periphery reinforcing the sprawling, fragmented, racially divided character of South African cities.<sup>512</sup>

---

<sup>507</sup> In depth interview, 17 September, 2007

<sup>508</sup> In depth interview 18 September, 2004

<sup>509</sup> Bunjiwe Gwebu, Shack Dwellers’ International, in depth interview 11 October 2007.

<sup>510</sup> *Housing Department Mission Statement*

<sup>511</sup> Misslehorn, *ibid.*

<sup>512</sup> *State of the Cities*, Chapter 5, p. 59

The report concluded that it: “encourages housing officials to go beyond providing only housing, and think more holistically about neighbourhoods that include social facilities and amenities.”<sup>513</sup>

Academic research in Durban has described the relocation sites as seriously deficient environments. For instance Sarah Charlton has concluded that “Housing projects tended not to be fully functional neighbourhoods, but rather basic, highly inadequate environments, with land reserved for facilities remaining largely undeveloped.”<sup>514</sup>

Relocating shack dwellers from central shack settlements to peripheral relocation sites has disturbing echoes of apartheid practices and, from the beginning, it was clear that in many instances people were economically worse off in far flung greenfield relocation settlements than they had been in better located shacks due to the distance of the relocation sites from their livelihoods and schools.<sup>515</sup> Recent research indicates a clear correlation between high rates of HIV infection and peripheral spatial location and links this finding directly to the reduction in women’s economic autonomy that results in physical marginalisation.<sup>516</sup>

### *Shack dwellers’ views on relocation*

In the interviews with shack dwellers undertaken by COHRE every interviewee, without exception, indicated clearly and often with considerable anger and emotion that they do not want to be moved to peripheral relocation sites. There was an astonishing degree of unanimity. It was striking that the understanding of both shack settlements and relocation sites and the processes that move people from the former to the latter were often profoundly different to that of the state. Comments made in the Arnett Drive Focus Group were typical. Thandi Khambule said that:

For government this is an informal settlement but for the people who stay here it is formal. We take our lives and our place very seriously. Yes it is not formal in the way that the buildings are not formal and need to be made formal and in the way that we need toilets and electricity and in that way it must be made formal. But it is wrong to say that it is informal as if it doesn’t matter, as if we don’t care. The thing is that if you are staying in the shacks you have got the hope that things will get better. If you are staying in Underberg you won’t have any hope. If they take you to a rural house in a place like Verulum you won’t have any hope. Here the people have the hope.<sup>517</sup>

There are people who have spent their whole lives being moved around the city in the name of slum clearance. Clement Mtshali was born in eShowe in 1949 and his parents moved to Umkhumbane (Cato Manor) in 1956. He remembers the famous women’s riot in which his father, dressed in women’s clothes, participated along with his mother. In 1959 they were evicted. The shack owners were forcibly removed to E Section in KwaMashu but as renters his parents were left homeless. They moved their family to a shack settlement in Newlands where they lived from 1959 to 1971. Once again the shack owners were forcibly relocated to KwaMashu, this time to L Section, leaving his family, still renters, homeless. This time they moved to Reservoir Hills

---

<sup>513</sup> Ibid.

<sup>514</sup> Charlton, *ibid.* p.271.

<sup>515</sup> See for instance Pearl Sithole ‘Defining the Meeting Zone: Institutional and Community Imperatives Regarding the Informal Sector in Durban’ in *Governance, Urban Dynamics and Economic Development: A Comparative Analysis of the Metropolitan Areas of Durban, Abidjan and Marseilles* Edited by Antoine Bouillon, Bill Freund, Doug Hindson and Benoît Lootvoet, Plumblin, Durban, 2002.

<sup>516</sup> See Mark Hunter ‘Informal settlements as spaces of health inequality: The changing economic and spatial roots of the aids pandemic, from Apartheid to neoliberalism’ *Centre for Civil Society* Research Report 44: pp. 1-24, 2006

<sup>517</sup> Shannon Drive Focus Group, Saturday 4 August 2007

where, with some others who'd been left homeless, they founded the Arnett Drive settlement. The settlement is slated for relocation which he sees as forced removal. He told COHRE that:

We have the pride. Nobody put us here...When we came here this place was rocky. We made it our place. If they push us out we will find another place...It is so hard to be evicted because you are not used to the place where they take you. Here we can walk to work, children can walk to school. There are shops close by. In the new places there is no space for a family. It is very bad to be evicted...What is happening now is the same as what happened in Umkhumbane. It is still relocation. We still have no freedom to stay where we want. We are still being collected like animals and taken in trucks to places outside the city.

Happiness Ngema is 39 years old and came to the Arnett Drive settlement 7 years ago from eShowe to find work. She has only found intermittent washing and ironing jobs but has kept her spirits up. She told COHRE that:

I am concerned about the issue of conditions. I am coming from the rural areas to access jobs and schools. But if we are taken to houses in the rural areas like Verulum we will be going backwards. The councillors have broken their promises...We do not want to be relocated. Why just us? What about all the rich people here? Why are they not leaving?...We would rather be locked [up in prison] than go to Verulum. We would rather stay in the jondolos in Reservoir Hills than in a house in Verulum. But the best thing is to upgrade the jondolos here.<sup>518</sup>

People in settlements slated for relocation are well aware of the circumstances in the relocation sites. For instance Clement Mtshali said that:

At first the people from Juba Place had two taxis coming to Nazareth [after they were relocated there] to take the people back to Reservoir Hills [where the Juba Place residents used to live and where almost all of them work]. They were paying R14 a day, R7 R7. Now there is one taxi and it is almost empty because travel money is close to over the wages people are getting. Some of the children had to leave the school. One mother and two children costs 3 x R14 every day, that is R42 every day.

None of the women working as domestic workers that COHRE spoke to in the Arnett Drive settlement were earning as much as R42 a day. It is clear that subsidised transport need to be provided from the relocation settlements as a matter of serious urgency. The fact that people are being forced to give up jobs and to leave school is a profoundly unacceptable result of a housing programme. It is no doubt inadvertent but what is being created is a ghetto where many people can only survive on grants and pensions and have no real prospects for improving their lives. Subsidised transport would be one way of creating the material conditions for hope.

People routinely return from relocation sites to shack settlements. In all of the settlements facing relocation where COHRE held focus groups some people, usually the poorest, were adamant that they would just return if they were relocated.

Government tends to present this practice of returning to well located sites after removal to peripheral sites as criminal and a key aim of the Slums Act is to criminalise this practice. However

---

<sup>518</sup> Focus Group Interview, Arnett Drive Settlement, Saturday 4 August 2007.

the practice is clearly a matter of survival and not criminality. The most common reasons for wanting to remain in the settlements were as follows:

- To be close to work
- To be close to schools
- To avoid the break up of an established community
- To retain accessibility to hospitals, libraries, shops, sports, cultural and religious facilities etc.

But it is important to note that relocation is not a purely material or technical question. It is also about identity and community. In the Motala Heights settlement in Pinetown Louisa Motha alleges that in the course of her struggle to refuse relocation to the Nazareth relocation site and to remain in Motala Heights she has been threatened with violence by local landlord Ricky Govender, as well as the local police and people she believes to be linked the local ward councillor. When COHRE asked her why she wanted to stay there she answered that:

I am born here. My father and him [pointing to an old Indian man] lived in the bushes together after the Romans [the Catholic Church] evicted the people from there [pointing over the hill to the factories adjacent to the freeway]. We grew up eating banana curry. Now they want us to go from here. They are continuing to separate the people. I was born here. I will die here.<sup>519</sup>

#### *Residents' views on relocation*

In random interviews at the Waterloo and Parkgate relocation sites a very clear majority of the interviewees indicated that they considered their relocations to have been forced evictions. The first door that COHRE knocked on in Parkgate was that of Mr. S Msimango. He moved to the Canaan settlement in Clare Estate from Vryheid in 1991 to seek work. In 2003 he was moved, against his will, to Parkgate. When asked how he felt about the moved he replied:

I have lost my job because of being moved here. I am no longer working. We were moved from Canaan to Egypt. We were told that they had failed to get land near the city and that we had to come here. Everything was demolished. We would have loved to stay in Canaan – even if we stayed in the jondolos and never got the housing subsidy. The reason for this is that there we were close to work.<sup>520</sup>

Enoch Mpetswa answered the second door that COHRE knocked on. He had moved from Bizana to Canaan in 1997 and was moved, against his will, to Parkgate in 2004. He said that:

We have been put in a very bad position. We don't want the future of others to be in the same position. The house is not divided into two rooms. It looks like a hall. The houses should be cut into half, especially for the dignity of the old people. The houses are cracking and there is no hall in this community, no pre-school. But the main problem is transport. Transport is scarce and expensive. We can't afford to go into town. In Canaan I was doing part time jobs in the area. I am trying to do the same here but it was much better there. It is very hard here. When the government is

---

<sup>519</sup> Motala Heights Focus Group, Motala Heights, 4 August 2007

<sup>520</sup> In-depth interviews, random selection, Parkgate 13 September 2008

putting these housing subsidies they are putting the workers under many pressures. Things are very bad.<sup>521</sup>

The third door was answered by Thabisile Msomi. She was 17 and told COHRE that:

We all got much poorer when we were moved here. The reason is that transport is expensive, jobs are hard to find and lots of people, when they do find them, have to work for only R30 a day...We were living in Tendeni in Clare Estate. It was too nice living in Clare Estate. They must build houses there. And proper houses. Not these houses that look like halls.

In Clare Estate I went to Plamiet Primary. When I came here in 2002 I went to Parkgate Primary. But I had to stop because my mother didn't have any money. The fees are R450 a year. I don't like it here. There is no job for my mother. We are just sitting here.

My mother was cleaning the house in Clare Estate but she never had the job since she moved here. I think that the government made us move here because of the fires. That was the problem.

Things are much worse for us now. Here the neighbouring Indians are poor. We can't get a job. There the neighboring Indians were rich.

During two visits to Parkgate COHRE only met one person who was happy with the move. Siyabonga Phungula, a chemical operator, said that the housing conditions in the Lusaka settlement in Reservoir Hills were "not right" but that in Parkgate the job situation was "not right". However he had been working as a bricklayer in Reservoir Hills and in Parkgate he had been trained and was now working as a chemical operator so for him, personally, the move had worked out well.<sup>522</sup>

When COHRE randomly knocked on doors in Wellbedacht the first person we met was Rosemary Jacobs. She was allocated a one room house built of ash blocks in the Wellbadacht relocation site in 2004. She explains:

We came here from South Beach where we were living in a shelter. I applied and we got this house. I was exhilarated. I was thrilled. I needed a home. But when we got here I was disappointed. When they said Chatsworth I didn't realise that it was right out here. There are no shops. It's a long walk to school. There is nothing there. Things were much cheaper in South Beach. Here things are double the price. One egg is one rand. One tea bag is 50c. The roof is asbestos and it leaks. There is no soil. There is water all round the house. The mud is smelly.<sup>523</sup>

The second person was Juliet Mkhize, a woman in her late 60s. She explained that she, with about 100 others, had been forced to move to Wellbedacht 4 years previously from a 4 room house in K-Section Umlazi because her house was demolished to make way for a sewerage pipe. She was very clear that it was a forced removal imposed without consultation and that it had profoundly worsened her life. She was now living with 9 others in a one roomed house. She said that job opportunities were much better in Umlazi and that transport costs were unaffordable.

---

<sup>521</sup> Ibid.

<sup>522</sup> Ibid.

<sup>523</sup> Random door to door interviews, Wellbedacht, Tuesday 7 August 2007.

“In Umlazi you would take a train for R28 for a whole week. Here my grandson is taking a taxi to school in Shallcross at R120 a month.”<sup>524</sup>

The third door that COHRE knocked on was opened by a young couple, S’khumbuzo Ndlovu and Fikile Mathumbu. They had been there since 2004. They had come from a shack in Seaview. S’khumbuzo said:

We hate this area because it is far away from the city and from jobs. Relocation wouldn’t be a serious problem if we were taken to Mayville because it is close to the city. We were forced to come here. Once you get a subsidy you get no choice where you go. They just come and demolish your shack and take you to the new place. The City’s housing policy is super harassing. Many people lost jobs when they came here. The people really suffered when they started to stay here but they have got used to it now even though it hasn’t got any better. But one thing we can say very strongly is that if we had been shown the place we were being relocated to we would never have come here. Why couldn’t they build houses in Seaview?...Now there is a hotel for the rich people where we were staying. The conditions of these houses are too bad. The roof is getting wet. Our main issue of concern is that there is no foundation, look at how the walls are already cracking.<sup>525</sup>

After knocking on four doors COHRE did find someone who was happy to be in Welbedacht. Tony Gumede was born in Seaview where his mother was working as a domestic worker. When he reached adulthood his mother’s employers did not want him living in the servants’ quarters and his mother built a shack for her children. Although he was quick to point out that a lot of people had lost jobs as a result of being unable to afford transport costs and, although he regretted that the move had separated his family as his mother remained in Seaview, he was clear that his life had improved. “This place is much better because in Seaview I was living in a shack built in a cemetery.”<sup>526</sup>

The views expressed to COHRE by residents of relocation sites are largely echoed in the academic research undertaken on relocation in Durban.<sup>527</sup> In the settlements that were upgraded there is, of course, not the same unhappiness about the location of the new houses. But there is the same widespread unhappiness about the quality of the houses and, especially amongst multi-generational households, the size of the houses.

### *Justifications for relocation*

The removal of shack dwellers out of existing sites is usually justified in the name of technical factors such as the gradient of slopes, proximity to rivers and so on. In some cases these may be legitimate grounds for an inability to build on site but in many instances the financing model in *Breaking New Ground* could be used to cover the costs of overcoming geo-technical and other engineering challenges. Moreover the fact that it may be unwise or impossible to build on a certain site does not justify relocation to a site on the urban periphery. With sufficient political will better options could be explored.

---

<sup>524</sup> Ibid.

<sup>525</sup> Ibid.

<sup>526</sup> Ibid.

<sup>527</sup> See for instance Warren Smit’s [‘The Impact Of The Transition From Informal Housing To Formalized Housing In Low-Income Housing Projects In South Africa’](#)

*Paper presented at the Nordic Africa Institute Conference on the Formal and Informal City – What Happens at the Interface?, 15-18 June 2000, Copenhagen*

[http://www.dag.org.za/index.php?option=com\\_content&task=view&id=45&Itemid=114](http://www.dag.org.za/index.php?option=com_content&task=view&id=45&Itemid=114)

Furthermore it is striking that shack dwellers are invariably deeply sceptical about technical justifications for relocation. For instance Clement Mtshali from the Arnett Drive settlement which is nestled within the suburb of Reservoir Hills reported that a former ward councillor told them in 1996 that they would have to be removed as the Umgeni Water Reservoir might explode. “But”, he asked, “how could it only explode for shack dwellers?” In the Foreman Road settlement Philani Mtansi, 19, reports that the community has been told that previous promises to build houses on site cannot be kept because the land is too steep. But he pointed to the homes of wealthy neighbours sitting on the same gradient and asks “How can it be too steep for the poor but fine for the rich?”<sup>528</sup> In the Kennedy Road settlement focus group people reported that initial promises to develop the settlement *in situ* have been withdrawn on the basis that it is not safe to build houses adjacent to the Municipal Dump. But they point out that there are big houses just across the road and that the people in those houses have been told that the dump is safe. They are certain that one group has been lied to and strongly suspect that it is them.

It is clear that shack dwellers are not getting to accept the good faith of technical studies that recommend their removal from well located land if they are excluded from the process of undertaking and evaluating those studies. Instead of having these studies undertaken by consultants and then simply have a decision communicated via an official the whole process needs to be democratised. This could be done by creating a committee constituted by City officials and elected community members to which the consultants report. Shack dwellers should be able to have preliminary results reviewed by their own experts and draft reports should be placed in the public domain where they can be debated before being accepted as final.

In some instances the forced removal of shack dwellers out of suburbs is perceived as racialised there are places where this is creating serious racial tensions. For instance in Motala Heights African and Indian shack dwellers both feel that it is unjust for only African shack dwellers to be slated for relocation.<sup>529</sup> In Arnett Drive Clement Mtshali told COHRE that:

Relocation is a threat to the people’s lives. We are being pushed out because the Indians don’t want us here... One of the Indians came here and just shot into the settlement saying that he had been robbed. But we were the ones that caught the culprit under the bridge and took the thief and the items back to the owner...The reason why we are being pushed out is because of this racism thing. The Indians don’t want us here. They [the government] are listening to the Indians...But at the end of the day this thing is amazing. No Indian is washing for an Indian. They only want Africans to wash for them but not to live near them. They, the middle class people, even use our place as a dump. That shows what they think of us.<sup>530</sup>

While the Municipality has often made welcome statements about the need to desegregate the City it became clear during the interviews conducted by COHRE that shack dwellers living in former white, coloured and Indian areas very often saw the City’s housing projects as a form of re-segregation. A recent press release from the Municipality appears to confirm these suspicions:

The relocation of 1050 families from the notorious Lusaka, Canaan and Quarry Road West informal settlements in Clare Estate are due to begin next month.

---

<sup>528</sup> Focus Group Interview, Foreman Road Settlement, Saturday September 2007.

<sup>529</sup> Motala Heights Focus Group, Motala Heights, 4 August 2007

<sup>530</sup> Focus Group Interview, Arnett Drive Settlement, Saturday 4 August 2007. Following this initial interview COHRE were 7 follow up visits to the Arnett Drive settlement during the rest of the year.



Informal Settlement upgrade projects in Inanda, Lamontville and Umlazi are due to begin later this year. Project teams have long been appointed and careful planning in conjunction with the affected families has been undertaken. These upgrade projects affect approximately 3 500 families.

In addition 18 selected informal settlements comprising a total of approximately 3 500 families have been earmarked for complete relocation from the north central areas of Durban such as Palmiet, Clare Estate, Greenwood Park, Springfield, Overport, Kenville, Sea Cow Lake, Avoca etc. Well located land within the City's Urban Edge is currently being evaluated for acquisition.

From the south central areas of Durban such as Lamontville, Clairwood, Chatsworth, Seaview etc., 14 selected informal settlements comprising a total of approximately 1 840 families have been earmarked for complete relocation. It is anticipated that all the affected families will be relocated to the Welbedagt Housing Project within the coming months. Should there be any shortfall of sites in the Project, families would as far as possible be accommodated in projects identified within the City's Urban Edge.<sup>531</sup>

A clear tendency to relocate shack dwellers living in former white, Indian and coloured suburbs (Avoca, Chatsworth, Clare Estate, Clairwood, Greenwood Park, Kenville, Overport, Palmiet, Sea Cow Lake, Springfield) and to upgrade settlements in former African townships (Inanda, Lamontville, Umlazi) is apparent.

Nevertheless, despite the marked tendency to relocate from former white, Indian and coloured areas and to upgrade in former African areas, the City's housing policy is having contradictory consequences with regard to racial desegregation. While in Motala Heights both African and Indian shack dwellers see it as racially divisive in other contexts quite different things are happening. For instance the Welbedacht relocation site is distinctly non-racial. A white man who preferred not to give his name was furious at the way in which he, with others, had been bundled into a bus and brought to the settlement without having any idea of where they were being taken when the homeless shelter in the City, the Ark, was torn down in the interests of 'urban renewal'. But he told COHRE that

they have brought us to a terrible place, there is nothing here. This is like a rubbish dump for poor people. But at least we are all together here. When I was living on the streets in Durban I was often attacked by other people but here we are becoming one community. I feel safe here.<sup>532</sup>

Rosemary Jacobs said that "People from all walks are here. At first it was scary. Especially because there was no electricity for the first year. But now we have meetings together. Nothing has been done to help us but at least we are together in the meetings."<sup>533</sup>

---

<sup>531</sup> 'eThekweni Delivers', *eThekweni Municipality Press Release*, 13 August 2007, <http://www.ethekwini.gov.za/durban/government/munadmin/media/press/375>

<sup>532</sup> Random door to door interviews Welbedacht, October 2007

<sup>533</sup> Random door to door interviews Welbedacht, 7 August 2007.

### *Factors driving relocation*

Mark Misslehorn identified three key factors driving relocations:

- A lack of available well located land. This problem, he stressed, was compounded by private landowners.
- A lack of capital to build medium density housing and resolve geotechnical issues.
- The absence of alternative strategies for settlement management that don't just measure success by the number of houses built.

Officials and housing professionals tend to argue that the City is well intentioned but that budgetary constraints and the political will to acquire well located land are key problems. It has also been argued that the political pressure and genuine commitment to build houses quickly has, at times, had the intended consequence of leading planners to follow pre-existing apartheid plans and to continued to segregate the city and to physically marginalise the poor albeit with good intentions.<sup>534</sup> A number of housing professionals argued that the unwillingness to make use of BNG was a key factor in reducing the City's ability to respond to the high price of urban land with sufficient imagination.

But shack dwellers tend to take a much more severe line. S'bu Zikode, chairperson of Abahlali baseMjondolo, told COHRE that:

I don't see any policy in place other than a continuation of apartheid. They are pushing people out of the city centres without taking into account the reasons why people are living in the city centres away from work and schools. Housing delivery is doubling the people's poverty...If they want to push people out there they must build schools, clinics, libraries, factories – all the institutions out there. The City fails to understand that people need a livelihood more than they need a house...And they are evicting people without court orders. It is as if the constitution doesn't apply to the poor. They are failing to consult the affected communities and this failure to consult is a symbol of a deep disrespect.

What ever the reasons for relocation to out of town housing developments it is clear that they are deeply unpopular, often worsen people's circumstances considerably and must be urgently reconsidered. If it is the case that the reasons for the relocations are largely technical then it is clear that the Breaking New Ground policy needs to be taken up as a matter of urgency.

### **Conclusion**

The Slums Clearance Project has been relatively successfully at building new houses at speed and scale. However there are serious questions about the quality of the houses that have been built and, in many instances, about their location. Relocation sites are often not adequate housing environments and swift action needs to be taken to improve conditions in these developments. Perhaps the most urgent problem facing relocated communities is the absence of subsidised transport. Moreover, reckless claims about the imminent eradication of shack settlements have created a situation where there is an official denial of the realities of urbanisation and household formation that results, among other unfortunate consequences, in a failure to provide adequate services and support to shack settlements. In many instance people are living in life threatening conditions in shack settlements. This is plainly unacceptable.

---

<sup>534</sup> Charlton, *ibid*, p.268.

## Chapter 5: Forced Evictions & Other Housing Rights Violations

### Introduction

This chapter looks at forced evictions and other forms of rights violations in the area governed by the eThekweni Municipality. It also considers the likely impact of the 2010 Football World Cup.

It was researched largely on the basis of site visits, interviews and examination of court documents. It is clear that there is a systemic problem with forced evictions on a large scale within the Municipality, that there are credible claims of state repression of shack dwellers' organisations and that there is a general lack of transparency and public participation in the City's housing programme.

### Evictions

The eThekweni Municipality denies that it carries out forced eviction. However, as noted in the introduction to this report, Mahendra Chetty of the *pro bono* social justice orientated Legal Resources Centre in Durban told COHRE that:

The City, as a matter of regular and consistent practice, acts in flagrant breach of the law. I have never come across one incident where the City has acted in accordance with the law in terms of Section 21 of the Constitution and the PIE Act. I do not know of one instance where the City has carried out an eviction with a court order.<sup>535</sup>

When the Municipality's own lawyers are pressed in eviction related matters they tend to argue that there should be no grounds for concern when people have not approached the courts for relief, implying that a failure to approach the courts indicates acquiescence.<sup>536</sup> However, as noted, it is extremely difficult for shack dwellers in Durban, as elsewhere, to access competent and committed *pro bono* legal support. Moreover on the rare occasions when shack dwellers have been able to approach the courts to oppose impending evictions by the City they have, in every case examined by COHRE<sup>537</sup>, been able to win interdicts preventing the City from evicting without a PIE application. In each case the shacks protected by such an interdict still stand and the City has not sought a PIE application.

Moreover it should be noted that popular opposition to evictions most often takes the form of protest and resistance rather than court action. The high incidence of attempts at resistance is a matter of public record. As noted eThekweni has recently been reported to have the highest number of protests of the nine cities in the Cities Network<sup>538</sup> and prominent local and sometimes national and international newspaper reports have often indicated that a number of them have been driven by opposition to forced evictions. Moreover the ubiquity of resistance to relocations is implicitly acknowledged by the Municipality by the fact that it often approaches relocations in a more or less militarised manner with a strong police presence and high levels of municipal and private security. Indeed shack dwellers often told COHRE that the Municipality had arrived 'as if they were coming for a war'.

---

<sup>535</sup> Mahendra Chetty, in-depth interview 13 September 2008

<sup>536</sup> See, for instance, Filing Notice in the High Court of South Africa, Durban & Coast Local Division, in the matter between Bhekuyise Ngcobo, Motala Farm Development Committee and eThekweni Municipality from Linda Mazibuko and Associates (Case no: 11981/2006), paragraph 71.

<sup>537</sup> These include Motala Heights (2006), Crossmoor (2006) and Shannon Drive (2007)

<sup>538</sup> *State of the Cities*, Chapter 3, p. 57

COHRE's own research found that unlawful evictions are a routine practice in Durban and that they take three key forms. The first is when 'new shacks' are demolished, the second is when people are rendered homeless during upgrades and relocations, and the third is when people are forcibly removed to relocation sites.

### *The demolition of 'new shacks'*

The Municipality allocates a number to each shack that it considers to be legitimate and in which it considers the household head to be eligible for a housing subsidy. Legitimacy is largely determined by the date on when the shack is believed to have been constructed and the location of the shack. The eligibility of the head of the household for a housing subsidy is determined according to government policy. That number is painted on the shack. Once a shack has a number it is supposed to be safe from demolition and its registered owner is placed on the waiting list to receiving a house.

Because the Municipality is committed to 'slum clearance', and so takes the 'elimination' of shacks rather than the securing of housing rights to be its project, no new shacks are allowed to be constructed in existing settlements, no new settlements can be founded and no shacks can be extended or structurally improved by their occupants. When new shacks are built or existing shacks are extended or improved the Municipality assumes for itself a right to demolish these shacks even if they have been awarded a number. Neither COHRE nor anyone interviewed for this project is aware of a single instance where any of these demolitions were conducted in terms of PIE. They are therefore all unlawful and in fact criminal acts.

The Municipality makes use of regular aerial surveillance to monitor the growth of new settlements and also employs Land Monitors who are tasked with monitoring the erection of new structures and the development of existing structures and with contacting the Land Invasions Unit to demolish these structures.<sup>539</sup> The Land Monitors often work closely with the Ward Councillors and Ward Committees. This is one reason for the widespread antagonism towards Ward Councillors and Ward Committees by shack dwellers.

The Municipality argues that it needs to demolish new shacks in order to prevent the growth of shack settlements. Sometimes it is suggested that this is a legitimate policy aim in-itself and at other times it is argued that this is necessary in order to ensure efficient planning for 'housing delivery'. It is not always clear when the cut of date for new shacks is. At the time of writing some Municipal and Provincial officials were telling the media<sup>540</sup> that all shacks built after October 2007 were, as a result of the Slums Act, illegal and subject to demolition. This has no basis in law.

There are serious technical, legal and moral problems with the City's assumption that it has a legal right to demolish new shacks and shacks that have been developed in some way. To start with there is often considerable dispute as to whether or not a shack has been awarded a number. The most common reason for this is that shack fires are frequent and people often lose evidence of having been registered (in the form of the number painted on the shack) in these fires as there

---

<sup>539</sup> A recent advert by the Municipality for the position of Land Monitor Officer details the duties as follows: "Report any new land invasions or erection of illegal structures within existing settlements by telephoning the Land Invasions Unit to demolish." There is no mention of PIE or of any court processes. The actions described in this advert are illegal actions. *Metro Beat*, February 2006

<sup>540</sup> See Ntokozi Mfusi 'Police fire rubber bullets: Chaos as shack dwellers go on the rampage' *Mercury* 5 October 2007 and Doreen Premdev 'Residents caught up in protest chaos' *Sunday Tribune*, 7 October 2007

is no publicly accessible database. Furthermore shack dwellers report that numbers are often crossed out or changed or added without any consultation and in a manner that appears to them to be completely arbitrary, resulting in considerable stress and anxiety and a further lack of clarity as to who is registered and why. In two instances this has happened after court judgments interdicting the Municipality against evicting applicants with particular numbers without going through PIE.<sup>541</sup> In both cases letters from the LRC requesting clarification went unanswered.

Moreover shack dwellers often reported to COHRE that bribes were requested by Municipal officials in order to get or keep numbers. Interviewees reported that this is particularly acute just before and during the demolitions consequent to upgrades and relocations.<sup>542</sup> COHRE was given some reports of people who had been on the list being taken off at the last minute due to a refusal or inability to pay a bribe.<sup>543</sup> There was also one instance in which shack dwellers reported being threatened with being taken off the list as a punishment for activism and one instance where people felt that someone had been removed because she was Mphondo.<sup>544</sup> Because the Municipality refuses to make its list public it is very difficult to assess these claims. The secrecy around the list, if indeed it exists at all, is fertile ground for rumour. COHRE strongly recommends that the City move towards maintaining an easily accessible public record of its housing list and that it sets up an accessible, effective and independent ombudsman to investigate complaints about the housing list.

There are other common grounds for disagreement as to whether or not shacks are new. This tends to take two forms. The first is when a shack that has been in existence for some years is extended to create more space for a growing family. Most often this happens when the children of the original residents reach adulthood, form their own partnerships or have their own children. In these instances the family does not consider extensions to the original shack to mean that it is a new shack but the Land Invasions Unit will often assume that it is now 'a new shack' and destroy it in its entirety. COHRE witnessed this first hand in the Arnett Drive and Pema Ridge settlements and heard a number of accounts of this from other settlements. There is also often dispute about whether or not shacks are new that is based simply on a disagreement as to when the shacks were built. COHRE also witnessed this first hand in the Shannon Drive, Arnett Drive and Pema Ridge settlements where COHRE witnessed people building early in 2007, after being illegally evicted from the nearby Juba Place settlement in November 2006, then being threatened with, and in some cases subject to eviction, in late 2007 and early 2008 on the grounds that their shacks were new. Residents contested this on the basis that they were long standing residents of the area and no choice but to rebuild after the City had unlawfully demolished their homes.

The City's ban on new shacks and on the development of existing shacks has no basis in law and results in worsening already severe over crowding. Given that over crowding is one of the key definitions of a 'slum' this policy is actually producing 'slums'. Moreover it often places particular stress on young people who feel that they are forced to remain in an endless childhood stuck in their parents' home even when they have taken on their own partners and begun their own families. COHRE is not aware of any research on this in Durban but it would be surprising if these stresses were not responsible for an increased risk of domestic violence and other anti-social behaviour.

---

<sup>541</sup> Motala Heights 2006, Arnett Drive 2008

<sup>542</sup> The most extreme instance of this is the Shannon Drive settlement where more than 100 families claim to have been asked to each pay R100 in order to get a number.

<sup>543</sup> Juba Place focus group

<sup>544</sup> Joe Slovo focus group

The ban on rebuilding by people unlawfully rendered homeless by the Municipality during relocations is also deeply problematic. The deleterious social consequences are obvious and it seems clear, based on the jurisprudence outlined in chapter two of this report, that if those people have been able to access the courts the City would, in fact, have been instructed to rebuild their homes.

The general ban on the construction of new shacks is also highly problematic from a housing rights perspective. If new migrants to the city, people forming new households in the city, and people who have fallen on hard times cannot afford formal housing in the city, then preventing them from accessing informal housing will only worsen their position and social stability and cohesion more generally.

#### *People rendered homeless during relocations*

COHRE has directly witnessed three in-progress relocations in the eThekweni Municipality. The relocations in question were from the Lusaka settlements in Reservoir Hills (October 2005), the Juba Place settlement, also in Reservoir Hills (November 2006) and the Motala Heights settlements in Pinetown (December 2006).

In each of these relocations people have, in direct violation of South African and international law, been left homeless. In each instance the process of relocating people on the housing list and destroying the homes of those not on the list was accompanied by some degree of violence. Furthermore many people suffered damage to property when their shacks were destroyed while their possessions were still inside and then left open to the elements. Moreover the Municipality also uses machines to pulverise building materials and often follows this by burning the area to ensure that no building material can be salvaged resulting in the complete destruction of building material which constitutes a further loss of important resources.

In all of the interviews in shack settlements and relocation settlements people reported that in every relocation a considerable proportion of people are invariably left homeless. People are rendered homeless during relocations when they are not on the housing list. Sometimes this is because they don't qualify for a subsidy because they are under 21 years old, are single people without dependents, or do not have ID books. People are also left homeless during relocations if they arrived in the settlement after the housing list was drawn up. However the main reason why people are rendered homeless is that the housing lists only include shack owners and do not include shack renters. When people on the housing list are being moved out of a shack to be given houses in a relocation or upgrade site their shacks are immediately destroyed and the building materials pulverised. Sometimes the remains are also burnt. But very often other people, not on the housing list, were living in those shacks and are left homeless. There is no legal or policy basis for this. In terms of the subsidy policy renters are as entitled to a subsidy as owners. Breaking New Ground, as previously noted, specifically seeks to ensure that all residents in a settlement are housed in upgrades or new developments irrespective of whether or not they qualify for subsidies. In any event owners and tenants receive equal protection from eviction under the law. Shack renters tend to be poorer than owners and there is a high proportion of women. The result of this is therefore anti-poor and anti-women.

When the Municipality was challenged in court by tenants at risk of being rendered homeless during a relocation from the Motala Heights settlement to the Nazareth Island relocation site they replied to the court as follows:

The respondent is conducting a housing upgrade project in the Motala Farm (sic) Informal Settlement in conjunction with the Provincial Department of Housing. Persons who agreed to the project are relocated to Nazareth Island. In order to ensure that the project achieves its aims, participants must agree to the shacks which they are moved from being demolished and the materials which were used to build them being disposed off. This is necessary to prevent other informal settlers simply taking up occupation.<sup>545</sup>

In this statement it is abundantly clear that the function of the project is to eradicate shacks rather than to secure adequate housing. No provision at all is made for the tenants who will be left homeless by the demolition. It is essential that the Municipality immediately cease its unlawful practice of rendering shack tenants, truly the poorest of the poor, homeless during relocations and upgrades. This is unlawful and it is a serious violation of rights.

No records are kept of the number of people left homeless during relocations. In the relocations that COHRE witnessed the proportion of people left homeless varied considerably but was as high as 50%. David Ntseng from the Church Land Programme, an NGO that works closely with shack dwellers, told COHRE that in the cases that he had worked on the number of people left homeless during relocations ranged from 30% to 60%. He estimated the average at around 40%.<sup>546</sup> S’bu Zikode, the chairperson of Abahlali baseMjondolo, estimated the average number of people left homeless in relocations at 50%.<sup>547</sup>

When people are left homeless as a result of relocations they sometimes sleep in the open, hidden in the bush or on the sites of the destroyed homes. In both cases, but particularly in the former, people are placed at tremendous risk of crime and sexual assault. People do sometimes try and rebuild on the same site or elsewhere but they do so at the risk of assault by the police and Land Invasions Unit and having the new structures immediately demolished on the basis that they are new. This happened in Motala Heights and people left homeless after the Juba Place relocation had new shacks destroyed by the Land Invasions Unit in the Shannon Drive and Arnett Drive settlements and were threatened with demolition in the Pemary Ridge settlement

For this reason the most common survival strategy is to seek refuge in other settlements. Sometimes this is offered on the basis of solidarity at no cost such as in the Pemary Ridge settlement where many people rendered homeless in the Juba Place eviction were accommodated.<sup>548</sup> At other times this is done on the basis of modest rental arrangements. For instance in the Pemary Ridge focus group COHRE was told that “Lots of Juba Place people are renting with friends in other settlements at around R50 per month.”<sup>549</sup>

But in both instances the result is to dramatically increase overcrowding in the remaining settlements. This worsens the conditions considerably. It is well known that over crowding leads to an increase in stress and anti-social behaviour and, as noted in chapter three, that it causes particularly acute distress amongst women. By creating this overcrowding the Municipality is significantly worsening the housing conditions of its poorest residents.

---

<sup>545</sup> Filing Notice in the High Court of South Africa, Durban & Coast Local Division, in the matter between Bhekuyise Ngcobo, Motala Farm Development Committee and eThekweni Municipality from Linda Mazibuko and Associates (Case no: 11981/2006), paragraph 21.

<sup>546</sup> David Ntseng, in-depth interview.

<sup>547</sup> In-depth interview, 10 October 2007

<sup>548</sup> Pemary Ridge focus group

<sup>549</sup> Clement Mtshali, Focus Group Interview, Arnett Drive Settlement, Saturday 4 August 2007.

### *People rendered homeless during upgrades*

People are also rendered homeless during upgrades. The upgrades undertaken in eThekweni are, like those in other South African cities, not the genuine upgrades along the model developed in Brazil and envisaged in *Breaking New Ground*. The developments are not planned with the community and are not undertaken incrementally in accordance with the planning already undertaken in the construction of the settlement. Instead the settlement is razed and a development built on the site as if it were a 'greenfield' relocation site. COHRE examined the Joe Slovo upgrade closely. Eight people, all female domestic workers, told COHRE that they had been left homeless during the upgrade. This included Abigail Damane the founder of the Joe Slovo settlement. She built a shack there in 1993 after losing a job when her employers emigrated and she was no longer able to afford rented accommodation in nearby Lamontville.

They reported that evictions and forced removals to Welbedacht began in 2002 when the density of the settlement was reduced for the upgrade. Ester Ngiba is very clear that the relocations to Welbedacht were forced:

When they were evicting people [relocating to Welbedacht] they just come and say you have to go now now. We told them want to stay. But if we didn't go we would be left homeless. They said it was volunteers but they were forced, they were forced against their will. About half the people went...They are not happy. Some of them are coming back. They are suffering for transport - no schools, no shops. They would rather live in the jondolo [shack] here than in the indlu [house] there.<sup>550</sup>

Busiswe Gule reported that when the new houses began to be built on site all the renters were left homeless:

We had to beg a place to stay. We moved around from one person's place to another. Sometimes we have to sleep outside if someone from the farm is visiting. We tried to build more shacks in 2003 but after three days they came and demolished. She [pointing to Mariet Kikine] phoned *Isolezwe*. They came. All the houses [shacks] were demolished except for hers.<sup>551</sup>

She gave the names of officials from the housing department who she said had threatened her and others, alleged that 4 of the houses built in the upgrade were given to civil servants close to the councillor, that she was told that she couldn't get a house because she was a Mphondo and that a friend was left homeless because her husband has been on the list and had died.<sup>552</sup>

Rendering people homeless during a relocation or upgrade is entirely illegal. In the one instance where COHRE is aware of a situation in which people threatened with being left homeless in a relocation have been able to access the courts they were able to easily secure an interdict in their favour preventing further demolitions and remain in their homes.<sup>553</sup>

### *Relocations that become forced removals*

The eThekweni Municipality does not consider relocations to be forced removals. It takes the view that they are either voluntary or actions necessitated in the interests of the safety of shack

---

<sup>550</sup> Focus group with Joe Slovo residents, 12 September 2007

<sup>551</sup> Ibid.

<sup>552</sup> Ibid.

<sup>553</sup> Motala Heights, December 2006



dwellers. However COHRE is not aware of any instance where, when challenged in court on this matter, the City's lawyers were able to show evidence of a relocation being voluntary. For instance in the case of Motala Heights in late 2006 the City's lawyers stated that:

The persons who are beneficiaries of housing projects often have poor literacy skills, uncertain living arrangements and are easily influenced by rumours or agitation. For this reason it is not possible to establish a final "list", nor is it possible to always obtain written relocation contracts or acknowledgements. It is respectfully submitted, however, that it is clear that only consensual relocations and demolitions have taken place because no persons who had been actually relocated have themselves approached this Honourable Court claiming any spoliation or any unlawful conduct by the respondent.<sup>554</sup>

It is clearly unacceptable to assume that consent for relocation is demonstrated by the fact that people do not or have not yet approached the courts to oppose relocation. The difficulties that shack dwellers typically face in accessing the courts have already been alluded to. There is simply no good reason why the City cannot develop a proper system of open negotiations and contracts to ensure that consent is genuine.

However the City certainly made a number of statements indicating a recognition that relocations are not ideal. For instance in 2006 Couglan Pather noted that:

Our housing unit is also looking at ways of reducing the number of relocations from informal settlement upgrade projects by introducing different types of housing, layout designs and so forth. These initiatives will also be introduced in greenfield projects. The idea is to make the most of good locations where infrastructural services, and social facilities are readily available, as well as where there is good access to economic opportunities and public transport. The presence of these factors make it logical to upgrade an informal settlement or for a greenfield project to be located in the vicinity. The municipality realises that residential densities need to be increased in locations where it benefits residents as well as the municipality.<sup>555</sup>

However he also explained that the municipality was in the process of planning phase two and phase three of the Slums Clearance Project and that it aimed to build 80 000 30m<sup>2</sup> houses over a 6 year period. He added that more than 70 settlements had been earmarked for complete relocation while about 120 settlements would be upgraded *in situ*.<sup>556</sup> It needs to be kept in mind that under current Municipal policies on minimum plot sizes per house a quarter to half of residents are relocated during each upgrade.<sup>557</sup>

If practical steps will indeed be taken to densify developments and thereby enable more people to live in the city and the rate of relocations in each upgrade (currently at between a quarter and half of the population of each settlement) to be reduced that would certainly be welcomed as progress. But at the moment it appears that the City is preparing to push on with a housing policy that is based on relocating hundreds of thousands of people, many if not most against their will. This is cause for serious concern.

---

<sup>554</sup> Filing Notice in the High Court of South Africa, Durban & Coast Local Division, in the matter between Bhekuyise Ngcobo, Motala Farm Development Committee and eThekweni Municipality from Linda Mazibuko and Associates (Case no: 11981/2006), paragraph 71.

<sup>555</sup> Ibid.

<sup>556</sup> Couglan Pather 'Durban is homing in on shacks' *Metro Ezasegagasin* 5 June 2006

<sup>557</sup> Anonymous interview with housing professional.

The Municipality told COHRE that it tries to be sensitive to the demands of residents and that it has avoided planned relocations where there is clearly generally happiness with these plans. Interviewees pointed to the Kennedy Road settlement which is slated for relocation and which, in the Municipality's view, is unsafe but which has not been relocated due to the refusal of the residents to accept relocation.<sup>558</sup> However it should be noted that this settlement is very large, very well organised, has access to *pro bono* legal support and has a record of sustained militancy since 2005. It seems clear that all of these factors are likely to give it an unusual degree of leverage in negotiations.

COHRE was often told of instances where people were given a simple choice between relocation or demolition or coerced in various ways to accept relocation. Clearly if the choice is between demolition, and thereby being rendered homeless, and relocation then the relocation is a forced removal. The kinds of coercion pointed to by interviewees included threats of the withdrawal of state grants<sup>559</sup> and threats of violence or expulsion from a community prior to the relocation.<sup>560</sup> It is clear that community leaders who support the relocations are often under the impression that relocation is a collective rather than an individual choice and that coercion to accept relocation tends to come from local party structures and community leaders rather than from the municipality. However, in each instance, the reports of a threat to demolish people's homes if they did not accept relocation was reported to have come from municipal officials. The Municipality needs to act swiftly to correct the impression that settlements must make collective decisions as to whether or not to accept relocation. The current misunderstanding results in local forms of coercion and is often accompanied by rumours about local leaders and party officials receiving large numbers of houses for their relatives in exchange for forcing the rest of the residents to accept relocation. Again, openness about housing lists and plans would do much to either dispel unfounded rumours or make such corruption much more difficult.

The disjuncture between the views of senior housing officials with regard to relocations being voluntary and the reality on the ground are striking. A partial explanation for this radical divergence may lie in the fact that the official discourse around housing policy at local, provincial and national levels creates the impression that the solution to the housing crisis is to 'deliver houses' and that success in this regard is measured by 'units delivered'. This makes it difficult to see the provision of houses as anything other than a 'success'. This may be one reason why, when popular opposition to relocation has had to be acknowledged, all three levels of government have tended to resort to conspiracy theories of various sorts to discount and dismiss it.<sup>561</sup> There have also been similarly conspiratorial explanations of the fact that there are instances around the country where people have refused to accept relocation from well located shacks to peripheral relocation sites with the result that houses in these sites have stood empty.

However most shack dwellers, and indeed most of the housing professionals, interviewed for this report take a very different view. That view is expressed in many different ways but can perhaps be summed up as the view that the role of the state is not simply to provide houses but is rather to support people to achieve adequate housing. Adequate housing certainly includes a concern with the nature of the structures in which people live but it also includes a range of other

---

<sup>558</sup> Robbins, p.12.

<sup>559</sup> This has been widely reported in Johannesburg (Marie Huchzermeyer, personal communication) but only two people interviewed by COHRE in Durban reported being threatened in this way. They both asked for their anonymity to be protected.

<sup>560</sup> This was widely reported in the interviews in Durban. For instance it often came up in the focus group interview in Motala Heights and Shannon Drive.

<sup>561</sup> In the case of the eThekweni Municipality see *eThekweni Delivers*, 13 August 2007, <http://www.ethekwini.gov.za/durban/government/munadmin/media/press/375>

concerns including the location of the housing, access to services and other social goods and the sustainability of communities. If it is accepted that people are themselves best placed to determine what constitutes adequate housing for themselves it immediately becomes apparent that the nature of the structure in which people live is not the sole criterion for determining its adequacy.

The question of safety is often misused to justify forced evictions. The Municipality reserves for itself a right to move people when they are living in conditions deemed unsafe. This is not unusual. Governments often reserve this right for themselves under emergency conditions. But in documents submitted by the Municipality's lawyers in eviction cases it has been made clear that the Municipality considers all shack settlements to be unsafe environments<sup>562</sup> and therefore reserves for itself a right to compel the relocation of all shack dwellers. This is deeply problematic on two levels. The first is that the Municipality does not go through PIE which, by law, it must. The second is that while it is true that most shack settlements are unsafe, with fire being the most immediate danger, relocation is not the only solution to this. It is perfectly possible to take steps to render the settlements safer such as providing electricity, fire hydrants, access roads for emergency vehicles and fire proof building materials.

It is important to note that without exception every shack dweller interviewed by COHRE said that they wanted the government to build formal houses for them and did not wish to continue living in shacks. But some said that if their only choice was between the small one-roomed houses built by the state and their larger shacks more suited to family life they would prefer to stay in their shacks. Many people stated very firmly that they would rather continue to live in well located shacks in established communities than be forced to move to poorly located houses in a manner that would break up established communities. A good number of people said that if it was impossible for the government to build houses where they were currently living then they would prefer to remain in their shacks rather than be relocated if their shacks could be electrified. The logic behind this view is that fire is the greatest danger in shack settlements and that people might be compelled to reluctantly accept relocation in order to escape the risk of fire.

Where transit camps are used as a staging post to final relocation they are also widely considered to be forced evictions. Thembinkosi Qumbela, speaking about Cato Manor, said that:

More than 250 people have been forcefully evicted from their houses and placed in an area called Waiting Trail Settlement, where they are told that they will wait in this area till they get their houses, its like a concentration camp of some sort. This area is more than 10km from Cato Manor and it is far from the city where people who have some form of employment work and far from schools where children initially registered at the beginning of the year and this has forced many children to drop out of school. Those that are employed now pay more for their transport than before. It is far from important facilities like health clinics and hospitals.<sup>563</sup>

A number of housing professionals told COHRE that in their view evictions were an unintended consequence of the slum clearance policy, the individual subsidy system and the mode of construction that requires so much more space per house than that achieved by shack dwellers.

---

<sup>562</sup> See, for instance, Filing Notice in the High Court of South Africa, Durban & Coast Local Division, in the matter between Bhekuyise Ngcobo, Motala Farm Development Committee and eThekweni Municipality from Linda Mazibuko and Associates (Case no: 11981/2006), paragraph 35.

<sup>563</sup> Qumbela interview, 17 September, 2007.

They added that *Breaking New Ground* was a developmental tool that could avoid or at least dramatically reduce the incidence of evictions.

But while there may well be technical reasons driving most evictions it is important to realise that they are carried out ruthlessly. This point was stressed by Mahendra Chetty who told COHRE that “A recurrent theme with these evictions is that simple callousness with which they are carried out. They are carried out in an extremely authoritarian and high handed manner against the most vulnerable people in our society – poor black women, old people and the unemployed.”<sup>564</sup>

COHRE is not in a position to offer a precise calculation of the number of forced evictions that have occurred or that are likely to occur in Durban since 1994. No records of any sort are available for the numbers of new shacks demolished by the Land Invasions Unit and a reliable estimate would require a major quantitative study. But while there are no precise figures available for the number of people that have been relocated it is clear that the figure is considerable. The average number of houses constructed each year is 9 600 and even if we assume that only half of those are relocations rather than upgrades and that only a quarter of people didn’t want to move that gives a figure of 1 200 households (around 6 000 people) subject to forced removal a year. But that is a very conservative estimate. If we assume that two thirds of the new houses are in relocation sites, and that two thirds of people were unwilling to move, then the figure could be as high as 4 267 households (around 21 300 people). Furthermore if we take the lowest of the various estimates of the percentage of people left homeless during each upgrade and relocation which was 30% then around 2 880 households (around 14 440 people) have been left homeless each year. If we take a higher figure of 50% of residents left homeless in each upgrade or relocation then the number climbs to 4 800 households (around 24 00 people). Of course if the City succeeds in approaching its target of 16 000 houses a year the figures will climb accordingly. But it can now be confidently asserted that at least 10 000 people have been left homeless each year and that at least 5 000 people have been forcibly removed each year giving a total of 15 000 people subject to forced eviction each year. This is unacceptable.

### **Insufficient Participatory Development**

Around the world best practice development models recognise the value of participation. In South Africa there are constitutional imperatives that commit all levels of government to participatory practice. However shack dwellers of all political persuasions consistently reported to COHRE that they were excluded, often aggressively, from decision making with regard to Municipal development projects and, consequently, of having very little clear understanding of what was planned for them and why. It was universally reported that when there were some sort of negotiations with the City they happened with Ward Councillors and local party officials rather than the people who would be affected by policies.

Statements from Municipal officials confirm that open and consultative practices are seen as a security risk. In an interview in the film *The Right to Know* by the Open Democracy Centre the City Manager Michael Sutcliffe states, baldly, that in his view “Information can also be dangerous.”<sup>565</sup> Sutcliffe also argues that providing information about the city’s housing plans would enable ‘queue jumping’ but why this would be so is not at all clear.

In a briefing document for COHRE based on interviews with municipal officials Glen Robbins reported that:

---

<sup>564</sup> In-depth interview, 13 September 2007

<sup>565</sup> Interview in the Open Democracy Advice Centre film *The Right to Know*, 2007

Municipal housing officials stressed that the potential for abuse of the information on housing projects was considerable and so there was not much public release until such time as it was deemed safe from potential exploitation. They did recognise that this could constrain public consultations on plans to some degree but it was a fact of life in the local context.<sup>566</sup>

Similar lines of argument emerge in various court documents. For instance in response to papers from Abahlali baseMjondolo (successfully) requesting an interdict preventing the City from demolishing shacks in Motala Heights without a court order, the City's lawyers stated that:

The respondent has a record of the participants in the project but has decided not to make this record available to members of the public or the applicants, because the respondent is concerned that this will encourage or facilitate opportunistic housing claims and "queue jumping."<sup>567</sup>

If the City does have, as it claims, a list of individuals who are eligible for housing subsidies and are in the queue to receive houses it is entirely unclear how revealing who is on that list and who is on the list to receive a house in a particular development, could result in "queue jumping". In fact it is clearly stated later on in the filing notice that the real concern is with:

persons who will have advanced notice of which shacks have to be vacated and who will move in and claim rights of occupation as soon as the legitimate occupants vacate the shacks, or even if they will move in while the legitimate occupants are preparing to leave and have not yet vacated.<sup>568</sup>

In other words the concern is that shacks, the best currently existing housing option for the very poor, may continue to be used for housing. The security considerations arising for the drive to eradicate shacks and to prevent their reoccupation by what are pejoratively termed "opportunistic newcomers"<sup>569</sup>, are therefore over-riding the constitutionally protected rights to information, participatory governance and access to housing. The prioritisation of security over democracy is clear.

The hostility to participatory mode of development extends to professional advocates of shack dwellers' rights. Polite letters from the Legal Resources Centre querying illegal behaviour by the City usually go unanswered and when answers are received they are often needlessly and startlingly hostile.<sup>570</sup> When the Open Democracy Advice Centre (ODAC) assisted Abahlali baseMjondolo to make use of freedom of information legislation to compel the Municipality to inform each of the settlements affiliated to the movement of the City's plans for that settlement ODAC found the City obstructionist and unwilling to adhere to the spirit of the law.<sup>571</sup>

---

<sup>566</sup> Glen Robbins, *An overview of eThekweni Municipality's perspectives on its approach to informal settlements - a research note for the Centre on Housing Rights and Evictions*, September 2008, p.12.

<sup>567</sup> See, for instance, Filing Notice in the High Court of South Africa, Durban & Coast Local Division, in the matter between Bhekuyise Ngcobo, Motala Farm Development Committee and eThekweni Municipality from Linda Mazibuko and Associates (Case no: 11981/2006), paragraph 71.

<sup>568</sup> Ibid., 71

<sup>569</sup> Ibid., 67.

<sup>570</sup> For instance in a letter to the LRC dated 2 November 2006 the head of the Municipal Legal Services department, Mr. Sibisi, demands that the LRC "stop harassing our officials" rather than addressing the urgent matters at hand. M. Sibisi *Motala Farm*, Letter to the LRC, 2 November 2006

<sup>571</sup> See the film 'The Right to Know', *Open Democracy Advice Centre*, 2006

Mahendra Chetty told COHRE that: “Throughout all this litigation the City has never come up with a clear housing plan indicating where it will build houses and, if it does intend knocking down settlements, where people will be moved to.”<sup>572</sup>

With one exception all of the housing professionals interviewed by COHRE argued that there was a serious problem with the lack of consultation and argued that collaborative planning with communities would radically reduce political antagonism and improve development outcomes. One person, who asked to be anonymous, asked “Why not allow communities to decide how money should be spent?”<sup>573</sup>

Shack dwellers uniformly argued that the lack of participation and consultation were very serious problems. Abahlali baseMjondolo have made many strong statements on this, often accusing local councillors of authoritarianism and sometimes even outright intimidation. But other shack dwellers’ organisations expressed very similar views. For Thembinkosi Qumbela of the Shack and Rural Dwellers’ Association:

There is nothing good about the housing process, from the beginning people are not consulted, the communication is between the municipality, the Counsellors and people close to the Counsellors... People’s voice is not being heard, the municipality communicates with the ward counsellors and the ward counsellors communicate with people that are closer to him/her. The ward committee does not represent the interest of the people but it a platform to discuss party politics.<sup>574</sup>

For Patrick Magebula from the Homeless Peoples’ Federation:

There is nothing good about the current housing process, it is not a people driven process. It is driven by the municipality... We want community driven housing projects where people are involved from the policy formulation to the policy implementation. We want people to determine the type of houses they want, we want people to live in houses where they will feel more human and less animals... People’s voice do not matter to the counsellors and to the municipality, we have tried to engage our counsellors and the municipality with no success. We do not even work with the ward committee because it’s all the same, they are not taking these matters seriously, it seems that politics is more important than housing and land.<sup>575</sup>

A number of development professionals, and one person who have previously worked in the Municipality housing department, told COHRE, in each instance off the record, that in their view a major barrier to effective and appropriate housing provision was that the process was very often captured and distorted by party political interests. Some of the academic research has reached similar conclusions. For instance Sarah Charlton, a former employee in the Metro Housing Department argued that the “allocation of sites in new housing projects...tended to be to the benefit of local, parochial interests only rather than serving Metropolitan-wide backlogs.”<sup>576</sup> COHRE was told that that this resulted in projects being blocked in areas not seen as supportive and contracts and access to the housing been directed to people seen as supportive.

---

<sup>572</sup> Chetty, Ibid.

<sup>573</sup> In-depth interview, transcript with COHRE

<sup>574</sup> Qumbela interview

<sup>575</sup> Patrick Magebula, in-depth interview, 27 September 2007.

<sup>576</sup> Charlton, p. 267.

An anonymous interviewee argued that:

Decisions should be made in dialogue with communities. But government has made the ward committees the site for engagement and they are political structures chaired by local councillors. The councillors very often appropriate the space for party political modes of decision making which are not developmental modes.”<sup>577</sup>

In the view of David Ntseng from the Church Land Programme “Government is obsessed with authority and control to the point where it is destroying its political credibility amongst the poor and destroying their livelihoods by forcing them out of the cities.”<sup>578</sup>

Reports in local newspapers seem to indicate that the subordination of developmental interests and housing rights to party interests is a serious problem.<sup>579</sup> If this is, indeed, a serious problem one way to avoid the misuse for housing provision for sectarian interests would be to render the entire process as open and transparent as possible.

## Repression

The problems around participation and democracy go deeper than a city administration that prioritises the security agenda underlying its shack eradication programme over democratic and rights-based practices. Many local shack dwellers’ organisations have reported severe and unlawful police violence against demonstrations and Abahlali baseMjondolo have produced a dossier of claims that include one instance of police torture, two instances of the police being used to prevent activists from taking up invitations to speak to the media, a number of instances of protests being illegally banned and numerous instance of wrongful arrest and police violence. Many of the accusations are levelled at Senior Superintendent Glen Nayager of the Sydenham Police station. The organisation also accuses a businessman and landlord in the Motala Heights area, Ricky Govender, of dumping toxic waste outside activist’s homes, of assaulting activists and threatening them with assault and murder.

Some of the claims made by Abahlali baseMjondolo will soon be tested in court as the movement is suing Nayager for wrongful arrest and assault with the support of Amnesty International. Others are being investigated by the Independent Complaints Directorate (ICD) and various international Human Rights organisations. A number of the claims in the Abahlali baseMjondolo dossier have been confirmed by independent witnesses. For instance a group of 14 church leaders, including two bishops, issued a widely circulated statement in September 2007 which stated that they had witnessed an unprovoked and violent police attack on a lawful and peaceful march by Abahlali baseMjondolo.<sup>580</sup> Moreover a number of journalists and academics have reported illegal intimidation and the confiscation of digital records of police violence by Nayager. Dr. Raj Patel of Berkley University in California has lodged a formal complaint with the ICD<sup>581</sup> in this regard and the *Mercury* newspaper reported that it has lodged a formal complaint against Nayager<sup>582</sup>, also in this regard. The Freedom of Expression institute has issued a number of statements confirming claims by Abahlali baseMjondolo that some of their marches have been

---

<sup>577</sup> Anonymous interview, transcript with COHRE

<sup>578</sup> In-depth interview, 11 October, 2007

<sup>579</sup> Carvin Goldstone ‘Houses-for-votes saga deepens’ *Independent on Saturday*, 2008 26 April 2008  
<http://www.tios.co.za/index.php?fArticleId=4374356>

<sup>580</sup> *Police Violence in Sydenham, 28 September 2007: A Testimony by Church Leaders*, <http://www.abahlali.org/node/2661>

<sup>581</sup> Email interview 22 December 2007

<sup>582</sup> See the editor’s footnote to Richard Pithouse ‘Democracy took a beating in Foreman Road’, *Mercury*, 22 November 2005 <http://www.themercury.co.za/index.php?fSectionId=285&fArticleId=3004548>

unlawfully banned by the Municipality.<sup>583</sup> On the one occasion when Abahlali baseMjondolo was able to get the legal support to approach the court to contest a prohibition on a march they were successful and the City was interdicted to allow the march to go ahead.<sup>584</sup> Independent witnesses have also publicly attested to unlawful intimidation by Ricky Govender. For instance the *Mercury* newspaper reported that Govender detained one of their journalists against his will, threatened him with death and confiscated the memory card in his camera. Govender was forced to release the journalist by the police at gunpoint.<sup>585</sup> Furthermore longstanding shack dwelling residents of Motala Heights who face forced removal out of the area claim that City authorities and the Ward Councillor tell them that no low cost houses will be built in the area as “only Ricky Govender will be building [commercial] houses here”.<sup>586</sup>

COHRE could not find any record of the eThekweni Municipality condemning or investigating intimidation of shack dwellers and their organisations by the police or private land owners. It is clear that the claims of unlawful anti-democratic behaviour by the Municipality, the police and the private landowner Ricky Govender all need to be seriously investigated as a matter of urgency.

## Corruption

There are widespread perceptions of corruption and manipulation of the City’s housing projects by local power relations and party political interests. COHRE was given numerous accounts of requests for bribes to get on to housing lists and to avoid eviction. People reported paying cash bribes as well as other sorts of bribes such as chickens. In one instance a young woman approached a COHRE research after a focus group meeting and reported that she had been asked to provide sex to a Municipal official in exchange for being placed on the housing list during a forced relocation accompanied by large scale evictions.<sup>587</sup> Almost every allegation of corruption made to COHRE was very specific in its details and appeared to be worthy of serious investigation.

It was astonishing that almost all of these many accounts, taken from across the city, named the same official (who has now left the employ of the housing department). The regularity with which his name emerged may indicate that there will be less corruption now that he has left. However it is quite clear that there is a widespread lack of confidence in the integrity of municipal officials. Moreover given the apparent credibility of the many allegations of corruption it appears that the departments’ oversight and auditing strategies may need to be radically reworked and, quite possibly, handed over to credible independent agencies with an investigative capacity. If the widespread claims of rampant corruption are a matter of perception more than reality this can be addressed by making the process as open and transparent as is possible. The secrecy that currently surrounds it clearly encourages rumours. But COHRE certainly welcomes recent well publicised action by the National Government to prosecute civil servants guilty of accessing housing via corrupt means. As this report was being concluded 31 000 government employees were being investigated nationally for fraudulent acquisition of government houses.<sup>588</sup>

---

<sup>583</sup> See, for instance, *FXI Welcomes Court Ruling on Shack Dwellers’ Movement Right to Hold Demonstration*, 28 February 2006 <http://www.fxio.org.za/content/view/full/68/51/>

<sup>584</sup> Ibid.

<sup>585</sup> Greg Arde ‘Photographer was threatened Police rescue news team after fracas’ *Mercury* 4 September 2007 <http://www.themercury.co.za/index.php?fArticleId=4017176>

<sup>586</sup> Motala Heights Focus Group.

<sup>587</sup> Juba Place focus group

<sup>588</sup> Figures were not given for Municipalities but the figures for KwaZulu-Natal were particularly high. Nick Wilson ‘Officials took housing for the poor’ *Business Day*, 23 April 2008



## Housing Rights and the 2010 Football World Cup

Given the general tendency for mega events to be accompanied by forced evictions there is considerable interest in the potential impact of the 2010 football World Cup on housing rights in South Africa.

There have been widespread reports of inner city evictions across South Africa as a result of the 2010 tournament. Last year the United Nations Office for the Coordination of Humanitarian Affairs reported that “Tens of thousands of South Africa’s poorest people face eviction from inner-city suburbs across the country ahead of the 2010 World Cup football.”<sup>589</sup> There has been considerable contestation around this and COHRE has been involved in a number of high profile court cases against these evictions in Johannesburg.<sup>590</sup> In Durban inner city evictions are currently under way<sup>591</sup> as the underside of much touted ‘regeneration’<sup>592</sup> in the area around the new Point Water Front Development.

The impact of the 2010 World Cup on shack dwellers has generally been less clear. However in Cape Town it has often been argued that the state’s attempt to evict 20 000 people from the Joe Slovo settlement, near the airport, is directly linked to the tournament.<sup>593</sup> In Durban the municipal officials and development professionals interviewed for this report uniformly argued that there would not be evictions consequent to the 2010 World Cup and that, on the contrary, the pressures resulting from the tournament would see an increase in ‘slum eradication’ and, therefore, housing provision.

However Municipal officials also deny that evictions are currently occurring and as this report, and many court decisions have clearly shown, this is certainly not the case. The shack dwellers’ organisations interviewed for this report all took the view that the increase in state discourse around ‘eradicating slums’, and the consequent increase in evictions, was directly linked to the World Cup and that the tournament was a direct threat to their foothold in the city and well being. Abahlali baseMjondolo has often made this argument in press statements and memoranda etc<sup>594</sup> but it is clear that other organisations with less access to the media have similar views. For instance Alex Mhlakwane of the Siyathuthuka Development Programme told COHRE that in his view:

What I know is that there will be an attempt to remove us from our shacks, the government will do everything in its power to ensure that come 2010 there will be no sight of shacks in the eyes of the visitors. However the process of doing this will not benefit people hence there are no engagement with the municipality at this level. We know that they have plans to eradicate all shacks by 2010 but there are no discussions with us about this till today. The people will be taken to areas far away from

---

<sup>589</sup> ‘Poor squatters make way for 2010 World Cup’ *United Nations Office for the Coordination of Humanitarian Affairs* 13 April 2007 <http://www.irinnews.org/Report.aspx?ReportId=71599>

<sup>590</sup> Further details, including court judgments, are available at [http://www.cohre.org/view\\_page.php?page\\_id=261](http://www.cohre.org/view_page.php?page_id=261)

<sup>591</sup> Interview, S’bu Zikode, 27 January 2008

<sup>592</sup> Suren Naidoo ‘To the point: neighbouring areas benefit from development’ *Mercury*, 10 January 2008

<sup>593</sup> This is the widely reported view of the Joe Slovo Task Team, the organisation of shack dwellers leading opposition to the eviction, as well as some academics. See, for instance, ‘Exchange for Letters Between Martin Legassick and Lindiwe Sisulu’ *Labour Net*, 8 October 2007 <http://www.labournet.net/world/0710/slovo1.html> and Alyssa Huff, *Itemba iyaphilisa: Redefining Development Through the Joe Slovo Anti-Eviction Struggle*, As yet unpublished monograph, December 2007

<sup>594</sup> See, for instance, Abahlali baseMjondolo *March on Mlaba: Final Press Release*, 27 April 2008, <http://abahlali.org/node/2508> and Colleen Dardagan ‘Poor left out in the cold for 2010’ *The Mercury*, 11 July 2007 <http://www.themercury.co.za/index.php?fArticleId=3927354>

everything. They will hide us from the visitors. The money that has been put towards this world cup should have been used to build more houses.<sup>595</sup>

Similar views are held by professionals who have been working against unlawful evictions in Durban. Mahendra Chetty from the Legal Resources Centre told COHRE that “My impression is that the closer we get to the World Cup the more these evictions will become increasingly common place.”<sup>596</sup>

In fact the 2010 World Cup has clearly been a key factor in driving the state’s escalating rhetoric about eradicating shacks and that rhetoric clearly serves to justify forced evictions. The KwaZulu-Natal provincial government has often declared that all shacks must and would be ‘eradicated’ by 2010.<sup>597</sup> Municipal officials have not declared that they will entirely eradicate shacks by 2010 but have spoken very clearly about a direct link between the tournament and eradication. For instance in October 2006 Municipal Housing and Infrastructure Committee Chairperson S’bu Gumede told the *Mercury*, in the wake of clearly unlawful forced evictions from the Motala Heights settlements (the City had no court order enabling it to evict lawfully), that:

As long as there are people that need to be removed, there will be such removals...We have adopted a zero-tolerance attitude to control the amount of informal settlements, and with the pressure of 2010, we are trying to eradicate such settlements. When there are houses built for people from informal settlements, they do not want them and yet, when such removals occur, we as the council are seen as the harassers.<sup>598</sup>

The connection between ‘slum clearance’ and the 2010 World Cup also emerges clearly in the work of a number of key consultants. For instance, in a presentation to the Provincial Housing Department on ‘Meeting Housing Demands for 2010’ Linda Masinga noted that it had been predicted that African’s urban population would double in the next 14 to 18 years, and opined that “increasing informal settlements [are] posing a serious challenge to most African countries.” He warned that Durban would be confronted with: “Increasing informal settlements as rate of housing demand continues to outstrip supply;” she also speculated that during 2010: “Host cities are likely to see an influx of people from rural areas” resulting in a “Possible increase of informal settlements;” finally, he called for legislative interventions to prevent the creation of new informal settlements and the growth of existing settlements as well as speedy delivery to eradicate the existing settlements resulting in the “Eventual eradication of informal settlements.”<sup>599</sup>

In late 2007 City announced that settlements near World Cup venues would be removed. The *Sunday Tribune* reported this announcement as follows:

The shacklands of post-apartheid South Africa, which would surely have been seen by tourists coming to South Africa for the 2010 World Cup, will be removed to hide the shame of poverty.

---

<sup>595</sup> In-depth interview, 12 November 2007

<sup>596</sup> Chetty, *ibid.*

<sup>597</sup> For instance see Government Communication and Information System KZN *to discuss housing policies*, 8 September 2006 <http://www.buanews.gov.za/view.php?ID=06090811451005&coll=buanew06>; and Xolani Mbanjwa “No shacks in KZN by 2010’ - minister’ *Sunday Tribune*, 5 November 2006, <http://www.sundaytribune.co.za/index.php?fArticleId=3521376>;

<sup>598</sup> Se-Anne Rall ‘Council vows to continue eradicating informal settlements’ *The Mercury* 30 October 2006 <http://www.themercury.co.za/index.php?fArticleId=3512014>

<sup>599</sup> Linda Masinga, *Meeting Housing Demands for 2010* [www.kznhousing.gov.za/Housing%20Summit%20Sept%202006/Presentations/L%20MASINGA.ppt](http://www.kznhousing.gov.za/Housing%20Summit%20Sept%202006/Presentations/L%20MASINGA.ppt)

Speaking this week at the second KwaZulu-Natal 2010 sports Indaba, provincial director-general Kwazi Mbanjwa, announced that more than R1,4-billion would be spent in eradicating slums in townships where soccer training camps would be held.<sup>600</sup>

The Province and the City was careful to present this as a boon to the shack dwellers living in the settlements slated for eradication, on the grounds that they would now receive housing delivery earlier than planned. For instance provincial government spokesperson Mandla Msomi said “the decision to remove slums was part of the government’s continuing service delivery programme”.<sup>601</sup> However given the lack of clarity about where the houses will be provided there is a clear risk that, in at least some instances, people will be forcibly removed to peripheral relocation sites. Moreover given that in every upgrade and relocation many people, sometimes as many as 50%, are illegally left homeless it appears inevitable that this 2010 Slum Eradication programme will result in some people being unlawfully left homeless.

Moreover the enormous construction projects being undertaken for the World Cup have resulted in a severe shortage of building materials, and in particular cement.<sup>602</sup> There has been widespread concern that the large construction projects required for the World Cup will drain skills, resources and energy away from building housing for the poor. A number of newspapers have already reported that concrete shortages consequent to 2010 construction are slowing down housing delivery and the Municipal Housing Department has said on a number of occasions that a “severe building materials shortage” is responsible for the slow down in the number of houses that they have been able to build over the last year.<sup>603</sup> It has also been reported that “developers are leaving housing and moving to the construction of hotels and stadiums in anticipation of the benefits from the boom that will come with the 2010 soccer World Cup.”<sup>604</sup>

There has also been concern that street traders are likely to have repression in the lead up to the tournament. The City was hailed as model for progressive street trader regulation but has been severely criticised since 2005. StreetNet attributed the return to repressive practices directly to the City’s attempts to create a ‘World Class City’ in advance of the 2010 World Cup<sup>605</sup> In late 2007 the *Daily News* offered a similar explanation after a conversation with the Mayor:

Mayor Obed Mlaba said removal of the informal traders was part of council’s revitalisation plan before 2010.

“It is happening everywhere. We have cleaned many areas in the city and also townships. This is a wonderful opportunity for us to clean up areas that have become unsavoury.”<sup>606</sup>

---

<sup>600</sup> Nomfundo Mcetywa ‘Hiding the shame of poverty for 2010’ *Sunday Tribune* 11 November 2007 <http://www.sundaytribune.co.za/index.php?fArticleId=4123269>

<sup>601</sup> Ibid.

<sup>602</sup> See, for instance, Ntokozo Mfusi ‘Cement price rockets as boom causes shortage’ *Mercury*, 15 December 2006 and ‘Concrete shortage threatens building process’, *Martin Creamer’s Engineering News*, 4 March 2008

<sup>603</sup> For instance see Couglan Pather cited in Niren Tolsi ‘What about the people?’ *Mail & Guardian*, 7 December 2007 and in Matthew Savides and Yusuf Moolla ‘Tackling the housing shortage’, *Mercury*, 11 April 2008 <http://www.themercury.co.za/index.php?fArticleId=4348025>

<sup>604</sup> Mzwandile Jacks ‘Low-cost housing gets promises aplenty but dismal delivery’, *Business Report* 10 September 2006 <http://www.busrep.co.za/index.php?fArticleId=3430967>

<sup>605</sup> See, for instance, Pat Horn, ‘From Best Practice to Pariah The Case of Durban South Africa’, *Street Net News*, No.6, September 2005 <http://www.streetnet.org.za/english/Durban06.htm>

<sup>606</sup> Bongani Mthembu ‘Evicted informal traders seek legal redress’ *Daily News* 8 October 2007 <http://www.dailynews.co.za/index.php?fArticleId=4070200>

Finally, there is also concern as to how the tournament will affect street children. In November 2007 when the preliminary draw for the tournament was held in Durban the *Daily News* reported that a social worker claimed that street children had been unlawfully taken to Westville prison.<sup>607</sup>

## Conclusion

It is clear that forced evictions are routine in Durban and that the City routinely engages in unlawful and, in strict legal terms, criminal behaviour with regard to its poorest residents. It also seems clear that the City does not engage with shack dwellers in a participatory and democratic manner and that credible *prima facie* evidence of claims of outright repression need to be seriously investigated. There are also widespread perceptions of corruption. The impact of the 2010 football World Cup on housing rights is not clear at this stage but there are some grounds for moderate concern.

The overall situation with regard to housing rights in Durban and the surrounding areas under the authority of the eThekweni Municipality is clearly very poor and speedy corrective action is urgently required.

---

<sup>607</sup> Sharlene Packree and Heinz de Boer 'Where are Durban's street children?' *Daily News* 22 November 2007 [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=15&art\\_id=vn20071122091820152C486964](http://www.iol.co.za/index.php?set_id=1&click_id=15&art_id=vn20071122091820152C486964)

## Conclusion

Since 2005 South Africa has had an extraordinary high rate of mass protest on housing issues. In May 2008, as the final edit of this report was being prepared, terrible xenophobic violence broke out in shack settlements in Johannesburg and spread around the country. Anxieties and anger about housing were commonly cited as a key cause of the frustration that boiled over into murderous mob violence. The issue of housing is not merely a question of satisfying a basic need. It is also about dignity and social inclusion at the level of both identity and spatial location. It has become clear that the question of housing rights is not only a question for the poor – it is a question of urgent import for the whole of South African society. For citizenship to be substantive and for social cohesion to hold people will have to have access to adequate housing.

Towards the end of the first chapter of this report the basic outline of what would be required for a rights centred post-apartheid housing policy was outlined. It was argued, drawing on thinking about this question in South African civil society, that an adequate response to the injustices of the past would require a housing policy that is democratic in its development and implementation rather than authoritarian; that seeks to prioritise the worst off and specifically African women; that builds inclusive cities where the poor are as close as possible to opportunity and support as is possible; that recognises that shacks are a material expression of need and the struggle for social inclusion rather than a form of criminality and that responds with rights rather than security as a foremost concern.

South African law and jurisprudence have risen to the challenge posed by the need to transcend South Africa's apartheid past. Grace and justice have, indeed, been infused into the law. Grace and justice are also evident in the high water mark of post-apartheid housing policy – Breaking New Ground. However they are entirely absent from the Slums Act and from the slums eradication discourse that has replaced the rights centred values that infuse the law, jurisprudence and the best policy.

The Slums Eradication discourse presents the poor and their housing solutions as the problem instead of acknowledging poverty and inadequate housing as the problem. Increasingly this discourse presents the housing strategies of the poor as criminal and proposes a security rather than rights based response. It is patently anti-poor. There has been a tragic step away from grace and justice towards fear and coercion.

A pro-poor housing agenda would take the support of housing rights as its central commitment. For as long as shacks remained the best option for some people that form of housing would be supported with tenure security, services and full social inclusion. There would be no denial of the massive scale of the housing problem in South African cities. It would be faced up to resolutely and the people producing their own housing solutions would be supported in every way possible by the state. Of course the state would work as hard as it could to create a situation in which shacks were no longer the best housing option for millions of people but, in the interim, it would accept that they are and not seek to criminalise popular solutions to the housing crisis. After all, forcibly evicting someone from a shack can only make that person's life worse. It can only make society worse.

In Durban there is no doubt that the eThekweni Municipality is sincere about its desire to build as many houses as it can as quickly as it can. Its zeal to build houses does deserve to be commended. But zeal is not always sufficiently reflective. This may explain those problems with housing in the city that are clearly technical in origin and form. For instance it is clear that the city is not building at sufficient densities and that this is a key driver of unwelcome relocations to

peripheral areas. The City does appear to be aware of this and other similarly technical problems and may well resolve them. This enables some optimism.

However not all of the problems confronting housing in Durban are technical. The apparent reluctance to negotiate with shack dwellers' organisations in an open and democratic fashion<sup>608</sup>, the regular recourse to conspiracy theory to explain popular critique and the apparent tacit endorsement of unlawful and violent police repression of shack dwellers' organisations are political problems. A profound paradigm shift is required. There needs to be a full acceptance that shack dwellers also enjoy all the constitutionally protected rights to citizenship including an open and participatory relationship with the state and that that includes the right to disagree with planning experts. Dissent is not treason. It is a normal day to day reality of democratic life.

The routine recourse to evictions, evictions that are plainly unlawful in terms of South African and international law, is a matter of profound concern. It is simply inexcusable and must be condemned in the strongest possible terms. If there is any easy explanation for this return to apartheid practices it probably lies in the power that the security driven eradication agenda exerts over housing in South Africa. If the goal is to eradicate shacks rather than to secure housing rights then evictions, perversely, take on a certain logic. Similarly if the primary goal of housing policy is to eradicate shacks rather than to secure housing rights the denial of basic services to shack settlements also takes on a perverse logic. After all making shacks liveable is hardly likely to encourage eradication. But people are literally dying because the conditions in shack settlements are so appalling. The denial of services will not make people go elsewhere. It will simply make them live more precarious and difficult and alienated lives.

After much reflection and discussion COHRE decided to name this report *Business As Usual? Housing Rights and Slum Eradication in South Africa*. When forced removals of shack dwellers to the rural periphery of the city continues from apartheid into post-apartheid South Africa, when people are still left homeless in every relocation and upgrade as in apartheid South Africa, when shacks are closely monitored and then destroyed when expanded to make space for growing families, when shack dwellers' organisations confront violent repression, when the poor are excluded from a city enjoying a property boom and their survival strategies are compromised and even criminalised, is this not a case of business as usual?

It is our hope that this report can contribute to open, inclusive debate on the issues raised, which will hopefully result in a paradigm shift in the approach of the authorities in dealing with the task of delivering adequate housing for everyone living within the boundaries of eThekweni Municipality.

---

<sup>608</sup> Although it should be noted, again, that there does appear to have been significant progress on this score after the completion of this report.

## Recommendations

Based on the evidence and analysis in this report, COHRE offers the following recommendations towards an inclusive, practical and results-centred discussion on the housing challenges facing the Durban (eThekweni) Municipality.

### General recommendations

#### *Need for a general paradigm shift*

It is clear that across different levels of government there has, in recent years, been a rapid decline from a pro-poor and rights based view of shack dwellers and shack settlements towards an anti-poor security based view. This has sometimes been picked up or actively encouraged by some of the media, and by some academics, NGOs and rate payers' and property owners' associations.

- There needs to be a general paradigm shift back towards a pro-poor and rights based view in accord with Chapter 13 of the Housing Code (Upgrading of Informal Settlements).

#### *Need to identify and address the real problems*

- Seeing and presenting poverty and a lack of affordable, decent and well located housing as the fundamental problem rather than seeing the self developed housing solutions of the poor as the fundamental problem.
- Moving from aiming to 'clear' or 'eradicate' 'slums' to aiming to offer ongoing and carefully negotiated maximum housing support to poor communities.
- Taking much more seriously the experience of success and failure in securing housing rights in countries that are similar to South Africa in terms of rates of inequality and poverty such as Brazil, India, the Philippines etc.

#### *Moving towards a just city*

- Abandoning the idea that a 'world class' city is a city in which the poor are hidden by active spatial exclusion and, instead, positing the development of an inclusive, integrated and just city as the primary goal of policy interventions and implementation programmes..
- Not allowing preparations for the 2010 World Cup to encourage unjust housing practices.

#### *A new approach to relocations*

- Abandoning the idea that a one-off relocation from a shack to a formal house is the key or only housing intervention
- Housing interventions should instead be seen as an ongoing process of support for poor communities.

- The first step should be to immediately secure land tenure for as many shack dwellers as possible as quickly as possible.
- The second step should be to immediately provide basic services to all shack settlements.
- The third step should be to provide upgrades of shack settlements where they are currently located and to undertake this in partnership with the communities.
- Where this is genuinely impossible, relocations must be carefully negotiated and planned together with communities as an option of last resort. These relocations should be to sites as close as possible to the original settlements and should never result in people being moved far from where they are working and where their children are at school or in established communities being needlessly broken up.

#### *A more participatory approach*

Moving away from a solely expert driven understanding of what constitutes good policy and practice to an understanding that actively seeks to take the views of the people who will be affected by a policy or practice very seriously.

### **Recommendations to National Government**

#### *Need for a general paradigm shift*

- The ‘Slums Eradication’ discourse needs to be replaced with a Housing Rights discourse.
- Active and effective steps need to be taken to ensure that the Breaking New Ground Policy is implemented at national, provincial and municipal level.

#### *Need to identify and address the real problems*

- Securing tenure needs to become a top priority of the National Department of Housing
- The Housing Budget needs to be dramatically increased from the current rate of around 1.5%. The internationally recognised minimum proportion of a national budget that needs to be dedicated to housing in a developing country is 6% but the recommended proportion is 10%. (However it should be noted that the paradigm shift explained above is not dependent on increased funding.)
- National standards should be altered to ensure that all households with children should receive houses with a minimum of 3 rooms.
- There needs to be a serious commitment to providing basic services to all shack dwellers as a matter of urgency. All cities should be mandated to extend basic



services even to shack settlements, even those that might not be suitable for *in situ* upgrading.

#### *Law related concerns*

- South Africa has signed but should ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- South Africa should sign and ratify the International Convention on the Protection and Rights of Migrant Workers and Members of their Families (CMW).
- Active and effective steps need to be taken to ensure that the Breaking New Ground Policy is implemented at national, provincial and municipal level.
- The ‘Slums Eradication’ discourse needs to be replaced with a Housing Rights discourse.
- There should be an investigation and clampdown on regressive law, policy and implementation practice in the areas of land, housing and tenure rights. Specifically, provinces need to be prevented from passing ‘slums eradication’ legislation and instead be required to ensure that all their legislation fits with the constitution. In addition, all levels of government, in particular municipalities, need to be warned against use of inappropriate laws or methods in the implementation of their housing and development programmes.
- Securing tenure needs to become a top priority of the National Department of Housing.
- A tax on profits earned during property speculation and elite developments should be introduced in order to cross-subsidize housing for the poor.
- The South African Police Services and the National Prosecuting Authority need to be instructed to arrest and prosecute Municipal officials and private landowners who give orders for illegal evictions and the illegal repression of shack dwellers’ organisations (such as the unlawful banning of marches, violent police attacks on peaceful and lawful protest etc.)
- There needs to be an independent and credible investigation into allegations or torture and other violations of basic rights levelled by shack dwellers against the Sydenham Police station in Durban.
- There needs to be an independent and credible investigation into the activities of businessman Ricky Govender in Motala Heights.

#### *Moving towards just cities*

- There needs to be a publicly stated commitment to an ‘evictions free 2010 World Cup’.
- South Africa should be declared an ‘evictions free zone’.

*A more participatory approach*

- A National Housing Summit needs to be called at which all membership based democratic organisations of the poor can negotiate a better way forward with the Housing Department.

**Recommendations to Provincial Government**

*Need for a general paradigm shift*

- The slums eradication discourse needs to be replaced with a Housing Rights discourse.

*Law related concerns*

- The KwaZulu-Natal Slums Act, currently under appeal in the High Court, needs to be repealed or significantly modified.
- All Municipalities must be instructed to obey the law and to cease unlawful evictions.

*Moving towards just cities*

- There needs to be a publicly stated commitment to an evictions free 2010 World Cup.
- KwaZulu-Natal should be declared an 'evictions free zone.

**Recommendations to the Durban (eThekweni) Municipality**

*Need for a general paradigm shift*

- The slums eradication discourse needs to be replaced with a Housing Rights discourse.
- All aspects of the Breaking New Ground policy need to be seriously implemented.

*Identifying and addressing the real problems*

- The Municipality needs to plan for the natural growth of settlements. This must include allowing and planning for family growth and family reunification.
- Housing needs to be provided at much higher rates of density.

### *Law related concerns*

- The Municipality must abide by the law and must immediately cease to evict people without an order of the court.
- Immediate steps should be taken to offer support to people who have already suffered illegal evictions. This could include immediate access to well located land with tenure security, priority on housing lists and financial compensation.
- An independent ombudsperson needs to be employed and tasked with investigating claims of corruption with regard to housing lists and claims of improper and unlawful actions with regard to the implementation of housing policy.

### *Moving towards just cities*

- eThekweni should be declared an evictions free zone.
- There should be a public commitment to ensure that there will be no World Cup related evictions.

### *A new approach to relocations*

- Life saving basic services (adequate water, sanitation and electricity) need to be immediately provided to all shack settlements.
- Subsidised transport needs to be urgently provided for people who have already been relocated to peripheral relocation sites.
- In the future no one should be considered to have consented to a relocation if they have not signed a statement giving such consent. Furthermore, given that in some other cities people have claimed that they have been forced to sign such statements under duress, including under the threat of being denied their social grants, shack dwellers organisations should be able to invite civil society or legal representatives of their choosing to be present during all negotiations and when documents are signed.
- In the future all relocation and evictions must be publicly announced in good time, at least 3 months in advance. Senior municipal officials, independent civil society observers, shack dwellers' legal representatives and the media must be invited to present at all relocations and evictions.

### *A more participatory approach*

- The Municipality needs to become more transparent and to put all of its plans and policies in the public domain including its housing lists, its plans for each settlement and the full details of all the undeveloped land that it owns.
- Where communities are represented by democratic and credible organisations the Municipality needs to negotiate directly with these organisations rather than ward

councillors.

- All consultants on geotechnical and environmental issues should report to committees set up in partnership between the Municipality and local shack dwellers organisations. All reports should be made public and there should be a period in which there can be public comment before they are accepted. Shack dwellers' organisations should be able to request that their own experts assess all such reports.
- The Municipality should arrange a housing summit at which it, and all democratic and credible shack dwellers' organisations, can meet to negotiate a positive way forward.

## **Recommendations to Civil Society**

### *Increased collaboration in pursuit of common goals*

- There needs to be stronger collaboration between human rights and basic needs/housing-oriented civil society groupings in order to support the development of a common agenda on housing rights for shack dwellers

### *Campaigns*

- There needs to be strong support for poor people, community organisations and social movements to access committed top level legal support on a sustained basis needs to be radically stepped up.
- A clear and public stand needs to be taken against both unlawful evictions and the unlawful and often violent repression of popular organisations contesting evictions.
- Education campaigns need to be undertaken to make society in general (including police officers, journalists, government officials, shack dwellers etc) fully aware of the legal protection for unlawful occupiers.

### *Learning from other contexts*

- Links need to be forged with civil society organisations concerned with housing rights in countries like Brazil, India, the Philippines, etc.

### *Development of constructive alternatives*

- It is imperative for civil society organisations to complement critique and resistance with participation in the development of viable, creative alternatives.

## Bibliography

### 1. Interviews and Focus Groups

Multiple anonymous interviews, 2007

Door to door interviews, Wellbedacht, 7 August 2007 and 9 October 2007

Door to door interviews, Parkgate, 13 September 2008

A. Aiello, Housing sector consultant and advisor to eThekweni Municipality, 30 July 2007

M. Byerly, eThekweni Manager Housing 14 August 2007

M. Chetty, Legal Resources Centre, Durban, 13 September 2007

B. Gwebu, Shack Dwellers International, 11 October 2007

P. Magebula, Homeless People's Federation, 27 September 2007

L. Mbonambi, INK ABM eThekweni, 22 August 2007

A. Mhlakwane, Siyathuthuka Settlement, 18 September 2007 and 13 October 2007

M. Misselhorn, Project Preparation Trust, 11 September 2007

D. Ntseng, Church Land Programme, 11 October 2007

C. Pather, eThekweni Head Housing, 14 August 2007

T. Qumbela, , South African Shack and Rural Dwellers' Association, 17 September 2007

F. Seedat, eThekweni Manager Housing, 14 August 2007

S. Skweyiya, DMM Safety and Health, 22 August 2007 (telephonic)

J. Subban, Head GIPO, 31 August 2007

S. Zikode, Abahlali baseMjondolo, 27 January 2008

Former Residents of the Juba Place Settlement now living in the Pema Ridge Community Hall,  
18 March 2007

Residents of Arnett Drive Settlement, 4 August 2007

Residents of Foreman Road Settlement, September 2007

Residents of Jadu Place Settlement, 2 May 2008

Residents of Joe Slovo, 12 September 2007

Residents of Kennedy Road Settlement, n.d.

Residents of Motala Heights, 4 August 2007

Residents of Shannon Drive, 4 August 2007

### 2. Court Cases

*Bekker and Another v. Jika* (2003)

*Doctors for Life International v. The Speakers of the National Assembly and Others* (2006)

*Fose v. Minister of Safety and Security* (1997)

*Fredericks and Another v. Stellenbosch Divisional Council* (1977)

*Municipality v. Sunridge Estate and Development Corporation (Pty) Ltd* (1997)

*Ngcobo and the Motala Farm Development Committee v. the eThekweni Municipality* (2006)

*Port Elizabeth Municipality v. People's Dialogue on Land and Shelter and Others* (2000)

*President of RSA and Another v. Modderklip Boerdery* (2005)

*The City of Cape Town v. Neville Rudolf and Others* (2003)

*The City of Johannesburg v. The Unlawful Occupiers of Mandelaville Informal Settlement* (n.d.)

*Transnet t/a Spoornet v. Informal Settlers of Good Hope and Others* (2001)

*Tswelopele Non-Profit Organisation v. City of Tshwane Metropolitan Municipality* (2007)

### 3. Websites

<http://www.abahlali.org>  
<http://www.achpr.org>  
<http://www.afesis.org.za>  
<http://www.anc.org.za>  
<http://www.buanews.gov.za>  
<http://www.buanews.gov.za>  
<http://www.capegateway.gov.za>  
<http://www.cohre.org>  
<http://www.eprop.co.za>  
<http://www.ethekwini.gov.za>  
<http://www.fxj.org.za>  
<http://www.housing.gov.za/>  
<http://www.ieasa.co.za/>  
<http://www.kznhousing.gov.za/>  
<http://www.labournet.net>  
<http://www.law.wits.ac.za/cals>  
<http://www.lrc.org.za>  
<http://www.mst.info>  
<http://www.sacities.co.za>  
<http://www.sahistory.org.za>  
<http://www.sangoco.org.za>  
<http://www.sdinet.org>  
<http://www.socialwatch.org>  
<http://www.southafrica.info>  
<http://www.unhabitat.org>  
<http://www.urbanlandmark.org.za>  
<http://www.web.wits.ac.za>

### 4. Newspapers and Periodicals

*Business Day*  
*Daily News*  
*Independent on Saturday*  
*Mail & Guardian*  
*Martin Creamer's Engineering News*  
*Metro Beat*  
*Metro Ezasegagasin*  
*Pambazuka News*  
*Pretoria News*  
*Street Net News*  
*Sunday Tribune*  
*The Citizen*  
*The Mercury*  
*The Sowetan*  
*The Witness*

## 5. Unpublished Papers

- Huchzermeyer, Marie (2006), 'The Struggle for in situ upgrading of informal settlements - Case Studies from Gauteng', paper given at Southern African Housing Foundation Conference and Exhibition, Cape Sun, 9-11 October 2006.
- Huff, Alyssa (2007), 'Itemba liyaphilisa: Redefining development through the Joe Slovo anti-eviction struggle'.
- Mbali, Mandisa (2002), "'A Bit of soap and water and some Jik": Historical and feminist critiques of an exclusively individualising understanding of cholera prevention in discourse around neo-liberal water policy', paper given at Municipal Services Project Conference, May 2002.
- Mike, Clara (2008), 'More than Service Delivery: The struggle for electrification in shack settlements in Durban'.
- Smit, Mark (2005), 'The Impact of the transition from informal housing to formalized housing in low-income housing projects in South Africa', paper given at Nordic Africa Institute, Conference on the Formal and Informal City: What Happens at the Interface?, Copenhagen, 15-18 June.
- Smit, Warren (2000), 'The Impact of the transition from informal housing to formalized housing in low-income housing projects in South Africa', paper given at Nordic Africa Institute Conference on the Formal and Informal City – What Happens at the Interface?, Copenhagen, 15-18 June

## 6. Published Books and Articles

- Abugre, Charles (1994), 'NGOs, Institutions and Sustainable Development in South Africa', in Ken Cole (ed.), *Sustainable Development for a Democratic South Africa* (London: Earthscan).
- African National Congress (1993), *Southern Natal Statement on the Housing Crisis* (Durban: African National Congress).
- Angotti, Tom (2006), 'Apocalyptic anti-urbanism: Mike Davis and his planet of slums', *International Journal of Urban and Regional Research*, 30 (4).
- Atkins, Keletso (1993), *The Moon is Dead: Give Us Our Money! The Cultural Origins of an African Work Ethic* (Portsmouth: Heinemann).
- Badsha, Omar (1985), *Imijondolo* (Durban: Afrapix).
- Ballard, Richard (2004), 'Middle Class Neighbourhoods or 'African Kraals'? The Impact of Informal Settlements and Vagrants on Post-Apartheid White Identity', *Urban Forum*, 15 (4).
- (2005), 'Bunkers for the Psyche: How Gated Communities Have Allowed the Privatisation of Apartheid in Democratic South Africa', *Dark Roast Occasional Paper Series*, 2 (25).
- Beall, Jo (1990), 'Women under indentured labour in colonial Natal, 1860-1911', in Cheryl Walker (ed.), *Women and Gender in Southern Africa to 1945* (Cape Town: David Phillip).
- Bonner, P.L. (1990), 'Desirable or Undesirable Basotho Women? Liquour, prostitution and the migration of Basotho women to the Rand, 1920-1945', in Cheryl Walker (ed.), *Women and Gender in Southern Africa to 1945* (Cape Town: David Phillip).
- Bradford, Helen (1987), *A Taste of Freedom: The ICU in Rural South Africa 1924-1930* (Johannesburg: Raven Press).
- Bundy, Colin (1988), *The Rise and Fall of the South African Peasantry* (Cape Town: David Phillip).
- Burrows, H.L. (1952), *Durban Housing Survey 1952* (Durban: University of Natal Press).
- Castells, Manuel (1983), *The City and the Grassroots* (Berkeley: University of California Press).
- (2006), 'Changer la Ville: A Rejoinder', *International Journal of Urban and Regional Research*, 30 (1).
- Chadwick, Edwin (1842), *The Sanitary Condition of the Labouring Population*.

- Charlton, Sarah (2003), 'The Integrated Delivery of Housing: A Local Government Perspective from Durban', in Phillip Harrison, Marie Huchezermeyer, and Mzwanele Mayekiso (eds.), *Confronting Fragmentation: Housing and Urban Development in a Democratizing Society* (Cape Town: UCT Press).
- Charlton, Sarah and Kihato, Caroline (2006), 'Reach the Poor: An analysis of the evolution of South Africa's housing programme', in U. Pillay (ed.), *Democracy and Delivery: Urban Policy in South Africa* (Cape Town: UCT Press).
- Committee on Economic, Social and Cultural Rights (1990), *General Comment No. 3 on the Nature of States Parties Obligations: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*.
- (1991), *General Comment No. 4 on Right to Adequate Housing*.
- (1997), *General Comment No. 7 on Right to Adequate Housing: Forced Evictions*.
- COSATU (2003), *Submission on the Draft Prevention of Illegal Eviction from Unlawful Occupation of Land Amendment Bill*.
- Cross, Catherine (1994), 'Shack Tenure in Durban', in Doug Hinson and Jeff McCarthy (eds.), *Here to Stay: Informal Settlements in KwaZulu-Natal* (Durban: Indicator Press).
- Davis, Mike (2006), *Planet of Slums* (London: Verso).
- Desmond, Cosmos (1970), *The Discarded People: An Account of African resettlement in South Africa* (Johannesburg: The Christian Institute of South Africa).
- Edwards, Iain (1996), 'Cato Manor, June 1959', in Paul Maylam and Iain Edwards (eds.), *The People's City: African Life in Twentieth Century Durban* (Pietermaritzburg: University of Natal Press).
- Falconer, Colin (2006), 'Why did the Banlieus Burn?' *Radical Philosophy*, 136.
- Fernades, Edésio (2007), 'Constructing the Right to the City in Brazil', *Social Legal Studies*, 16.
- Freund, Bill (1995), *Insiders and Outsiders: The Indian Working Class in Durban* (Pietermaritzburg: University of Natal Press).
- (2007), *The African City* (Cambridge: Cambridge University Press).
- Gardner, David (2003), 'Getting South Africans Under Shelter: an Overview of the South African Housing Sector', *Housing Finance Resource Programme*.
- Gibson, Nigel (2007), 'Introduction: A New Politics of the Poor Emerges from South Africa's Shantytowns', *Journal of Asian and African Studies*, 43.
- Godehart, Susanna (2006), 'The Transformation of Townships in South Africa: The Case of kwaMashu Durban', *Spring Research Series*, (49).
- Gordon, Lewis (2006), *Disciplinary Decadence* (Boulder: Paradigm Press).
- Guy, Jeff (1994), *The Destruction of the Zulu Kingdom: The Civil War in Zululand, 1879-1884* (Pietermaritzburg: University of Natal Press).
- (2005), *The Maphumulo Uprising: War, Law and Ritual in the Zulu Rebellion* (Pietermaritzburg: University of KwaZulu Natal Press).
- Hallward, Peter (2007), *Damming the Flood* (London: Verso).
- Hemson, Dave (1977), 'Dock Workers, Labour Circulation and Class Struggles in Durban, 1940-1959', *Journal of Southern African Studies*.
- Hoal, W.G., et al. (1936), 'Review of Legislation', *Journal of Comparative Legislation and International Law*, 18 (2).
- Huchezermeyer, Marie (2004a), 'From 'contravention of laws' to 'lack of rights': redefining the problem of informal settlements in South Africa', *Habitat International*, 28, 333-47.
- (2004b), *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (Trenton, N.J.: Africa World Press).
- (2006), *Comment on KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Bill, 2006*.
- Huchezermeyer, Marie and Karam, Aly (eds.) (2006), *Informal Settlements: A perpetual challenge?* (Cape Town: UCT Press).



- Hunter, Mark (2006), *Informal settlements as spaces of health inequality: The changing economic and spatial roots of the aids pandemic, from Apartheid to neoliberalism* (Centre for Civil Society Research Report; Durban).
- Institute for Industrial Education (1979), 'The Durban Strikes: South Africa 1973', in Robin Cohen, Peter Gutkind, and Phyllis Brazier (eds.), *Peasants and Proletarians: The Struggles of Third World Workers* (London: Hutchinson).
- Krikler, Jeremy (2005), *The Rand Revolt: The 1922 Insurrection and Racial Killing in South Africa* (Johannesburg: Jonathan Ball).
- la Hausse, Paul (1990), 'The Cows of Nongoloza: Youth, Crime and Amalaita Gangs in Durban, 1900-1936', *Journal of Southern African Studies*, 16 (1).
- (1996), 'Alcohol, the Ematsheni and Popular Culture in Durban, 1902-1936', in Paul Maylam and Iain Edwards (eds.), *The People's City: African Life in Twentieth Century Durban* (Pietermaritzburg: University of Natal Press).
- Lacey, Marian (1981), *Working for Boroko: The origins of a coercive labour system in South Africa* (Johannesburg: Ravan Press).
- Legassick, Martin (1975), 'South Africa: Forced Labour, Industrialisation and Racial Differentiation', in R. Harris (ed.), *The Political Economy of Africa* (New York: John Wiley).
- Liebenberg, Sandy (2002a), 'The courts and socio-economic rights: carving out a role', *ESR Review*, 3 (1).
- (2002b), 'South Africa's Evolving Jurisprudence on Socio-Economic Rights', *Law, Democracy and Development*, 6.
- Lopes de Souza, Marcelo (2006), 'Together with the state, despite the state, against the state: Social movements as 'critical urban planning' agents', *City*, 10 (3).
- Luckhardt, Ken and Wall, Brenda (1980), *Organize or Starve: The history of the South African Congress of Trade Unions* (London: Lawrence & Wishart).
- Maarsdorp, Gavin and Humphries, A.S.B (1975), *From Shanty Town to Township* (Cape Town: Juta).
- Maharaj, Brij (2002), 'Segregation, De-Segregation and De-Racialisation', in Vishnu Padayachee and Bill Freund (eds.), *(D)urban Vortex* (Pietermaritzburg: University of Natal Press).
- Mare, Gerry (1980), *African Population Relocation in South Africa* (Johannesburg).
- Maylam, Paul (1983), "'Black Belt": Black Squatters in Durban 1935-1950', *Canadian Journal of Africa Studies*, 17 (3).
- McClellan, Kirsty and Zefferett, David (2007), *Opinion by Kirsty McClellan & Professor David Zefferett on the KwaZulu-Natal Prevention and Re-emergence of Slums Act, Act No. 6 of 2007, September 2007*.
- Merrifield, Andy (2002), *Dialectical Urbanism* (New York: Monthly Review Press).
- Modisane, Bloke (1986), *Blame Me on History* (Johannesburg: Paper Books).
- Moodie, T. Dunbar and Ndatshe, Vivienne (1994), *Going for Gold: Men, Mines and Migration* (Berkeley: University of California Press).
- Morris, Mike and Hinson, Doug (1994), 'Power Relations in Informal Settlements', in Doug Hinson and Jeff McCarthy (eds.), *Here to Stay: Informal Settlements in Kwa-Zulu Natal* (Durban: Indicator Press).
- Ndlovu, Nana (2007), 'A Comprehensive Plan for the Development of Sustainable Human Settlements', *Project Preparation Trust briefing note*.
- Neuwirth, Robert (2006), *Shadow Cities: A Billion Squatters: A New Urban World* (New York: Routledge).
- Patel, Raj (2006), *Stuffed and Starved* (London: Portobello).
- Perlman, Janice (1976), *The Myth of Marginality: Urban Poverty & Politics in Rio de Janeiro* (Berkeley: University of California Press).
- (1990), 'A dual strategy for deliberate social change in cities', *Cities*, 7 (1).
- Platsky, Lauren and Walker, Cheryl (1985), *The Surplus People: Forced Removals in South Africa* (Johannesburg: Raven Press).

- Posel, Deborah (2001), 'What's in a name? Racial categorisations under apartheid and their afterlife', *Transformation*, 47.
- Priven, Frances and Cloward, Richard (1979), *Poor People's Movements* (New York: Vintage).
- Robbins, Glen (2008), *An overview of eThekweni Municipality's perspectives on its approach to informal settlements* (Centre on Housing Rights and Eviction Research Note).
- Scott, Dianne (2003), "'Creative Destruction": Early Modernist Planning in the South Durban Industrial Zone, South Africa', *Journal of Southern African Studies*, 29 (1).
- Sithole, Pearl (2002), 'Defining the Meeting Zone: Institutional and Community Imperatives Regarding the Informal Sector in Durban', in Antoine Bouillon, et al. (eds.), *Governance, Urban Dynamics and Economic Development: A Comparative Analysis of the Metropolitan Areas of Durban, Abidjan and Marseilles* (Durban).
- Smit, Warren (2006), 'International Trends and Good Practices in Housing: Some Lessons for South African Housing Policy', *Development Action Group*.
- Smit, Warren (2003), *Review of International Trends and Best Practice in Housing* (Development Action Group).
- (2005), *International Trends and Good Practices in Housing: Some Lessons for South African Housing Policy* (Development Action Group).
- South African Cities Network (2004), *State of the Cities Report*.
- Steinbeck, John (2002), *Of Men and Their Making: The Selected Non-Fiction of John Steinbeck* (London: Penguin).
- Steward, Alexander (1956), *You Are Wrong Father Huddleston* (Cape Town: Culemborg Publishers).
- Swanson, Maynard (1977), 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909', *The Journal of African History*, 18 (3).
- Swilling, Mark (1991), 'Introduction', *Apartheid City in Transition* (Cape Town: Oxford University Press).
- Todes, Alison (2003), 'Housing, Integrated Urban Development and the Compact City Debate', in Phillip Harrison, Marie Huchezermeyer, and Mzwanele Mayekiso (eds.), *Confronting Fragmentation: Housing and Urban Development in a Democratising Society* (Cape Town: UCT Press).
- Torr, Louise (1996), 'Lamontville', in Paul Maylam and Iain Edwards (eds.), *The People's City: African Life in Twentieth Century Durban* (Pietermaritzburg: University of Natal Press).
- United Nations (2000), *United Nations Millenium Declaration: Resolution Adopted by the General Assembly* (New York: United Nations).
- Unterhalter, Elaine (1987), *Forced Removals: The Division, Segregation and Control of the People of South Africa* (London).
- van der Walt, A.J. (2005), *Constitutional Property Law*.
- van Onselen, Charles (2001), *New Babylon, New Ninevah* (Johannesburg: Jonathan Ball).
- Walker, Cheryl (1990), 'Gender and the Migrant Labour System', in Cheryl Walker (ed.), *Women and Gender in South Africa to 1945* (Cape Town David Phillip).
- Watson, R.G.T. (1960), *Tongaati, an African Experiment* (London: Hutchinson).
- Wiese, Andrew (2004), *A Place of Their Own: African-American Suburbanization in the Twentieth Century* (Chicago).
- Wohl, Anthony (1983), *Endangered Lives: Public Health in Victorian Britain* (Boston: Harvard University Press).
- Wolpe, Harold (1972), 'Capitalism and Cheap Labour-Power in South Africa: From Segregation to Apartheid', *Economy and Society*, 1.