

Rental Housing – the plight of South African tenants and the homeless: the need for state-civil society partnership

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“There is enough for everyone’s need but not enough for everyone’s greed”
Mahatma Gandhi

Context : Present dynamics faced by tenants

1. Tenants, Rental Housing Act – provincial Tribunals
2. Sale of government rental dwelling stock
3. Informal settlement / the homeless community
4. Judicial challenges by the poor

Social Housing

5. Social Housing Policy
 - challenges
 - Social housing institutions
 - People-centred approach

6 Conclusion

Overview

The ANC led government has injected tremendous efforts in reconstructing a country devastated by a legacy of colonialism and apartheid and expanded extraordinary energy to the building of a fledgling democracy. The state has increased its social grants to include the elderly, children, poor households, war veterans and people with disabilities by providing R3 billion per month. Developers and the government who built substandard houses between 1994 and 2002 will be required to repair them (Mokgola 2005). The level of the capital and project linked subsidies has increased and is extended to individuals as well. In acknowledging the many outstanding efforts this paper looks at the need for affordable rental housing stock, policy and regulatory guidelines for the actualisation of a secure tenure. It also examines the failure

through positive criticisms of the social housing policy and institutions to deliver on its mandate.

Introduction

South Africans pride in the fact that we are called by our neighbours in the global village to share our experiences and successes as a fledgling democracy. Undoubtedly, dispensing with myriad of laws and rewriting policies and legislation for an integrated society, providing basic services to millions of people in a decade, is no simple achievement. But, our pride must be tempered with humility and our acknowledgment must include the wealth of information and goodwill of other nations in helping us reconstruct our country. What is significant is that at the beginning, at the height of our triumph against the evils of colonialism and apartheid, we had a people-driven process. The Constitution bears testimony to this whereby those of us who were not physically present in the drafting of it, were able to have a say in what should be included, excluded or modified; what Jagwanth (2003) refers to as a deep involvement of civil society that influenced its content. It is this spirit of partnership that is fast becoming a mere catch phrase in the context of the ugly side of globalisation and neoliberal economic reforms.

Security of Tenure

1. Tenants / Rental Housing Act – Provincial Tribunals

Tenants occupy one third of the total housing stock (31%). The Rental



Mohamed (right) with Reggie, 80 year old pensioner whose rental increase at the welfare institution is above his monthly grant (April 2006)

Housing Act 50 of 1999 and the provincial Rental Housing Tribunals were intended, *inter alia*, to bring about equity and stability in the rental sector and to provide security of tenure. The colossal rent increases, evictions and absence of a rental subsidy are contributing to displacements of tenants. Evictees include sitting tenants of 40-50 years and pensioners who are the most vulnerable group.¹ Government subsidy for

welfare institutions were withdrawn or substantially reduced with pensioners forced to survive on their meagre pension of R850.50.



South Africa like Brazil as both middle-income countries has a vast poor and ethnically diverse

_____ners are the poorest according to study by Moller and Ferreira (2003)

populations (Moller and Ferreira 2003) with pensioners' rentals, in some instances, have increased up to 350%. Some provincial Rental Housing Tribunals have granted such increases, thus, creating a perception, that the Tribunals are neoliberal market-driven economic mechanism for landlords. This highlights pensioners' insecure tenure and their vulnerability in a hostile and unsympathetic environment with neither legislation nor policy of any help to alleviate their abject poverty status.

The growing community of foreign nationals and refugees have added to the demand for rental stock. These tenants are the second most vulnerable group who bear the brunt of violent illegal actions by unscrupulous landlords.

"Sweatshop" or "work house"² tenants are the third vulnerable category of tenants. Tenants in Durban are self-employed and work and live in their respective small cubicles for which they pay exorbitant rentals. Security of tenure is extremely weak because of the high-handed approach by landlords who even resort to aggressive and violent behaviour to evict a tenant who may have defaulted by one day with rental payment.



The income from their micro businesses (such as sewing, repairing sewing machines, providing indigenous herbal remedies, "therapy" and other skills) belongs to the tenants. In Gauteng, sweatshop tenants also work and live on the premises, but there are several instances where they work for a landlord who controls all income.

2. Sale of government residential dwellings

Municipalities and provincial governments are disposing off housing stock. The notable exception is the eThekweni Municipality (city of Durban) which has placed preconditions for itself prior to the sales. It has invested over R100m in upgrade projects (extensive renovations and repairs), arrear write-

² "Different groups and role-players have ascribed different names to buildings occupied by tenants for both residential and "commercial" (self-employment) purposes. Essentially, in Durban, these were buildings designed for commercial use, e.g. offices, warehouses and supermarkets, but in recent years have become vacant due to businesses closing down or relocating to suburbs. Durban local government authorities prefer the word "workhouses" to distinguish these from "sweatshops" in other provinces" Mohamed, S.I., Mncanywa, T.A. & Moodley, K. (2004).

offs and job creation for tenants within the upgrade projects. Ownership is transferred through the sectional titles scheme with occupants exercising their right to remain tenants.



Residents' representatives in the Sydenham Heights project, Durban

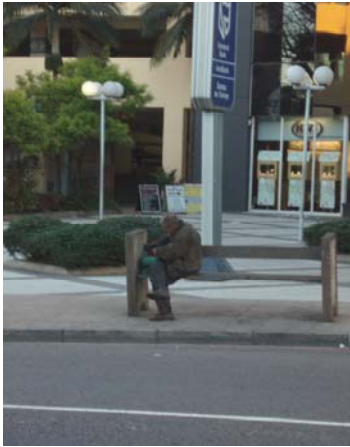
The OCR was involved in the social facilitation of the first two upgrade projects (2002-2005) and is presently engaged in project management and community sales facilitation to enable residents to make an informed decision and to educate and empower new owners in the effective administration of the bodies corporate.

Credit goes to the concerned citizen's forum and other residents who through protest actions refused to buy shoddy dwellings built by the apartheid government, with maintenance and repairs receiving little attention by the democratically elected government. They engaged the eThekweni municipality in a people-centred approach from inception to completion of the project. The residents' bitter rivalries had to be transformed by the OCR into social capital Mayer (2003) that resulted in skills training and short term job opportunities.



3. Homeless / Informal Settlement or shack dwellers
 - a) The homeless community

South African sidewalks reflect the multi-ethnic composition: up to 1997 there were almost no “whites”, today they comprise of about 10% of the



Musgrave, Durban

homeless community who generally occupy pavements / sidewalks³. What is required is a mental and physical health assessment to establish a profile of the homeless community for appropriate

intervention apart from their housing needs. There appears to be no government

intervention and the recent development of shelters by the private sector at R10.00 per

night is beyond the means of the homeless.



Overport, Durban

b) Informal settlement

There are conflicting figures about the housing deficit, which is placed at approximately 3 million. It is estimated that 1.4 million households (Matomela 2005) live in shacks in informal settlements. In spite of efforts by the government, in some instances, speedy delivery of formal housing, shack dwellers remain a great challenge. Through the subsidies and partnership with the private sector, housing institutions, communities and NGOs, almost 5, 776 300 poor and the poorest of the poor in urban and rural areas were given 1,155 300 houses by 2000 (Gilbert 2002) with secured tenure, running water, sanitation and electricity (Knight 2001). The number of people still in need of adequate housing according to Knight (2001) is 7.5 million.

The government has however not produced any new rental housing stock, which is urgently needed for the urban migrants and the growing refugees and foreign nationals. It needs to tread cautiously and not become the New Zealand of Africa where the reforms of the 1990s allowed market forces to determine the rentals. New Zealand returned in 2000 to a modified income related rental structure because the market approach could not meet the needs of low-income earners (Murphy 2003).

³ OCR is to undertake a survey of the inner city homeless in 2005/ 2006. Last survey was done in 1997 (Mohamed, S. I. (1997). Durban's Homeless Community Survey. Durban: Organisation of Civic Right. February 1997)

The challenge by the poorest of the poor and the working class (large proportion of whom are self-employed) is what Pruijt (2003) would refer to as a political restructuring because of their economic needs and one of spatial action (Gotham 2003). The poor households make up one third of South Africans and are locked into the circumstances of poverty, the deputy president of South Africa Phumzile Mlambo-Ngcuka based on her response to a macro-social report (Daily News June 9, 200).

4. Judicial challenge by the poor

On the other extreme of the provincial Tribunals and the government's response, the high courts and the constitutional court have given expression to the constitutional rights of the poor. This has led to debates about the constitutional court's judgments and the constitution. The inner city judgment in March 2006⁴ against the Johannesburg municipality as part of its inner city regeneration programme brought an action against landlords of several buildings and to have their tenants evicted because of the state of disrepair, health and fire hazards. The judgment in favour of the tenants, marks another milestone in the courts giving expression to the Constitution.

This judgment takes cognisance of international declaration on rights' issues: the United Nations Housing Rights Programme, Report No. 1, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights. Numerous references are made to the State's obligation to ensure access to affordable and acceptable housing. In the discussion about the culture of *ubuntu*, justice Jajbhay remarks poignantly that "in the establishment of our constitutional values we must not allow urbanisation and the accumulation of wealth and material possessions to rob us of our warmth, hospitality and genuine interests in each other as human beings. Ubuntu is a culture which places some emphasis on the commonality and on the interdependence of the members of the community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community, that such a person may be apart of. In South Africa, ubuntu must become a notion with particular resonance in the building of our constitutional democracy" (2006: 35-36)

⁴ City of Johannesburg v Properties (Pty) Ltd and others. Judgment March 2006

The Grootboom case (2000)⁵ is one of the most significant judgments for the poor dealing with the protection of socio-economic rights. Sunstein (2001) states that “the first time in the history of the world, a constitutional court has initiated a process that might well succeed in the endeavor of ensuring that protection without placing courts in an unacceptable managerial role. This point has large implications for how we think about citizenship, democracy, and minimal social and economic needs” (p 2). He considers the South African constitution as a transformative constitution that provides a leading example.

The constitutional court regarding the plight of Irene Grootboom, the main plaintiff with 899 others (510 of whom were children) went beyond holding the government responsible for a long-term programme to provide shelter for the poor. The government was also under obligation to have a short-term plan to house the poor. There is also the Constitutional case where the right to housing is clearly affirmed. This is the case of Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217. The judges also emphasised the importance of a mediated settlement and the need for a municipality to act even headedly to both owners and occupiers.

It is against this brief background we now turn to the social housing policy.

5. Social Housing Policy

The draft social housing policy is a significant shift in recognising rental as a necessary viable tenure option. It recognises a number of reasons people rent rather than own. It widens the housing market segment that was peaked at R3500.00 with rental not exceeding 33.3% of the income and an escalation linked to inflation. Overall, it envisages ethnic and mixed income integration. Individuals and not only families will qualify for subsidy and in a collective ownership structure. eThekweni Municipality is setting up a social housing unit that would become operation by 2009.

The following are some of the issues that arise from the proposed policy: -

- * Tenants will be required to pay a deposit equivalent to three month's rental.
- * Social housing institutions (SHIs) and not the government will drive the delivery process.

⁵ Government of the Republic of South Africa v. Grootboom and others, 2001 (1) SA 46

- * While the draft policy identifies the shortcomings of the SHIs and provides measures to overcome these, the people-centred approach may still not be achieved.
- * Rephrasing terminology and calling it housing for low income earners instead of low income housing, will not prevent problems as long as private sector developers are the main agents of housing delivery.
- * Production and profiteering levels will continue to be placed above the quality of housing because the main creditors would be banks, businesses and other financiers of low cost housing.

Will the new policy then break the monopoly so that there is genuine power sharing to prevent the marginalisation of grassroots structures and the tokenism (Miraftab, 2003) of the people-centred approach? Hutchzermeyer (2003) criticises the top-downward approach that results in the project / product linked subsidy, which is developer-driven rather than people centred because of the liberal policy influenced by the private financial sector.

The community must be involved to guarantee success to the state's social housing policy and the instruments of check and balances. There is no stimulation of community development because community participation is minimised (Jenkins 1999) and the voices of protesters silenced, sometimes through brute force reminiscent of the apartheid regime. At most times, as Jenkins cautions, the drive for rapid delivery represses community participation and results in unaffordable and unacceptable dwellings.

6. Conclusion / Way Forward

Most activists have become politicians but few, if any, are in touch with grassroots dynamics. They are not critical readers, researchers and most certainly not part of the debates for changing the plight of the poor. Too much time is invested to maintain a new standard of living and are divested of the living standards of the people whose cause they once championed. No housing policy, no reform will succeed unless other social issues are addressed adequately, such as the high unemployment rate, crime, poverty, land distribution and income inequality

There is an urgent need to: -

6.1 Go beyond theory and policy

- 6.2 Engage the people so that solutions from inception to implementation is people-centred and not consultant-developer-money driven.
- 6.3 Examine African solutions and not rely completely on European and American models
- 6.4 Challenge the globalisation menace in producing a policy and legislation for the residential rental sector, so that there is economic equity through an all inclusive partnership engagement.

No matter how articulately and ingeniously the case for privatising social protection is argued by Douglas Besharov, Neil Gilbert, Le Grande (Lee, Hudson et al., 2005), we must debate market capitalism and globalisation that underpins our social policies. We must work hard to assert the rights of the poor over the greed of the rich for a better and just world order.

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