

Housing as a Basic Human Right: A Reflection on South Africa

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Abstract

This paper reflects on human rights in the housing context of post-apartheid South Africa from a social development lens. The Constitution guarantees access to adequate housing as a basic human right, a prerequisite for the optimum development of individuals, families and communities. Without the other related socio-economic rights, the provision of access to housing is limited in its service delivery. We argue that housing rights are inseparable from the broader human rights discourse and social development endeavours underway in the country. While government has made much progress through the Reconstruction and Development Programme, the reality of informal settlements and backyard shacks continues to undermine the human rights prospects of the urban poor. Forced evictions undermine some poor citizens' human rights leading courts to play an active role in enforcing housing and human rights through establishing a jurisprudence that invariably advances a social development agenda. The authors argue that the post-1994 government needs to galvanise the citizenship of the urban poor through development-oriented housing delivery.

Keywords: housing; human rights; housing delivery; social development; South Africa



Introduction

The centrality of housing as a cornerstone of social and economic relations cannot be contested. In the context of South Africa's socio-historical injustices emanating from colonialism and apartheid, housing delivery has a potential to reconfigure social relations while also opening economic opportunities for the low-income urban poor (South African Human Rights Commission 2018). In essence, housing access is known to enhance the stability of families and communities (Cohen et al. 2004; Cohen and Philips 1997; Cohen and Pyle 2000; Hartman 1998; Sobantu 2017). Housing delivery cannot remain a neutral exercise – but a process that should be predicated on social justice and human rights as articulated in the Bill of Rights (RSA 1996). Hohmann (2013, 1) argues that the right to housing remains one of the most “under-studied and ill-defined” elements in the human rights discourse. As also posited by Huchzermeyer (2001, 38) and McLean (2006, 55), housing delivery has a multiplier effect on creating employment, generating wealth and contributing towards redistribution. This contributes hugely to the goals of the National Development Plan, that of fighting inequality and poverty (RSA 2011). The history of exclusion in the South African context makes housing inseparable and indivisible from the human rights discourse chiefly because of the high levels of poverty, inequality and unemployment (Statistics South Africa 2017; 2018). It is in this background that “all fundamental human rights [are] indivisible and interrelated” in the country (Murray and Rensburg n.d, 1). Since human rights are a pillar of social development, the paper also demonstrates how housing delivery serves as a catalyst for the realisation of both the social and economic facets of development.

The apartheid government's housing policy excluded the majority blacks, forcing many of them into peripheral informal settlements and backyard dwellings (Ntema 2011). To deal with the huge housing backlog, the post-apartheid government pledged to place the provision of affordable housing high on its developmental agenda obligated by the Constitution (Chenwi 2015; Dugard 2008). As such, housing delivery became an integral part of the post-apartheid projects of redistribution, healing and nation-building in the country. The Constitution's stance on housing is informed by the 1948 United Nations Declaration of Human Rights (UNDHR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) that emphasise a rights-based approach to housing delivery. Section 26(1) and (2) of the South African Constitution states that “everyone has a right to have access to adequate housing [and] the state must take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of this right” (RSA 1996). Despite this policy commitment, the country has a housing gap of 2.1 million while more than 7 million people have resorted to informal settlements (Statistics South Africa 2017).

Objectives of the Paper

Fundamental in this paper is the resonance between the perpetual struggle for housing and human rights. Noyoo and Sobantu (2017) argue that housing delivery hugely contributes towards social development; hence, it should always be viewed from the rights-based perspective in order to promote equality, social justice, human rights and dignity. The paper aims to reflect on the South African housing situation in the context of human rights and social development in the country. More importantly, the role played by the courts in promoting the poor's access to housing is discussed as it points to the need to have integrated services to beneficiaries.

The first section of the paper discusses the evolution of social development in South Africa and how housing delivery conjoins the social and economic facets of development. Next, the paper argues that in the context of high rates of poverty, inequality and unemployment which lead to low housing affordability, housing delivery is inherently a human rights issue. Thirdly, the Constitutional endorsement of the right to housing is lauded as a core developmental achievement towards pro-poor housing delivery. In addition, the paper also highlights the contradictions between the Constitutional pronouncements and the violation of the poor's human rights through evictions that continue to define the country's housing delivery landscape. Fourthly, the paper argues that, while the RDP programme facilitated housing delivery at scale, the process fell far short of advancing the human rights of the urban poor. Lastly, the important contribution that the courts are making in promoting the housing and human rights of the urban poor is discussed before the conclusion.

Social Development as a Developmental Approach

This paper adopts the social development approach to get a conceptual appraisal on the housing situation in the country and how some processes have impinged on the human rights of the citizens. As an approach to welfare, social development aims to enhance human well-being in a holistic manner, by conjoining the social and the economic facets of development (Midgley 1995; Noyoo 2014; 2015; Patel 2005). Responding to distorted development, the United Nations (UN) introduced social development as the most suitable social welfare approach posited to improve the social and economic circumstances of the poor, especially in post-colonial Africa (Noyoo 2014; 2015). Midgley (1995, 250) defines social development as "a process of planned social change designed to promote the welfare of the population as a whole in conjunction with a dynamic process of economic development". Globally, the approach advocates that economic gains have to lead to tangible improvements in people's lives in terms of access to housing, healthcare, education, sanitation and clean water to mention a few (Midgley 1995).

The post-apartheid government has made strides in promoting social development, having started with promulgating the Reconstruction and Development Programme (RDP), which is aimed at promoting economic growth and eradicating poverty,

exclusion and inequality (Noyoo 2005; Patel 1991; 2005). The 1997 White Paper for Social Welfare serves as a blueprint for social development in South Africa, underlining a pro-poor focus on development as key to sustainable growth (RSA 1994a). According to Patel (2005, 96), this approach replaced the remedial model where people's challenges were assessed and interventions given based on the individuals' dysfunction. In the social development paradigm, assessments and interventions are designed with consideration to the holistic environment of the communities, as opposed to individualisation common in the remedial approach practised in the apartheid era. To ensure efficiency and effective deployment of resources, welfare services in a developmental model are rendered in a pluralist fashion, involving partnerships from government, non-profits and the business sector (Patel 2005, 96). In line with its Constitutional prerogative, government has been at the forefront of providing housing, education, water, sanitation, and electricity, to mention a few (RSA 1996). These services are essential social investments that are key in eliminating inequality and improving access for all citizens to enjoy their lives (Lee 2017). More importantly, housing as a basic human need, contributes hugely to the optimum functioning of individuals, families and communities (Lee 2017).

With specific reference to housing, the 1994 White Paper for the RDP did not only serve as a political manifesto for the ANC in 1994 (Noyoo 2014; 2015) but laid the basis for the developmental pro-poor housing delivery programme. In the same developmental path, the White Paper for Housing was promulgated, envisaged to create "viable, integrated settlements where households could access opportunities, infrastructure and services" (RSA 1994b). Overall, these policies are an endeavour to build credible institutions that will engender social and economic growth, redistribution, and foster human rights, equality and nation-building. In South Africa, housing has long been at the centre of the struggle for democratisation and socio-economic rights (Hohmann 2013; Huchzermeyer 2001). Thus, a rights-based strategy will go a long way towards promoting the urban poor's housing and human rights.

Housing Delivery and Human Rights in Context

In most progressive societies, the issues of housing delivery are taken seriously as a human rights activity, especially as they concern the poor. As a result of the sustained historical housing deficit of 1.5 million in 1994 (RSA 1994b) and 2.1 million in 2015 (Statistics South Africa 2017; Tomlinson 2015, 2) associated largely with the black population, the urban poor are becoming more impatient of waiting for their turn to be allocated housing (Oldfield and Greyling 2015). Progress in housing delivery has largely been given in quantitative terms and is largely silent on how it has enhanced children's access to education, healthcare and whether beneficiaries, especially women have been given space to participate in the planning, delivery and allocation processes. Tissington (2011) reports that, between 1995 and mid-2008, 2.6 million units had been completed while Tomlinson (2015, 1) estimates that government had handed over 2.5 million by the end of 2015. The National Housing Finance Corporation (NHFC)

gives a different estimate of 4.3 million houses and opportunities created between 1994 and 2015, which benefited more than 20 million people (NHFC 2017). The quantitative figures alone do not reflect how many of these units were of good quality and conveniently located, for example, Article 11 of the UNDHR specifies that access to housing should be planned in a manner that gives “everyone the right to a standard of living ... health ... food ... clothing, housing ... medical care ... security in the event of unemployment” (UN 1948). The strong association between housing and human rights is not coincidental but seeks to galvanise citizenship through linking people to economic opportunities and services.

For a country that is confronted by racial and social divisions (Patel 1992; 2015), poverty, unemployment and inequality (Statistics South Africa 2017), and gender-based and domestic violence (Abrahams et al. 2006; Woollett and Thomson 2016), meticulous housing delivery has the propensity to contribute towards social justice and building a truly non-racial society. The interface between abject poverty and the lack of housing in South Africa makes the subject of housing delivery an inherently human rights issue. Posing as a perpetual pain, poverty undermines human dignity and social development in post-apartheid South Africa (Ministry of Welfare and Population Development 1997). Between 2011 and 2015, poverty increased from 25.5 per cent to 27.7 per cent with the black population being the most affected (Statistics South Africa 2017). By the same account, the 2010 country report on the Millennium Development Goals established that South Africa qualified as a low-income country owing to the high levels of poverty for the majority (Barros and Gupta 2017). With the latest poverty rates of about 26.7 per cent (Statistics South Africa 2018), it is highly unlikely that many low-income South Africans will realise their dreams of owning their own houses. More than two decades since the advent of democracy, over 13.4 per cent of the population are still locked in informal settlements, without adequate water, sanitation, electricity and quality education (Noyoo and Sobantu 2017). In light of the foregoing dehumanising reality, Hohmann (2013, 1) asserts that government has failed to fully comprehend the nexus between human rights, housing and social development.

As enunciated, housing delivery enhances the accrual of other rights. Hohmann (2013) argues that humanity is expressed in a home then over to the neighbourhood. In the same vein, Hohmann (2013) stresses that housing undergirds all social relations in all societies. Olufemi and Reeves (2004) also emphasise that housing is more than a physical structure, but enhances stability and security for individuals, families and communities. Malpass (2000) indicates that housing gives an address, which, especially to an urban poor beneficiary, symbolises safety and security from the vagaries of the weather, enhances stability, self-worth, dignity and a sense of pride. Inadequate housing is normally associated with diseases, limited access to education for children and invariably a vicious cycle of deprivation and poverty. The impact that homelessness has on women and children is well-documented in literature by Fish (2003), Mulroy (1988) and Malaza, Todes and Williamson (2009). The lack of housing has “immediate and long-term consequences for a child’s social development and level of education

attainment” (Mulroy 1988, 19). The centrality of housing explains why virtually all service delivery protests in South Africa are organised around housing-related issues such as water, electricity, sanitation and the slow pace of housing delivery or complete lack of it in some cases (Msindo 2017).

From the foregoing discussions, it is clear that housing is intricately a human rights issue and that housing delivery needs to be a deliberate conscientious process. If the housing-related social and economic spillovers are to be realised, then a bottom-up pluralistic planning and implementation process is an imperative. Pluralism is a major post-1994 developmental pillar that is known to effectively target poverty and help speed up service delivery (Larner and Craig 2002; Patel 2015). Expediting housing delivery is a step towards dealing with the growing poverty, inequality and unemployment in the country (Huchzermeyer 2001; McLean 2006). It needs to be understood by both ordinary citizens, government and all stakeholders that the call for housing access is not in any way driven by the notions of entitlement – but a constitutional right to avert the homelessness, poverty and unemployment in South Africa, which bear psycho-emotional and physical pain to the urban poor.

Housing, a Constitutional Mandate

The Constitution is the supreme law in the country. Having come into effect in 1996, it was informed by the ICESCR and the UNDHR (Chenwi 2015; McLean 2006; Tissington 2011). In its emphasis on socio-economic rights and embracing a developmental approach to social welfare, it is acknowledged nationally (Noyoo 2017; Patel 2015) and internationally as being progressive and pro-poor (Lombard 2007). Section 26 of the Constitution (RSA 1996) has three key elements that relate to housing delivery.

The first most important element is the Constitution’s endorsement of housing as a right. Specifically, the Constitution contains a Bill of Rights that stresses the right to housing. Section 26(1) states that “Everyone has the right to have access to adequate housing”. The ICESCR, however, refers to the right to adequate housing while the Constitution talks of housing access. Housing rights academics including Huchzermeyer (2001, 305–6) have criticised this disconnection as the right to housing in the country is established in the RDP and also the Housing White Paper, which interprets adequate housing to mean “viable, socially and economically integrated communities”. Instead of contracting with its citizens to deliver access to housing, the government committed to rolling out 1 million houses in five years, supported by a specific amount of subsidy (Huchzermeyer 2001; RSA 1994b; 1997). To many, this disjuncture amounts to government reneging from its mandate of ensuring the right to adequate housing. Nonetheless, the Constitution is commended for asserting that housing is more than just a physical structure (Simone in Khan and Thring 2003; Noyoo and Sobantu 2017; Olufemi and Reeves 2004). For housing to be adequate, it has to be connected to services so that beneficiaries can have peaceful and comfortable lives (Paglione 2006).

The second element, the state, as explained earlier, is obliged through Section 26(2) to provide housing to the citizens of the country. Hence, civic organisations and communities protested against some eviction orders while some litigated against the state in a bid to defend the right to adequate housing, for example, in the Grootboom, Joe Slovo and the Olivia Road cases which will be discussed in detail later (Chenwi 2015; Huchzermeyer 2001; McLean 2006). Through Section 26, the state is tasked to develop legislation, and to set up financial and material resources to ensure adequate housing delivery. Charlton and Kihato (2006) and Huchzermeyer (2003) argue that Section 26(2) must be seen in the light of the entire Constitution as it also relates to other socio-economic rights specific to vulnerable groups. With the high incidents of abuse and violence against women and older persons in contemporary South Africa (Abrahams et al. 2006; Woollett and Thomson 2016), more measures are needed to protect human rights for these categories. Read and understood in line with Section 28(1)(c) and Section 35(2)(e), Section 26(2) also extends the right to housing in respect of children and detained persons as some of the vulnerable groups in the society.

The third element protects the rights of individuals from arbitrary evictions (Section 26(3)). The Constitution explains that “no one may be evicted from their home ... no legislation may permit arbitrary evictions”. As highlighted by both the UN and the Constitution, evictions may be carried out, only after a court order has been obtained and served, and if such a process will not result in homelessness and distress (Chenwi 2015; McLean 2006). The 1998 Prevention of Illegal Eviction and Unlawful Occupation of Land Act (RSA 1998) and the 1997 Housing Act (RSA 1997) help define the tenant-landlord relationship, and lay guidelines for resolving disputes between parties, all in an endeavour to ensure that evictees’ rights to sanitation, shelter and water are not infringed.

These pieces of legislation stress that poor people in informal settlements and backyard shacks are human beings too who need to be treated with dignity. Evictions are most likely to affect children and women as in the Grootboom case. After evictions, the victims are likely to be dislocated from their sources of livelihood and left in hazardous environments (Hohmann 2013; Huchzermeyer 2003). As housing is more than just a physical structure that embodies social and even spiritual relations, it is a violation of the poor’s rights if people are evicted without consulting them and considering their post-eviction circumstances. Jurisprudence in South Africa has raised much awareness and a level of consciousness regarding the rights of the poor to adequate housing and the related socio-economic rights. Before discussing the role of the courts, the next section is an attempt to amplify the connection between housing and human rights.

RDP Housing and Human Rights

Despite the RDP housing initiative, it is argued that the human rights prospects of the homeless and the informal settlements dwellers have not been adequately met in line with expectations (Rust, Tanya, and Napier 2009). Nonetheless, some progress has been made on housing delivery, albeit at a slow piecemeal pace with the process criticised by

many as lacking an integrated bottom-up agenda (Charlton and Kihato 2006; Huchzermeyer 2001; Noyoo and Sobantu 2017; Pithouse 2009). The progress reported by government is ambiguous as in most instances it includes housing opportunities and houses yet to be completed (Rust in Tissington 2011, 31) while it also omits the qualitative dimensions that are important markers of human rights and social development (Noyoo and Sobantu 2017).

In its endeavour to redress the housing shortage and socio-economic rights deficits for the poor citizens (Rust, Tanya, and Napier 2009), the government initiated the RDP programme to roll out subsidised housing to the largely black majority citizens. As already alluded to, this housing programme was informed by the Constitution and the RDP policy. Through the 1994 White Paper, the government promised to deliver “1 million houses in 5 years” (RSA 1994b, 22) – a target that was furthermore supported by an allocated financial subsidy budget. To the people on the housing list waiting for their turn, the RDP and housing delivery were symbolic of democratisation, human rights and social justice. To the informal settlements and slum dwellers, access to RDP housing entailed access to adequate housing, running water, electricity, safety, security and progress as a result of secure tenure, with connected services and amenities (Rust 2007; 2012). The RDP programmes were much welcome in the light of poverty and the historical housing and human rights deficits associated with largely black disadvantaged households.

There is an increasing scholarly focus on how the post-apartheid government missed the opportunity to foster citizenship by improving the lives of many urban poor households through housing delivery. While the RDP housing delivery was a relevant response for the many poor citizens who had been on the housing list for ages, Charlton and Kihato (2006), Chenwi (2015), Huchzermeyer (2001, 308), McLean (2006), Oldfield and Greyling (2015) and Tomlinson (2015), argue that the programme in many ways undermined the beneficiaries’ human rights and “shifted from faith”. Since 1994, government claims to have provided 4.7 million units (Tomlinson 2015, 1). However, between 1994 and 2015, the housing gap nonetheless rose from “1.5 million to 2.1 million units, while the number of informal settlements has gone up from 300 to 2 225, an increase of 650%” (Tomlinson 2015, 1). From a human rights perspective, homelessness poses a threat, “emotional costs and implications of parenting in such contexts” (Malaza, Todes, and Williamson 2009; Meth 2013, 541; Mulroy 1988, 155). The beneficiaries’ rights to privacy, hygiene, and confidentiality are infringed by the small size of the RDP units (Manomano and Tanga 2018; Manomano, Tanga, and Tanyi 2016, 114). The ICESCR stipulates that beneficiaries should live in dignity and peacefully (Paglione 2006, 122; UN 1966). Manomano, Tanga, and Tanyi (2016, 114) also indicates that “involvement of the beneficiaries is still problematic and not being considered in the implementation stage ... occurs as a passive involvement”, tampering with the beneficiaries’ rights to participation and democracy.

This paper adds onto existing literature that raises concerns and questions over the lack of a bottom-up approach in the RDP delivery processes. The question we ask is: “Were the poor’s voices integrated in the planning and the implementation of the programme?” As a consequence of unilateral decisions, most RDP settlements were located in the urban peripheries, away from their livelihood opportunities and disenfranchised from advanced services and amenities (Department of Human Settlements 2009; Huchzermeyer 2001). Instead of generating inclusive settlements, the RDP perpetuated apartheid spatial trends of ghettos for the poor and suburbia for the rich (Noyoo and Sobantu 2017). Furthermore, Khan and Thring (2003, 18) argue that the houses are “environmentally unsound; unsuited to the local climate; relatively expensive to maintain at a physically comfortable indoor climate” and are of poor quality. These criticisms inform the 2004 Breaking New Ground (BNG) policy, which seeks to build inclusive, integrated, viable and sustainable human settlements in direct response to the dissatisfaction of the RDP housing (Department of Housing 2004). There is, however, scepticism on whether the BNG will indeed be able to promote housing and the human rights of the poor to whom “waiting for the state-provided homes is normal ... and [an] intergenerational condition” (Oldfield and Greyling 2015, 1100). In light of the above-mentioned, the authors argue that housing delivery can only be developmental if processes are underpinned by a rights-based approach to social welfare.

Central to all the above-cited criticisms is the lack of participation of the beneficiaries in the programme. Participation, especially for the poor is an integral component of democracy in a constitutional democracy (Pahad 2009). In the light of the lack of a poor voice in the RDP programme, key questions still remain: Out of the 4.7 million houses provided: How many are habitable? How many have been abandoned by the beneficiaries? How many have been allocated to women, single parents, older parents and people with disabilities? How do the settlements have improved access to clinics, schools, water, and electricity? How many of these opportunities turn into habitable physical structures?

In the human rights discourse, it is germane to ponder on these questions chiefly because housing is a basic need espoused in the Constitution (RSA 1996). At the centre of many service delivery skirmishes and litigations to promote human rights for the poor is the yearning for housing delivery and its concomitant socio-economic benefits (RSA 2014; Turok 2014; Turok and Borel-Saladin 2016). South Africa is characterised by protests, with about 67 750 having been recorded between 1997 and 2013 (Alexander, Runciman and Maruping 2017, 9). Mukhuthu (2015) reported that, in 2015 alone, the Eastern Cape police responded to 2 045 service delivery protests which were organised mainly around housing, water and electricity. Furthermore, Troye (in Msindo 2017, 7) points out that through observation, housing protests are four times more than those organised around any other service. As most of these skirmishes and contestation end up in litigation, the courts have immensely contributed to enhancing the housing rights of the urban poor and the human rights and dignity of the marginalised.

Courts and Litigations to Promote Housing Rights

In the light of the above-mentioned challenges, it is evident that having a battery of progressive policies and a progressive Constitution does not always beget social justice (Noyoo 2005). The government's progress in tackling the housing challenge was far slower than expected for the low-income urban poor, some of whom are still awaiting their turn to get houses (Chenwi 2015; Oldfield and Greyling 2015). Having lost trust in the government's capacity and political will to deliver housing, the urban poor resorted to land invasions and occupying dilapidated inner city buildings, especially in Johannesburg (Irurah and Boshoff 2003; Mailovich 2017; Noyoo and Sobantu 2017). When government reacted to these invasions by evicting the occupiers, the latter launched counter litigations criticising the former of being more obsessed with the protection of property rights than delivering on its promise of housing. Litigations involving the Grootboom, Olivia Road and Joe Slovo cases are highly relevant for this paper as they amplify the nexus between the human rights and housing discourse and the role the courts have played in promoting these rights.

The Grootboom case is hailed as one of the litigation cases that has served to strengthen the right to housing and in promoting the human rights for the urban poor households in South Africa. Furthermore, it sets jurisprudence precedence in line with the international laws on housing and human rights (Hohmann 2013; McLean 2006). This case relates to 900 people (510 children and 390 adults) in Cape Town who in 2000 were evicted from their informal homes on private land that was earmarked for low-cost housing development (Joubert 2008). Later in 2000 they settled on the Walacedene sports field in the Oosternberg Municipality, Cape Town. Stranded on the open sports fields, the evictees on their own, led by an activist among them, Mrs Irene Grootboom, launched a court order to the Cape of Good Hope High Court forcing the government to provide them with shelter or housing (Hohmann 2013; Huchzermeyer 2011; Joubert 2008). In the May 2000 judgment, the court ruled that the state was obliged to provide reasonable policy to resolve the urgent shelter needs of the Grootboom community (Chenwi 2015; Hohmann 2013; Huchzermeyer 2011). The ruling has been hailed as the most progressive development in establishing jurisprudence not only on housing but also for the socio-economic rights realisation for the urban poor (Huchzermeyer 2003, 88). Following this ruling and the court order, the government came up with the Emergency Housing Programme set out in Chapter 12 of the 2009 National Housing Code (Department of Human Settlements 2009; Huchzermeyer 2003; McLean 2006).

According to the National Housing Code, the government is obliged to make alternative arrangements for communities that are faced with evictions or any crisis such as floods, fires and evictions (Department of Human Settlements 2009). There had not been any such arrangements before the Grootboom judgment. This case amplifies that poor people are human beings too, who deserve social justice and whose housing rights must not be undermined. The principle of "reasonableness approach, first conceived in the case" has been used in other socio-economic rights cases at the courts (Chenwi

2015, 86). The yardstick for “reasonableness” is Section 26(2) of the Constitution that mandates the state to take “reasonable measures” to ensure the realisation of the right to housing (RSA 1996). The court found the state to have been “unreasonable”, hence violating its own obligation because it failed to cater for the needs of children, older persons and women it planned to evict in the Grootboom case (Chenwi 2015). “Reasonableness approach” therefore requires that special considerations be made for children in respect of their “right to basic nutrition, shelter, basic health care services and social services” in line with Section 28 of the Constitution (RSA 1996). Directly because of this case, the government also adopted the National Upgrading Support Programme (NUSP) in 2009 to assist municipalities and provinces to upgrade informal settlements.

In the Olivia Road court case, the City of Johannesburg applied to the high court to evict over 400 occupants of two inner city dilapidated buildings; 51 Olivia Road in Berea and 197 Main Street (Chenwi and Tissington 2009). However, the court turned down this application citing that there had been no prior meaningful engagement with the would-be evictees and more importantly, argued that the affected individuals would be homeless as there were no alternative accommodation arrangements. The judgment established the principle of meaningful engagement, an important jurisprudence also in housing and human rights. As a precept, meaningful engagement persuades genuine discussion of the points of disagreements by parties without undermining the human rights of the complainants – who in this case happened to be poor citizens. To ensure the rights of the complainants prior to their movement to alternative accommodation, the Constitutional Court ordered the city to have interim measures: inter alia, to ensure the safety of the buildings, to ensure access to sanitation, potable water and toilets, and fire extinguishers – all at the city’s expense (Chenwi and Tissington 2009; Huchzermeyer 2003; McLean 2006). Furthermore, the city was ordered to find alternative accommodation in consultation with the occupiers.

Drawing from Article 11 of the UNDHR and the ICESCR, the Constitutional Court ordered that alternative accommodation for these occupiers would have to “consist of, at least, security against eviction, access to sanitation, access to potable water, and access to electricity for heating, lighting and cooking” (Chenwi 2015, 83; UN 1948; 1966). This judgment provides important lessons in the housing and human rights discourse. The first obvious lesson is the primacy of housing as a human right. The second lesson is the requirement to integrate the voice of the poor or intended beneficiaries in housing development. As such, it is the responsibility of the state to come up with a solution for permanent housing in the country. Democracy and participation are a pillar of social development.

A similar case involves the 4 000 residents of the Joe Slovo informal settlement community in Cape Town that in 2009 appealed to the Constitutional Court against a High Court order to evict them from their dwellings to pave the way for low-cost housing development. Basing its ruling on the principle of meaningful engagement, the

Constitutional Court differed with the High Court citing that the families had not been meaningfully engaged, that alternative accommodation with schools and amenities had to be found. In all the jurisprudence cited, the underpinning human rights argument is that the urban poor are human beings too who deserve to be treated with respect, equality and dignity in line with the Bill of Rights (Chenwi 2015; Hohmann 2013; McLean 2006). Thus the enforcement of a rights-based approach to housing delivery would best include a deliberate creation of space for the participation of beneficiaries in planning, implementation and evaluation. In essence is meaningful participation as ruled by the courts.

Conclusion

In ending this reflection, the authors reiterate the centrality of housing delivery in shaping societies' social and economic relations. The paper has shown how government is still faced with numerous challenges in meeting the social and economic goods for its poor citizens. As demonstrated by the courts in their judgments, principles such as reasonableness approach and meaningful engagement should be guiding pillars in processes of housing disputes with the poor. Hence, the authors' position that housing delivery cannot be separated from the human rights and social development discourses in South Africa. Exploring other developmental housing delivery processes that take into cognisance locational issues and other socio-economic rights is imperative to mitigate the plight of the urban poor. From a social development lens, this paper advocates for a rights-based approach to delivery with the urban poor at the forefront of people-centred processes.

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