



## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

Response to the call for Contribution to the Mandate of the Special Rapporteur on Adequate Housing: Designing and Implementing Effective Human Rights-Based Strategies

*November, 2017*

---

### **1. INTRODUCTION**

The South African Human Rights Commission (Commission) is an independent institution established by sections 181(1) (b) and 184 of the Constitution of the Republic of South Africa, 1996 (Constitution), to promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic. The SAHRC has additional powers and functions in line with its enabling legislation<sup>1</sup>, and is a recognised 'A' status national human rights institution.

### **2. BACKGROUND**

South Africa has a constitutionally entrenched the right to housing.<sup>2</sup> Section 26 of the Constitution provides that everyone has the right to have access to housing and that the State is obliged to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.<sup>3</sup> In 2012, South Africa adopted the National

---

<sup>1</sup> South African Human Rights Commission Act 40 of 2013.

<sup>2</sup> Section 26 of the Constitution of the Republic of South Africa, 1996.

<sup>3</sup> Section 26(1) and (2) of the Constitution of the Republic of South Africa, 1996.

Development Plan 2030 (NDP), which is a strategic blue print envisaged to eliminate poverty and reduce inequality by 2030.<sup>4</sup>

South Africa's active participation and contribution to regional and international actions are indicative of concerns around access to housing in the country. In January 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and tabled its initial country report before the Committee on Economic, Social and Cultural Rights (CESCR).<sup>5</sup>

South Africa also played a key role which culminated in the adoption of the Sustainable Development Goals (SDGs) by the United Nations General Assembly in September 2015. The South African government through the Department of Human Settlements (DHS) was instrumental in the process, which led to the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), hosted in Quito, Ecuador from 17 to 20 October 2016. During the conference, the New Urban Agenda, which set out global standards of achievement in sustainable urban development was adopted. South Africa hosted a Thematic Meeting on Informal Settlements, which adopted the Pretoria Declaration which formed an official input to Habitat III. South Africa also developed a national country report to Habitat III, which indicated successes and challenges experienced by South Africa in realising the constitutional right to housing.<sup>6</sup>

### **3. GENERAL COMMENTARY**

The State has enacted a number of laws and policies to ensure the realisation of the right to adequate housing in South Africa. This includes, amongst others, the Housing Act, 107 of 1997, which sets out principles for housing development and the division of responsibility among different spheres of government. It makes a commitment to ensure the progressive realisation of adequate housing and commits local government to take reasonable steps towards this goal. It also obligates all spheres of government to prioritise to the needs of the poor in relation to housing development and to consult meaningfully with communities affected by housing development. The State is currently engaged in a process of developing

---

<sup>4</sup> A copy of the National Development Plan 2030. Our Future-make it work is available at: <http://www.poa.gov.za/news/Documents/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf>

<sup>5</sup> The country report is available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en)

<sup>6</sup> Habitat III National Report, available at [http://www.dhs.gov.za/sites/default/files/u16/HABITAT%20III%20SOUTH%20AFRICA%20%20NATIONAL%20REPORT\\_final.pdf](http://www.dhs.gov.za/sites/default/files/u16/HABITAT%20III%20SOUTH%20AFRICA%20%20NATIONAL%20REPORT_final.pdf)

comprehensive legislation, which will align with the broadened mandate of government from housing to human settlements, to ensure that housing is linked to other basic services required by communities.

### **3.1. Affordable Housing**

The State has developed a number of policies and housing assistance programmes to serve as vanguards and housing strategies. These include the Finance Linked Individual Subsidy Programme (FLISP), which was developed to enable first time home-ownership opportunities to individuals earning between R3 500 (US\$ 250) and R15 000 (US\$ 1000) per month. This is referred to as the ‘gap market’, comprised of those earning too little to qualify for a bank-sponsored home loan but too much to qualify for a government-subsidised house. However, the FLISP has not achieved its intended objective of being an instrument to bridge the affordability gap due to a number of challenges. For example, the State has not provided affordable homes or engaged with the private sector to provide homes specifically for this market. It is hoped that the Human Settlements Development Bank recently formed by the State, will assist to bridge the affordability gap and assist at least a portion of the 70% of South Africans that cannot currently afford to purchase a home due to deeply entrenched poverty,<sup>7</sup> inequality and unemployment<sup>8</sup> in the country.

### **3.2. Urbanisation**

Like many countries around the world, South Africa is beset by rapid urbanisation and migration, which continues to place significant pressure on the existing infrastructure in cities. This leads to urban sprawl and a rise in the number of people dwelling in informality,<sup>9</sup> as well as associated problems, such as, overcrowding and a lack of access to basic services. It is estimated that by the year 2030, about 71.3% of the South African population will live in urban areas, reaching nearly 80% by 2050. At a policy level the State has devised the concept of “mega projects” to respond to the challenges of urbanisation. This concept is geared towards building new cities. However, it has been argued that this approach will perpetuate spatial

---

<sup>7</sup> See the Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015, which notes that poverty levels are now at 55,5% of the population. Available at <http://www.statssa.gov.za/?p=10334>

<sup>8</sup> The official unemployment statistics (as of June 2017) put the official unemployment rate at 27.7%. This is the highest unemployment rate observed since September 2003 and is a far cry from the unemployment target of 14% by the year 2020 envisioned by the National Development Plan (NDP). Statistics SA, Quarterly Labour Force Survey, Quarter 1 2017 (1 June 2017). Available at <http://www.statssa.gov.za/publications/P0211/P02111stQuarter2017.pdf>

<sup>9</sup> See Statistics South Africa, ‘General Household Survey’, 2016 (May, 2016). Available at <http://www.statssa.gov.za/publications/P0318/P03182016.pdf>

displacement.<sup>10</sup> Furthermore, that the policy might be incongruent with the policy trajectory of the Department of Cooperative Governance and Traditional Affairs, which seems to be focusing on urban compaction, integration and densification by encouraging new housing on well-located land within cities and improving public transport connections between places of work and leisure.<sup>11</sup>

### **3.3. Integrated Planning and Service Delivery**

The development of housing projects are most successful when integration and a human rights-based principles are considered at the outset. While integration could comprise of several components, including spatial integration, (where different housing typologies are used), socio-economic integration must always be the end goal of housing provision, aimed at poverty and inequality alleviation, legacies of South Africa's apartheid past and apartheid based spatial planning. While 'sustainable livelihoods' is further expanded on below, it must be noted that a single department, whether national or local, cannot make huge advances in the lives of the poor and impoverished without interdepartmental cooperation and cooperation between different spheres of government. Furthermore, all departments must ensure that constitutional and rights-based principles such as participation and consultation; access to information, and transparency, are a continuous practice of service delivery and not merely an afterthought.

### **3.4. The Needs of the Vulnerable**

South Africa's constitution affords the right to housing to everyone. The Commission recommended that housing projects should consider the special needs of vulnerable groups such as people with disabilities and orphans and vulnerable children.<sup>12</sup> Although the State has taken steps to provide housing to vulnerable persons, particularly for persons with disabilities and the aged, a range of other vulnerable persons who require special needs housing struggle to access State assistance. In light of this policy *lacuna* the DHS developed the *Special Housing Needs Policy and Programme (SHNP)* in June 2015, which would provide capital funding for special need housing projects and ensure the ongoing training of staff and

---

<sup>10</sup> Ivan Turok 'What will housing megaprojects do to our cities?' Available at <https://www.dailymaverick.co.za/article/2015-11-19-op-ed-what-will-housing-megaprojects-do-to-our-cities/#.WdJXvYVOKAs>

<sup>11</sup> Ibid.

<sup>12</sup> SAHRC 6<sup>th</sup> Report on Economic and Social Rights. Available at <https://www.sahrc.org.za/index.php/sahrc-publications/section-184-3-reports>

maintenance of facilities. The Commission is currently in negotiations with the DHS to ensure that this policy is adopted in the near future.

### **3.5. Sustainable Development Goal 11 and New Urban Agenda**

As indicated above, in 2012 South Africa adopted the NDP as the socio-economic blue print of the country. The NDP has directed a number of actions be taken by the DHS in order to fulfil its mandate as expressed in section 26 of the Constitution. These include, *inter alia*, responding systematically to entrenched spatial patterns<sup>13</sup> across all geographic scales that exacerbate social inequality and economic inefficiency. Reviewing housing policies to better realise constitutional housing rights and ensuring that the delivery of housing is used to restructure towns and cities and strengthen the livelihood prospects of households. Thus, to that end the DHS is seized with crafting a legislation on human settlements in light of the paradigm shift from housing to human settlements.<sup>14</sup> Recently, South Africa held a Human Settlements Development Summit meant to critically assess the strides South Africa has made in the human settlements sector and map a trajectory towards the implementation of the New Urban Agenda and the Sustainable Development Goals.<sup>15</sup>

### **3.6. Independent Authorities**

As the designated NHRI, the SAHRC plays a monitoring role with regards to the progressive realisation of the right of access to adequate housing in South Africa. The DHS has recently created a Human Settlements Ombudsman to deal with issues of conflict between contractors, provinces and municipalities, cut our red tape and stem out corruption in the human settlements sector. The Department of Planning, Monitoring and Evaluation is responsible for ensuring the effective implementation and monitoring progress of the NDP, particularly outcome 8, which aims to create sustainable human settlements and improved quality of life

---

<sup>13</sup> The issue of addressing spatial injustice has been government's priority for a while. Since 1994, South Africa set itself on a path of 'breaking down apartheid geography through land reform, more compact cities, decent public transport and the development of industries and services that use local resources and/or meet local needs'. Efforts towards reversing apartheid spatial geography continue to be stifled by insufficient access to well-located land in the cities which has resulted in people living in situations of informalities in the periphery of economic nodes. To address this challenge the state has enacted the Spatial Planning and Land Use Management Act of 2013 (SPLUMA) to reverse legacy related housing patterns, and address inequalities access to housing.

<sup>14</sup> L N Sisulu "Budget Vote Speech of the Ministry of Human Settlements" Available at <http://www.dhs.gov.za/content/speeches>

<sup>15</sup> See <http://www.dhs.gov.za/content/2017-human-settlements-summit>

for households.<sup>16</sup> Another authority includes the National Home Builders Registration Council which is a body that regulates the home building industry.

#### 4. CONCLUSION

South Africa has made significant strides in realising the right to have access to adequate housing.<sup>17</sup> However, the country continues to grapple with a number of challenges such as spatial fragmentation with poor black communities still largely confined to the margins of areas characterised by poverty and underdevelopment.<sup>18</sup> Due to the rapid pace of urbanisation, informality remains a major concern in South Africa as about 20% of households continue to live in 2700 informal settlements. Through the exercise of its mandate, the SAHRC will continue advocating and monitoring for the realisation of the right of access to adequate housing.

The SAHRC is available for further consultation and wishes the Special Rapporteur well in the finalisation of the report.

\*\*\*END\*\*\*

---

<sup>16</sup> See [https://www.brandsouthafrica.com/wp\\_download\\_viewer.php?file=wp-content/uploads/brandsa/2015/01/MTSF\\_Outcome\\_08\\_Human\\_Settlements.pdf](https://www.brandsouthafrica.com/wp_download_viewer.php?file=wp-content/uploads/brandsa/2015/01/MTSF_Outcome_08_Human_Settlements.pdf)

<sup>17</sup> See South Africa's initial report on the ICESCR available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en) where it notes that the government has delivered a total of 4,48 million housing opportunities and subsidies from 1994 to end of March 2016. Over the past 22 years, 2,8 million completed houses, more than 216 000 rental, social and community residential units, and over 1 million serviced sites, were delivered, allowing approximately 20 million people access to accommodation and a fixed asset.

<sup>18</sup> South African Cities Network, "State of the Cities Report (2016) Available at <http://www.sacities.net/wp-content/uploads/2016/SOCR/SoCR16%20Main%20Report%20online.pdf>