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‘Jumping the Queue’, Waiting Lists and other Myths:

Perceptions and Practice around Housing
Demand and Allocation in South Africa

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Community Law Centre (CLC),
University of the Western Cape

Socio-Economic Rights Institute of
South Africa (SERI)

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Abbreviations and Acronyms

ANC	African National Congress
BNG	Breaking New Ground
CLO	Community Liaison Officer
DA	Democratic Alliance
DHS	National Department of Human Settlements
GDLGH	Gauteng Department of Local Government and Housing
HDD	Housing Demand Database
HSS	Housing Subsidy System
IDP	Integrated Development Plan
IRDP	Integrated Residential Development Programme
MEC	provincial Minister of the Executive Council
NDoH	National Department of Housing (became DHS in 2009)
NHDD	National Housing Demand Database
NHNR	National Housing Needs Register
NHSDB	National Housing Subsidy Database
NHSS	National Housing Subsidy Scheme
PSC	Project Steering Committee
RDP	Reconstruction and Development Programme
SALGA	South African Local Government Association
SCOPA	Standing Committee on Public Accounts
UISP	Upgrading of Informal Settlements Programme
WCDHS	Western Cape Department of Human Settlements
WCHDD	Western Cape Housing Demand Database

Glossary of Terms

Allocation

Allocation in the context of this report refers to the entire process through which state-subsidised housing opportunities are distributed to eligible (nor non-eligible) individuals or households, including registration, project identification, beneficiary selection and subsidy application.¹ It is important to note that there are other types of housing or land allocation in South Africa, which operate in addition to state allocation for subsidised houses. These include *inter alia*: market allocation, self allocation, traditional authority allocation and community allocation.²

Allocation Committee

An Allocation Committee is described by the National Housing Allocation Strategy as a committee comprising municipal and provincial officials formed to make decisions about the allocation of houses in state-subsidised housing projects. The Allocation Committee must comprise at minimum two members from the Office of the City or the Municipal Manager as well as two members from the provincial department of housing. No political office-bearers are allowed to sit on the Allocation Committee.

Application

Application in the context of this report refers to the process through which an individual or household applies for a housing subsidy, bearing in mind that there are specific eligibility criteria that must be fulfilled in order to qualify.³ The status of a subsidy application can be tracked via the Housing Subsidy System (HSS).

C-Form (officially known as a Form C)

A C-form is a housing waiting list registration receipt that was used as proof that someone was registered on the waiting list. Many people who registered for housing did so in 1996 and 1997. In Gauteng in 2008 the C-form was replaced with a computer-generated demand database receipt; however it is up to people to register on the demand database.

Community Liaison Officer (CLO)

A CLO is appointed by a municipality to facilitate communication between community members and government on specific projects. For example, CLOs are appointed as the liaison between the contractor appointed on a housing project, the municipality and the community. The ward councillor is often responsible for the selection of CLOs, however CLOs are meant to be seen as neutral by all parties involved.

Demand Database

A demand database is a repository of information about households and individuals that have expressed a need for subsidised housing opportunities, capturing all the eligibility information required. A demand database can operate at municipal, provincial and national level. Different registers for certain 'housing products' can be drawn from the database, based on specific criteria

¹ M Tshangana 'Allocation of subsidized housing opportunities to households in the Western Cape by municipalities' paper presented at Southern African Housing Foundation International Conference, Exhibition & Housing Awards (11-14 October 2009) p. 3.

² L Royston and R Eglin 'Allocation Thought Piece for Managed Land Settlement' (December 2011) p. 3.

³ Ibid.

selected. The City of Cape Town has a housing database, while the Western Cape maintains its own housing demand database – referred to in this report as the Western Cape Housing Demand Database (WCHDD). Gauteng also has a Housing Demand Database (HDD), which was established in 2008.

Housing Subsidy

A housing subsidy is a once-off grant paid by government to qualifying beneficiaries for housing purposes. The grant is not paid in cash to beneficiaries but, rather, is paid to the seller of a house or, in new subsidised housing developments, the grant is used to construct a house which is then registered in the name of the beneficiary in the Deeds Office.

Housing Subsidy Application Form

The Housing Subsidy Application Form is a form that prospective beneficiaries of state-subsidised houses must fill in to apply for a housing subsidy. There are different forms for different subsidies; however the 2009 National Housing Code contains a generic application form for all subsidies.⁴

Housing Subsidy System (HSS)

The HSS is an information system that records the progress of subsidy allocations made in terms of the various national housing programmes. It is the main operational and administrative tool through which subsidies are allocated in terms of the NHSS. The HSS is managed at national level by the Department of Human Settlements (DHS) and by provinces, and it allows users to register, edit and verify applications, as well as capture budgetary information for the different housing projects.

Informal Settlement

Statistics South Africa (Stats SA) defines an informal settlement as “an unplanned settlement on land which has not been surveyed or proclaimed as residential, consisting mainly of informal dwellings (shacks).”⁵ Informal settlements can typically be identified on the basis of the following characteristics: illegality and informality; inappropriate locations; restricted public and private sector investment; poverty and vulnerability; and social stress.⁶

National Housing Needs Register (NHNR)

The NHNR is a web-based system operating out of DHS but used by some accredited municipalities and provincial housing departments. The NHNR aims to capture the housing needs information of individuals and households, pre-screen them for eligibility and then use the information to assist with the allocation of housing opportunities. The NHNR is based on household surveys administered by fieldworkers and loaded onto the system, which is linked to the HSS. While it is a national system, provincial officials are trained on how to use the NHNR and are responsible for registering people and updating information on the NHNR.

National Housing Subsidy Database (NHSDB)

The NHSDB records all approved housing subsidy beneficiaries and it is linked to the HSS. The purpose of the database is to prevent fraud in the form of households receiving more than one subsidy allocation. It includes information on all historical and current subsidies granted to individuals in South Africa.

⁴ See DHS 'Integrated Residential Development Programme' Volume 4, Part 3 of the National Housing Code (2009) pp. 67-71.

⁵ Housing Development Agency (HDA) 'South Africa: Informal settlements status' (2012) p. 18.

⁶ DHS 'Upgrading of Informal Settlements Programme' Volume 4, Part 3 of the National Housing Code (2009) p. 16.

National Housing Subsidy Scheme (NHSS)

The NHSS is the cornerstone of government's housing delivery programme, which provides capital subsidies for housing to qualifying beneficiary households to take full ownership. The NHSS currently consists of the individual subsidy, Integrated Residential Development Programme (IRDP), consolidation subsidy, institutional subsidy and rural subsidy.

Project Steering Committee (PSC)

A PSC is established for a provincial or municipal housing project and is meant to serve as a community interface mechanism to facilitate communication with the community on matters pertaining to a project, including the selection of prospective beneficiaries and the subsidy application process and approvals.⁷ PSCs often comprise the following stakeholders: provincial and/or municipal officials, representatives of the beneficiary community, councillors and project consultants.

Reference Number

A reference number in the context of this report refers to the number that the HSS allocates to a specific subsidy application e.g. BORKN96110453. It is purely an administrative number related to the application and does not refer to a site or a house. Housing waiting list receipts or C forms also include a reference number, which is also purely administrative.

Registration

Registration is the process by which people place themselves on the waiting list or housing demand database in their specific municipality or province.

Shack

A shack is a form of informal housing prevalent in South African informal settlements and in the backyards of formal housing. Stats SA differentiates between these two categories of shacks in its surveys.

Title Deed

A title deed is a legal document that reflects the proof of ownership of a property. A copy of the title deed is kept at the Deeds Office, and anyone can check who owns a property. All state-subsidised houses are supposed to be registered on the deeds registry; however there is a huge backlog which means that many households have not received title deeds to their homes.

Waiting List

A waiting list is a register (or part of a register) usually arranged in date order from oldest to most recent registration date.⁸ In Gauteng, the waiting list was a computerised database system previously used by the provincial department and municipalities to record particulars of households in need of housing assistance, but this has been replaced by the HDD.⁹

⁷ DHS 'Strategy for the Allocation of Housing Opportunities Created through the National Housing Programmes' (2008) pp. 15-16.

⁸ Tshangana 'Allocation of subsidized housing opportunities to households in the Western Cape by municipalities' p. 5.

⁹ GDGLGH 'Gauteng Housing Demand Database and Allocation Policy' press release (June 2011) p. 8.



1

Introduction

Since 1994 the South African government, through its National Housing Subsidy Scheme (NHSS), has embarked on the large-scale provision of state-subsidised housing to low-income households across the country. Over 2 million state-subsidised houses have been built during this period, predominantly through the project-linked subsidy programme.¹⁰ These houses have been mainly constructed in typical greenfield¹¹ housing projects, with developers building houses for eventual ownership by qualifying beneficiaries in terms of the NHSS. The delivery of these houses – also known as RDP or BNG houses¹² – has been, and continues to be, an important political drawcard in South

Africa, forming part of the post-apartheid project to redress the historical, socio-economic injustices of apartheid. The ‘eradication of the housing backlog’ is as much a political target, as a broader developmental goal.¹³

However, despite noteworthy gains since 1994, there is still a substantial ‘housing backlog’, which has become one of the reasons for the mushrooming of local ‘service delivery’ protests

across South Africa in recent years. As individuals and families attach much of their “emotional and economic well-being to the attainment of a formal house, tensions around housing delivery processes are almost inevitable.”¹⁴ Indeed, housing delivery has become highly politicised and subject to politicking and protest throughout the

“The dominant discourse around housing delivery is that there is a ‘waiting list system’ which constitutes a housing ‘queue’, and that people must wait patiently until their name is chosen in terms of a rational process of ‘first come first served’.”

¹⁰ The actual number of houses built since 1994 is disputed. See section 3.3 below for more on this.

¹¹ A greenfield housing development is one where new construction occurs on a piece of previously undeveloped land.

¹² RDP is a reference to the Reconstruction and Development Programme of 1994, while BNG refers to the Breaking New Ground plan launched in 2004.

¹³ See M Huchzermeyer ‘Pounding at the Tip of the Iceberg: The Dominant Politics of Informal Settlement Eradication in South Africa’ *Politikon: South African Journal of Political Studies* 37, 1 (2010) pp. 129-148.

¹⁴ Centre for Social Science Research (CSSR) ‘The Social Consequences of Establishing ‘Mixed’ Neighbourhoods: Does the mechanism for selecting beneficiaries for low-income housing projects affect the quality of the ensuing ‘community’ and the likelihood of violent conflict?’ (May 2010) p. 36

country, particularly in the context of medium-to-large state-subsidised housing projects undertaken by provincial housing departments.

The dominant discourse around housing delivery is that there is a 'waiting list system' which constitutes a housing 'queue', and that people must wait patiently until their name comes up in terms of a rational process of 'first come first served'. Any perversion of this system is referred to as 'queue-jumping', and this term is consistently evoked by politicians and government officials. Anti-Land Invasion Units have been set up in various municipalities, which operate on this premise and use the rhetoric of 'the queue' to justify evicting people from land, houses or buildings they occupy. There is an assumption, often unarticulated, amongst the public that the system in place operates in a rational way. For example, the assumption is that if 10 houses are being built, then the first 10 people who applied on 'the waiting list' will receive houses. While recent housing demand databases - implemented in Gauteng and the Western Cape - and the National Housing Needs Register (NHNR) - used by other provinces - incorporate other criteria like location, special needs, age etc, the assumption remains that, taking these into account, perhaps 10 people in the top 25 will get houses. Both these assumptions, in most cases, appear to be wrong and the 'housing waiting list' does not exist or function in any way that it is understood to exist or function.

One reason for this continued myth is that both the modality and rhetoric of the NHSS, the project-linked subsidy programme and RDP housing projects are extremely pervasive. In a sense the language used to describe processes put in place to deal with a very specific type of housing programme has 'colonised' all other housing programmes, even though there are in fact numerous entry points for allocation into the state's systems of housing delivery besides typical RDP housing projects, including informal settlement upgrading, emergency housing, social housing and Community Residential Units (CRU). Further, in reality, it appears that a very high percentage of people who actually receive state-subsidised houses engage in informal transfers, either renting or selling their houses for cash, and move back to shacks in backyards or informal settlements to be close to economic and social opportunities. This phenomenon has been heavily criticised by government; however given the complexities of housing need in South Africa, it is not surprising. What is needed is a new public discourse on housing, and a more complex and nuanced way of characterising the rational, appropriate and humane responses to the broad range of housing needs in South Africa, which are not currently catered for by the market.

"In a sense the language used to describe processes put in place to deal with a very specific type of housing programme have 'colonised' all other housing programmes, even though there are in fact numerous entry points for allocation into the state's systems of housing delivery besides typical RDP housing projects..."

Housing allocation, while loosely regulated by numerous policies and systems, appears to be fundamentally about access to resources and power, and has little to do with individual housing needs.¹⁵ The failures of and politicking around housing provision are exacerbated by the fact that the South African housing delivery programme is widely perceived as extremely corrupt. Research shows that these perceptions relate not only to the amount of real corruption that has been exposed over the years,¹⁶ but also to the "clumsiness, opacity, confusion and capriciousness that exists within the housing programme".¹⁷ Although maladministration, fraud and corruption certainly exist and appear to be widespread, it also appears that much of the anger and confusion – which often culminates in protest - arises from a lack of information and explanation of some very technical and banal processes and systems. According to the Public Protector, during 2011/2012, "approximately 10 percent of all complaints received by the Public Protector were related to maladministration pertaining to the delivery of the low cost housing."¹⁸ Numerous problems with procurement, allocation and post-allocation of state-subsidised houses were identified.¹⁹ Indeed, while there have been several challenges with the size, quality, location and allocation of subsidised houses, the allocation of houses has been particularly contested terrain.

While there are numerous national, provincial and local government policies, systems, tools, databases and processes in place to determine 'housing demand' and ostensibly assist with the allocation of state-subsidised houses to qualifying beneficiaries, this terrain is very opaque and is dominated by myths, misinformation and confusion, which has led to protests, 'illegal' occupation of newly built or unfinished RDP houses, and court cases. These policies and processes feed into the prevailing discourse that there is a rational system in place around housing delivery and allocation, and that there is very little, if any, space to contest current practice. There is further tension around the fact that, while a particular mode of delivering and allocating houses is extremely entrenched in government and public discourse, over the past years there have been statements made by the Minister of Human Settlements, Tokyo Sexwale, about the

¹⁵ Royston and Eglin 'Allocation Thought Piece for Managed Land Settlement' p. 5.

¹⁶ For an example of this, in the Minister's recent Human Settlements Budget Vote speech he stated that "regarding public servants in all three spheres of government who committed housing subsidy related misconduct and fraud, more than 290 have been arrested, over 240 found guilty, and over 220 are facing internal disciplinary action. Nearly R30 million lost through corrupt activities has been recovered". T Sexwale 'Address by the Minister of Human Settlements, Tokyo Sexwale, on the occasion of the Human Settlements Budget Vote, National Assembly' (9 May 2012).

¹⁷ M Rubin 'Perceived Corruption in the South African Housing Allocation and Delivery Programme: What It May Mean for Accessing the State' *Journal of Asian and African Studies* 46, 5 (2011) p. 488.

¹⁸ Public Protector 'Presentation Presentation to the Portfolio Committee on Human Settlements by the Public Protector Adv TN Madonsela' (20 February 2013).

¹⁹ Ibid.

government's shift away from delivering subsidised houses.²⁰ These statements have been met with criticism from various quarters²¹ and show up current contradictions and tensions around housing delivery in South Africa, and the need for honest reflection and nuanced responses by government.

This report aims to investigate some of the current assumptions and practice around housing demand and allocation in South Africa. While overviewing the national situation and processes undertaken by the national Department of Human Settlements (DHS)²², our research also focuses on the Gauteng and Western Cape provinces, primarily because these provinces have designed their own housing demand databases and because they face some of the heaviest demand in terms of housing delivery (due to two main cities, Johannesburg and Cape Town, being located there). Furthermore, these provinces are currently experiencing the shift of their housing-related powers and functions from provincial departments to accredited municipalities.

In spite of the high political profile of subsidised housing provision in South Africa, and its simultaneous contribution to poverty alleviation (when it is correctly provided) and public unrest (when it is not), there is a surprising dearth of consolidated information and research around the programmes, policies and practices, particularly the selection and allocation process, e.g. what and how selection criteria are used by municipalities and provincial departments to 'choose' beneficiaries for subsidised houses; municipal selection policy and practice in general; and the institutional context in which beneficiary selection and allocation takes place.²³ The research informing this report attempts to fill a few of these gaps, highlighting the complexity and opaqueness of various policies, processes and practices operating at national and provincial levels. This report thus attempts to provide some much-needed analysis about housing demand and allocation policies and systems operating in South Africa.

²⁰ See, for example, A Majavu 'Sexwale: 'Housing for poor is not sustainable'' *Sowetan* (27 September 2011); M Mnyakama 'Sexwale says free housing ride has to come to an end!' *Daily Sun* (10 May 2012).

²¹ See, for example, I Mahabane 'What is the purpose of this gigantic state?' *Business Day* (30 September 2011); A Majavu 'Sexwale comment blasted' *Sowetan* (3 October 2011).

²² In 2009, the National Department of Housing (NDoH) changed its name to the Department of Human Settlements (DHS).

²³ Tshangana 'Allocation of subsidized housing opportunities to households in the Western Cape by municipalities' p. 10. Two exceptions include research conducted by the Human Sciences Research Council (HSRC) for the Eastern Cape province, which touches on demand databases and housing delivery in the province (in the context of assessing demand and backlogs more broadly): HSRC 'A Rapid Verification Study on the Informal Settlements and Backyard Shacks, Backlog and Trends within the Eastern Cape' (April 2010) pp. 93-95; as well Tshangana 'Allocation of subsidized housing opportunities to households in the Western Cape by municipalities'.

Structure of the report

Section 2 of the report describes the multi-pronged methodological approach used for the research.

Section 3 provides a brief overview of the South African housing context from 1995 to present, describing some of the policy shifts and summarising four important national housing programmes: the Emergency Housing Programme, Upgrading of Informal Settlements Programme (UISP), Social Housing Policy, Community Residential Units (CRU) Programme and the Integrated Residential Development Programme (IRDP).

Section 4 of this report describes current housing demand and allocation policies and systems, charting the shift from the housing waiting list system to demand databases at national, provincial and local level, focusing on the Gauteng and Western Cape provinces.

Section 5 of the report analyses some of the systemic problems with current policies and processes, highlighting the following: problems with the waiting list system, problems with demand databases, problems with the Housing Subsidy System (HSS) and the National Housing Subsidy Database (NHSDDB), problems with the allocation of houses (e.g. informal transfers/sales and maladministration, fraud and corruption), and finally, problems around municipal accreditation.

Section 6 provides a conclusion to the report and posits some recommendations for key stakeholders.

Section 7 of the report contains an extensive bibliography.

Section 8 is an annexure that provides more information on housing legislation and policy in South Africa, specifically on the Housing Act, municipal accreditation and the NHSS.



Methodology

We used a multi-pronged methodological approach for this research report. First, we conducted a desktop review of all applicable legislation, policies and strategies relating to housing demand and allocation in South Africa. We also analysed a number of relevant research reports, academic articles, press releases, speeches, forensic reports and media articles. This process gave us a broad overview of the legal and policy terrain, as well as the history of waiting lists and demand databases in the country.

Second, in February and March 2012 we conducted interviews with government officials at national, provincial and local level, including officials from the City of Cape Town, West Rand Municipality, Tshwane Metropolitan Municipality and Ekurhuleni Metropolitan Municipality as well as officials from the Western Cape Department of Human Settlements (WCDHS), the Gauteng Department of Local Government and Housing (GDLGH), and, finally, the DHS.²⁴ We also conducted interviews with academics working in the field of housing rights and development in South Africa. We were fortunate to be invited to a workshop on 23 February 2012, hosted by the National Human Settlements Research Task Team located within DHS, on the topic "Allocation of housing opportunities". A number of representatives from DHS, provincial housing departments and municipalities were present, which contributed towards a very interesting discussion on housing demand and allocation in South Africa.

Third, we held a number of focus group discussions in Gauteng and the Western Cape to gain insight into how community members, CBOs and NGOs understand the housing waiting lists, demand databases and housing allocation. These focus groups aimed at eliciting community and civil society perceptions to counterbalance perspectives from government officials. In Gauteng, we conducted three focus group discussions: the first with residents of an informal settlement who had registered on the HDD and who should, in their view, have been allocated houses in a nearby housing development;²⁵

²⁴ We have chosen to keep the identities of these officials anonymous in this report.

²⁵ This focus group discussion was held on 8 March 2012, hosted by SERI in Johannesburg and was attended by eight residents of the Winnie Mandela informal settlement, located in Tembisa on the East Rand in Ekurhuleni Metropolitan Municipality. Most of the residents are also members of the Ekurhuleni Concerned Residents (ECR). The focus group participants all had experiences with registering for housing over the years and interacting with housing allocation processes in several nearby projects. Much of what they raised related to fraud and corruption, lack of information provided to residents, false promises to set up forums of communication,

the second with NGOs, academics and consultants to elicit a more systemic, birds-eye analysis;²⁶ and the third with community leaders, social movements and CSOs to get a sense of the issues facing those assisting poor individuals and communities around land and housing issues.²⁷ In the Western Cape, three focus group discussions were also held: the first with NGOs and CBOs working with communities on housing issues in the province;²⁸ and the second and third with a number of residents of poor communities who had registered on waiting lists and were yet to be allocated houses.²⁹

Finally, a roundtable seminar was held on 26 April 2012 in Cape Town, attended by a range of stakeholders from government, civil society and academia.³⁰ At the roundtable seminar, CLC and SERI presented findings from research conducted in the Western Cape and Gauteng. The aim of the seminar was to obtain feedback on the findings, to share insights on housing demand and allocation, and to explore challenges facing individuals and communities in accessing decent housing, particularly around registering for housing and subsequent allocation. The findings and insights from this roundtable seminar were then integrated into the final report.

etc. The community provided documentation they had collected over the years, which shows their numerous attempts to engage government at various levels over housing allocation.

²⁶ This focus group was held on 22 March 2012 at SERI's office, with 12 participants attending. The aim of this discussion was to get a sense of what some of the key issues are regarding housing demand and allocation in Gauteng, from the perspective of NGOs, support organisations, academics and consultants. We wanted to know what they knew and thought about the current policy framework, the HDD and current allocation processes within local, provincial and national government. The discussion also provided an opportunity to find out what alternatives to the current system are being advocated by CSOs, and how they position their housing-related work in relation to the state processes of allocation and delivery. The discussion was extremely lively and provided useful insight into the lack of clarity and understanding of the HDD among people who are familiar with housing policy and delivery processes. The HDD as an administrative tool was discussed, and many participants were critical of the way government in South Africa conceptualises housing, housing needs and the centralised administrative process.

²⁷ This focus group discussion was held on 23 March 2012 at SERI's office, attended by 17 people representing different communities, CBOs and social movements in the Gauteng region. The aim of the discussion was to get a sense of the challenges CBOs and community leaders face when assisting community members around housing issues. Some of the topics highlighted during the discussion were: lack of information on housing policy, particularly around allocation; lack of effective communication between the municipality/province, councillors and the community; local politics and corruption; and housing systems not taking into consideration housing needs/demand despite the HDD.

²⁸ On 23 March 2012, a discussion involving 9 representatives from NGOs and CBOs working with communities was held at CLC's offices.

²⁹ Two focus group discussions were held on 19 and 20 March 2012 with community members and leaders from Mandela Park, Khayelitsha and Blue Downs, Belhar. The main purpose of these interviews was to gather information on the lived experiences of individuals and communities who have registered on waiting lists and the HDD, and are waiting to be allocated a subsidised house. The exercise was also intended to gauge the level of satisfaction of individuals and communities with current systems and processes.

³⁰ The roundtable discussion – entitled Housing Allocation and the Housing Demand Database (HDD) System in South Africa - included representatives from GDLGH, WCDHS, City of Cape Town, SERI, CLC, Women's Legal Centre (WLC), Development Action Group (DAG), Planact, South African Human Rights Commission (SAHRC), Gugulethu Backyarders, Mandela Park Backyarders, ILRIG, Blue Downs community and the Right to Know Campaign (R2K), amongst others.



3

Overview of the South African Housing Context: 1995–present

The housing terrain in South Africa is extremely complex, with numerous laws, policies, programmes, subsidies and processes in place.³¹ This section provides a brief overview of the housing context in South Africa, and how it has shifted since 1994, with a view to locating the substantive discussions later on in the report. The section describes the building of RDP houses from 1995–2003; the Breaking New Ground policy amendment and period from 2004–2009, including a summary of the following national housing programmes: Emergency Housing Programme, Upgrading of Informal Settlements Programme (UISP), Social Housing Policy, Community Residential Units (CRU) Programme and Integrated Residential Development Programme (IRDP); and finally, describes the period after 2009 and the implementation to date of the Outcome 8 humans settlements delivery agreement.

In recognition of the importance of housing, the South African Constitution contains a right of access to adequate housing in section 26 of the Bill of Rights.³² The 1994 White Paper on Housing, which was published following extensive negotiations at the National Housing Forum (1992–1994), laid out the post-apartheid government’s ambitious housing policy and development target of building 1 million state-funded houses in five years. The White Paper on Housing and policy were informed by the African National Congress (ANC)’s Reconstruction and Development Programme (RDP), and hence the houses built under this policy are generally referred to as ‘RDP houses’.

While national housing policy principles and strategies are contained in the White Paper on Housing, it is the Housing Act 107 of 1997 and the National Housing Code that are the principal instruments enacted to give effect to the constitutional obligations of the various organs of state. The Housing Act is framework legislation that contains general principles applicable to housing development; defines the functions of national,

³¹ This section draws from K Tissington ‘A Resource Guide to Housing in South Africa 1994–2010: Legislation, Policy, Programmes and Practice’ (February 2011).

³² Section 26 of the Bill of Rights states that:

- 26(1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

provincial and local governments in respect of housing development; and lays the basis for financing national housing programmes (see section 8.1 in the annexure below for more on the Housing Act). The National Housing Code contains the national housing policy and programmes. It was first published in October 2000, and substantially revised and republished in 2009.³³

A cornerstone of the early housing policy was the National Housing Subsidy Scheme (NHSS), which was introduced after 1994 and provides once-off capital subsidy assistance to low-income households earning below a certain amount per month. The NHSS has developed over the years and comprises a number of ways in which the state housing subsidy can be ‘delivered’ to assist households gain access to different housing options. There is a set of generic qualifying criteria that must be fulfilled by those applying for housing subsidies under the NHSS. These include that the beneficiary must be: lawfully resident in South Africa (i.e. a citizen or in possession of a permanent residence permit); competent to contract; a first time property owner; be married/cohabiting or be single with financial dependents; and have a monthly income not exceeding R3 500. The Housing Subsidy System (HSS) is the information system that records the progress of subsidy allocations made in terms of the NHSS. See section 4.2 for more on the HSS and section 8.3 in the annexure below for more on the NHSS.

3.1. Building RDP houses

In terms of modes of housing development, between 1995 and 2001 housing delivery was private developer-driven, with mass housing projects initiated, planned and built by private construction companies for the national and provincial governments. These developers were able to draw down the state subsidies through a process managed by conveyancers. Over 76 percent of projects were initiated and led by private sector developers, who controlled the process and identified beneficiaries themselves. The majority of housing development was undertaken in terms of the project-linked subsidy programme, which was the most utilised of the NHSS subsidies (although the individual subsidy and Discount Benefit Scheme were also popular).³⁴ The project-linked subsidy enabled a qualifying household to acquire ownership of a completed

³³ Section 4 of the Housing Act states that the Minister must publish a National Housing Code, which contains the national housing policy and, in consultation with MECs and the South African Local Government Association (SALGA), may contain procedural guidelines for the implementation of the national housing policy. The Housing Act states that any new housing policy applies even if it has not yet been included in a revision of the Code. Section 3(b) of the Housing Amendment Act 4 of 2001 makes the Code binding on the provincial and local spheres of government.

³⁴ The individual subsidy has not been used as frequently as the project linked subsidy, however this subsidy provides qualifying beneficiaries with access to housing subsidies to acquire ownership of a stand or a house, or to acquire a house-building contract which is not part of approved housing subsidy projects (this option is only available to beneficiaries who can access credit).

house that was developed within an approved housing project (often developed by provincial government together with private stakeholders). Initially, developers identified beneficiaries themselves, however towards the end of this period beneficiaries were allocated to projects from a housing waiting list managed by municipalities or provinces (see section 4.1 below).³⁵

From 2001 onwards the housing delivery process shifted and became public-sector driven, with national and provincial government acting as developers. In 2001, the use of conveyancers to pay out subsidies was terminated, and an amendment to the Housing Act included a mandatory 'lock-in' period for the sale of state-subsidised houses. Sections 10A and 10B prohibit the owner (or the owner's successors in title or creditors in law, other than creditors in respect of credit-linked subsidies) from selling their house within eight years of acquiring the property. This clause applies to a housing subsidy received in terms of any national housing programme contained in the National Housing Code for the construction or purchase of a dwelling or serviced site. There have been a number of criticisms of this clause, discussed in more detail in section 5.4.1 below on the informal transfer of state-subsidised houses.³⁶

In terms of the housing development process, after 2001 it became possible for payment of subsidies for completed top structures to occur *before* the registration of transfer of the property to a qualifying beneficiary.³⁷ Before 2001, subsidy payments were made only once the houses had been transferred. The delinking of the subsidy beneficiary selection and approval processes from the actual building of a house clearly has a number of implications for developers, government and beneficiaries. One of the most notable implications of this model is that state-subsidised houses are built with no specific beneficiaries in mind, and actual people are allocated to a house only after the subsidy has been paid to the developer and the house built. According to a Public Service Commission monitoring and evaluation report on the DHS and the provincial housing departments, "of concern also is the de-linking of beneficiaries from the development and construction phase in order to speed up delivery. This severely limits the say beneficiaries have in projects," and limits participation.³⁸

Another problem with the large-scale developments built since 1994 is that they were most often located on the periphery of existing townships on land first acquired or

³⁵ Shisaka Development Management Services 'Housing Subsidy Assets: Exploring the Performance of Government Subsidised Housing in South Africa – Overall Analysis' (November 2011) p. 11.

³⁶ Ibid pp. 77-78.

³⁷ Important to note is that a house consists not only of a 'top structure', but also under- and above-ground services (water reticulation, sewers for sanitation, electricity, etc.) which are provided by different departments, timelines and, sometimes, funding streams.

³⁸ Public Service Commission 'Consolidated Monitoring and Evaluation Report on the Department of Housing (Human Settlements): Evaluation Cycle 2009/2010' (July 2010) pp. 11-12; 20-22.

zoned for township development under apartheid.³⁹ According to Sarah Charlton and Caroline Kihato, this has served to perpetuate the marginalisation of the poor and has not contributed to the "compaction, integration and restructuring of the apartheid city."⁴⁰

3.2. Breaking New Ground

While the fundamental policy and development principles introduced by the 1994 White Paper on Housing continue to guide all developments in respect of housing policy and implementation, there has been another shift in policy focus since 2004. In 2003, a comprehensive review was undertaken of the government's housing delivery programme since 1994.⁴¹ This led to the approval of the Comprehensive Plan for the Creation of Sustainable Human Settlements - commonly known as Breaking New Ground or BNG - in 2004. The BNG policy amendment aimed to create "sustainable human settlements" and to increase the quality and size of houses and provide more choice in housing typology and tenure etc.⁴²

As a part of BNG, a raft of new subsidy and funding mechanisms were initiated in order to try to broaden the potential housing instruments. This included a focus on the *in situ* upgrading of informal settlement, and in 2004 the Upgrading of Informal Settlements Programme (UISP) was published (Chapter 13 of the National Housing Code). In 2004, the Emergency Housing Programme (Chapter 12 of the National Housing Code) was also published, in response to the Constitutional Court judgment in the *Grootboom* case which established that the state had an obligation to provide temporary accommodation to those who had been evicted or where facing imminent eviction and who could not find alternative shelter with their own resources.⁴³ BNG also cemented the process of moving from developer-driven housing delivery to municipal housing delivery, and places "substantially increased emphasis on the role of the state in determining the location and nature of housing as part of a plan to link the demand for and supply of housing."⁴⁴ The accreditation of municipalities to undertake the housing function was included as a key component in BNG. The aim was for successfully accredited municipalities to manage the full range of housing instruments within their areas of

³⁹ S Charlton and C Kihato 'Reaching the Poor: An analysis of the influences on the evolution of South Africa's housing programme' in U Pillay et al (eds) *Democracy and Delivery: Urban Policy in South Africa* (2006) p. 268.

⁴⁰ Ibid p. 255.

⁴¹ Tissington 'A Resource Guide to Housing in South Africa 1994-2010' pp. 64-70.

⁴² State-subsidised housing built after 2004 is commonly referred to as 'BNG houses'. For an extensive overview of housing policy shifts and development since 1994, see Shisaka Development Management Services 'Housing Subsidy Assets: Exploring the Performance of Government Subsidised Housing in South Africa - Timeline Analysis' (April 2011).

⁴³ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) (Grootboom). See Tissington 'A Resource Guide to Housing in South Africa 1994-2010' pp. 43-44.

⁴⁴ Ibid p. 13.

jurisdiction and to take control of the demand-driven housing process envisioned in BNG. See section 8.2 in the annexure below for more on municipal accreditation.

The period 2004-2009 has been categorised as one focused on “delivering human settlements” in terms of BNG, through the building of mega-projects like N2 Gateway (2005) in Cape Town and Cosmo City (2004) and Olievenhoutbosch (2006) in Johannesburg. During this period, despite the progressive policy and programme in place advocating for *in situ* upgrading, public discourse and messages from the state focused on the need for “slum eradication” and “slum clearance.”⁴⁵ This manifested in several concrete ways over the years, most publicly in the attempted mass eviction of thousands of households from the Joe Slovo informal settlement in Cape Town (as part of the N2 Gateway project, one of the pilot projects of BNG), which was challenged by the occupiers in the Constitutional Court,⁴⁶ and in the judicial challenge by the shackdwellers’ movement Abahlali baseMjondolo to the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007 (KZN Slums Act).⁴⁷ Housing-related cases are the most common socio-economic rights cases to be brought before the Constitutional Court. These cases, and those that often come before the lower courts, generally show up the vast gap between national policy intent on the one hand, and implementation on the other (most often undertaken by provinces or municipalities). It is clear that very few people, particularly government officials, are aware of the currently applicable policies and programmes.

Since the National Housing Code was revised and re-published in 2009, the key national housing programmes now include the Upgrading of Informal Settlements Programme (UISP), Emergency Housing Programme, Integrated Residential Development Programme (IRDP), Social Housing Programme and Community Residential Units (CRU) Programme. A brief overview of each of these programmes is provided below, with a focus on who is eligible for the programme, how beneficiaries are selected, allocation processes etc.

“Housing-related cases are the most common socio-economic rights cases to be brought before the Constitutional Court. These cases, and those that often come before the lower courts, generally show up the vast gap between national policy intent on the one hand, and implementation on the other...”

⁴⁵ A recent book by Marie Huchzermeyer called *Cities with ‘Slums’: From informal settlement eradication to a right to the city in Africa*, argues that this messaging was largely caused by the misunderstanding between the United Nations’ Millennium Development Goal (MDG) to improve the lives of 100 million slum dwellers, and a target to free cities of slums i.e. the eradication of slums.

⁴⁶ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes & Others* CCT [2009] ZACC 16 (Joe Slovo). See Tissington ‘A Resource Guide to Housing in South Africa 1994-2010’ pp. 48-52.

⁴⁷ *Abahlali baseMjondolo Movement SA and Another v Premier of the Province of KwaZulu-Natal and Others* [2009] ZACC 31 (Abahlali). See Tissington ‘A Resource Guide to Housing in South Africa 1994-2010’ pp. 52-53.

3.2.1. Upgrading of Informal Settlements Programme (UISP)

The aim of the UISP is to provide improved services and security of tenure to people living in informal settlements. The UISP categorically states that only "as a last resort, in exceptional circumstances, [may] the possible relocation and resettlement of people on a voluntary and co-operative basis as a result of the implementation of upgrading projects" be considered.⁴⁸ The UISP is effectively an area-based subsidy meant to be applied to a specific informal settlement to improve the quality of services and security of tenure for all who live there.

The UISP applies to households and individuals who qualify under the NHSS criteria, however, importantly, it also applies to those previously excluded from the NHSS. This includes households that exceed the income threshold, people without dependents, child-headed households, etc. Furthermore, individuals who have previously received state housing assistance, have owned property or currently own residential property, as well as undocumented migrants, may be considered on a case-by-case basis. The UISP provides funding for the installation of both interim and permanent municipal engineering services i.e. the creation of serviced stands. Community participation is acknowledged as being important to the UISP and funding is made available to support social processes.⁴⁹

3.2.2. Emergency Housing Programme

The Emergency Housing Programme has the objective to provide temporary housing relief to people in urban and rural areas who find themselves in emergency situations.⁵⁰ Emergency housing assistance is provided through grants to local government, administered by provincial government, to enable municipalities to respond rapidly to emergencies through the provision of land, municipal engineering services, relocation assistance and/or shelter to households on a temporary basis. The programme applies to situations where people have become homeless as a result of a declared state of disaster or a situation which is not declared as a disaster but in which extraordinary natural circumstances cause destitution. The programme also applies to those who are evicted, or threatened with imminent eviction, from land, unsafe buildings or situations where pro-active steps ought to be taken to forestall such consequences, as well as a number of other situations outlined in the programme.⁵¹ The programme is applicable to all people affected by an emergency situation and in need of housing assistance, and not just those who qualify in terms of NHSS criteria.

⁴⁸ DHS 'Upgrading of Informal Settlements Programme' Volume 4, Part 3 of the National Housing Code (2009) p. 9.

⁴⁹ Ibid pp. 9-14.

⁵⁰ DHS 'Housing Assistance in Emergency Circumstances Programme' Volume 4, Part 3 of the National Housing Code (2009) p. 9.

⁵¹ Ibid pp. 15-16.

3.2.3. Integrated Residential Development Programme (IRDP)

The IRDP replaces the project-linked subsidy contained in the 2000 Code and provides for phased area-wide planning and development of integrated housing projects on greenfield land or in an existing township where an undeveloped parcel of land is utilised for development purposes. The municipality or provincial department acts as the developer in IRDP projects. The programme provides for the development of state-subsidised houses, as well as finance-linked housing (catering for households earning between R3 500 and R7 000 a month), social housing, and the development of commercial, institutional and other land uses within the project. Therefore, beneficiaries are those who qualify in terms of NHSS criteria, as well as those who are able to obtain non-residential stands in the development.

According to the IRDP, subsidy beneficiaries should be identified before the design and approval of the housing construction phase takes place as “it is recommended that beneficiaries are involved from the design and planning phases through to the completion of the houses.”⁵² However, the allocation of the stands and the submission of subsidy application forms only need be undertaken and finalised before the approval of the housing construction project phase. The developer (municipality) is responsible for ensuring that identified beneficiaries complete and sign the subsidy application form for the IRDP individual subsidy, which is submitted to the MEC accompanied by all documentation set out in the application form, including an agreement of sale concluded by the qualifying beneficiary.

According to the IRDP, on receipt of any application the provincial department should: within 7 days acknowledge receipt in writing; verify the legitimacy of applicants’ ID numbers and ascertain whether their names or ID numbers appears on the NHSDDB (if any of them do, the developer must be told); ascertain by means of a deeds search whether any immovable property is registered in the name of any applicant or their spouse (if this is the case then the applicant should be informed and the application shall be deemed to have been rejected); and if the application is procedurally correct, submit the application for consideration to the MEC. The MEC and/or municipal council is then meant to consider the application and advise the developer and/or individual of its decision within 21 days after acknowledgement of receipt of the application form. If an application is rejected, the MEC should provide reasons in writing. Once the provincial department has received and approved a subsidy application within three months, it records the name and ID number of the applicant (and their spouse plus dependants if applicable) on the NHSDDB. The official transfer of the stands to the beneficiaries can be undertaken after the approval of the subsidy applications (or as soon as possible after the completion of the houses).⁵³

⁵² DHS ‘Integrated Residential Development Programme’ p. 56.

⁵³ Ibid pp. 58-60.

3.2.4. Social Housing Policy

The Social Housing Act 16 of 2008 provides the legal framework for the implementation of the Social Housing Policy, contained in the 2009 National Housing Code. Social housing is defined as "a rental or co-operative housing option for low-income persons [those whose household income is below R7 500 per month] at a level of scale and built form which requires institutionalised management and which is provided by accredited social housing institutions or in accredited social housing projects in designated restructuring zones".⁵⁴ The programme provides for grant funding to establish, capacitate and capitalise social housing institutions (SHIs) which develop, hold and administer affordable rental units within identified restructuring zones. A precondition for receiving capital grants is that SHIs must be accredited by the Social Housing Regulatory Authority (SHRA) and must access their own capital contributions for social housing projects. Subsidies are provided to SHIs on a sliding scale based on the number of low-income households accommodated in specific social housing projects.

According to the Social Housing Policy, "as a general rule social housing projects should avoid housing uniformly very low income individuals" and the desire is for projects to cater for a mix of incomes. To date, social housing has predominantly benefited those people with formal incomes who earn upwards of R3 500 per month (and mostly those at the upper end of the income spectrum R3 500-R7 500 per month). According to the programme, the aim is to shift from income-based eligibility testing to greater "self-targeting", which is based on the premise that higher income households would not want to stay in the poorer quality units, and that the 'correct' income group will gravitate towards social housing units. Periodic social surveys would be undertaken to establish the actual correlation between incomes and types of units occupied and, if out of line, remedial action would have to be taken. The Social Housing Policy acknowledges that the main weakness of the self-targeting approach is that it is vulnerable to downward-raiding by higher income households of units meant for lower income people, and that better guidelines need to be developed around self-targeting in social housing to prevent this.⁵⁵

3.2.5. Community Residential Units (CRU) Programme

The CRU programme replaces the Hostel Redevelopment Programme contained in the 2000 Code and aims to provide rental accommodation to poor households who are underserved and currently accessing informal rental housing opportunities. The CRU programme targets households earning between R 800 and R3 500 per month who are not able to enter the formal private rental or social housing market.⁵⁶ The programme is intended to redevelop or develop the following: public hostels owned by provincial departments and municipalities; public housing stock which cannot be transferred

⁵⁴ DHS 'Social Housing Policy' Volume 6, Part 3 of the National Housing Code (2009) p. 17.

⁵⁵ Ibid pp. 32-33.

⁵⁶ DHS 'Community Residential Units' Volume 6, Part 3 (2009) pp. 9-10.

to individual ownership; publicly-owned rental stock developed after 1994; existing dysfunctional, abandoned or distressed buildings in inner cities or township areas that have been taken over by a municipality; and new public rental housing assets. Under this programme, housing stock must be owned by a provincial housing department or municipality and must remain in public ownership. Housing stock developed under CRU cannot be sold or transferred to individual owners and there is no pre-emptive right to purchase. The programme is administered by municipalities or provincial government who can choose to manage the housing stock in-house, or outsource the management to an accredited SHI, private company or municipal entity (as long as all costs related to the units forming part of a specific scheme can be financed within the operating budget for the specific housing stock). Funding is provided for the development or refurbishment of the properties in question through the capital costs of project development and the long-term capital maintenance costs, however operating costs must be sourced from rental incomes provided to the 'owner' of the housing stock.

According to the CRU programme, the "target market" is primarily the existing residents of public housing stock (both those who qualify for a subsidy in terms of the NHSS and those who do not); people displaced as a result of informal settlement upgrading or evictions; new applicants, who should be qualifying beneficiaries drawn from the provincial or municipal housing waiting list; and, finally, "qualifying indigent groups would also qualify for the housing but they must be able to pay some form of rental and services/utilities."⁵⁷

3.3. Delivering on Outcome 8?

While policies and programmes around informal settlement upgrading, rental housing and the accreditation of municipalities have been in place since 2004, it is only really since 2009 that these have moved squarely onto the national political agenda. This is as a result of a number of factors, including: the increasing number of 'service delivery protests' since 2004, which very often relate to housing grievances; the establishment of the National Upgrading Support Programme (NUSP) in 2008 to assist municipalities and provinces implement upgrading programmes; the increasing accreditation of municipalities; the publishing of the revised National Housing Code together with a revised UISP and Emergency Housing Programme in 2009; and the Outcome 8 human settlements delivery agreement signed in April 2010 between the President and Minister of Human Settlements, which contains a target to "upgrade of 400 000 households in well-located informal settlements with access to basic services and secure tenure" by 2014 (this represents one third of households living informal settlements). The Minister

⁵⁷ Ibid p. 12.

has since signed memorandums of understanding (MOUs) with the nine provincial MECs around provincial upgrading targets in line with the 400 000 target.⁵⁸

According to the Outcome 8 agreement, "the target is a shift away from the current paradigm of exclusively state-provided housing for the poor. It explicitly includes improving livelihoods through the provision of different forms of tenure, and provides for alternative methods of housing delivery. It is the first large-scale programmatic response to incremental upgrading of informal settlements in the country."⁵⁹ The Outcome 8 agreement states that "municipalities face the challenge of implementing UISP projects as part of transformation towards sustainable human settlements" and that municipal officials will need to be supported in incremental upgrading processes in order to "embrace qualitative aspects of this process including: incremental tenure within informal settlements; adopting livelihoods-based approaches; integrating human settlement planning and housing activities; and participatory planning."⁶⁰ To this end, the NUSP is currently assisting accredited municipalities and provinces set up informal settlement upgrading programmes and plan for specific upgrading projects in the next two years.

Related to this, since 2009 the accreditation of municipalities to undertake the housing function has been emphasised as a key government priority, with a view to locating "the decision-making authority and funding capacity for local development at the most local sphere of government."⁶¹ The aim of accreditation is to decentralise housing functions (including beneficiary management, administration of national and provincial housing programmes, subsidy registration, financial administration etc) to those municipalities deemed to have sufficient capacity to take on these functions. In order to be accredited, municipalities must demonstrate sufficient capacity to plan, implement and maintain projects and programmes that are integrated within municipal integrated development plans (IDPs). See section 8.2 in the annexure below for which municipalities have been accredited to date.

As of 2012, however, the cracks have begun to show (quite literally in the case of many RDP houses built after 1995, which are falling apart).⁶² As mentioned above, housing delivery in South Africa is deeply political and there has been a concerted effort by the state to publicise the fact that they have delivered 3 million houses since 1994. However, the housing delivery statistics paint a different picture and reflect a state of some contestation. For example, the South African government website states that "between 1994 and June 2010, government built over 2.7 million homes for South Africans, giving shelter to more

⁵⁸ For more on The Presidency's Programme of Action see <http://www.thepresidency.gov.za/pebble.asp?reid=2493>

⁵⁹ DHS 'Annexure A: For Outcome 8 of the Delivery Agreements: Sustainable Human Settlements and Improved Quality of Household Life' (19 September 2010) p. 14.

⁶⁰ Ibid p. 17.

⁶¹ DHS 'Accreditation of Municipalities' Volume 3, Part 3 of the National Housing Code (2009) p. 9.

⁶² A major problem in South Africa relates to the quality of houses built since 1994, and in 2012 it was reported that R400 million was spent by the DHS to fix badly built RDP houses. Since 2009, it appears that billions of rands have been spent on this remedial action i.e. fixing already built RDP houses as part of the national department's rectification programme.

than 13 million people.⁶³ More recently, the DHS stated that a total of 2 586 856 houses have been built between 1994 and 31 January 2012.⁶⁴ There are conflicting statistics around the exact number of houses constructed and transferred to beneficiaries.⁶⁵

Indeed, there appear to be discrepancies between the number of subsidies approved (according to the DHS, over 3.8 million people have been approved for a subsidy), the number of houses actually built (DHS does not have an accurate record of this), and the number of houses where formal title has been received by the owner.⁶⁶ According to a recent report on state-subsidised houses, only 1.44 million state-subsidised properties have been built and formally registered on the Deeds Registry since 1994 (comprising 24 percent of all formally registered residential properties in South Africa and 51 percent of the total number of houses the DHS states have been built between 1994 and 2009).⁶⁷ This means that potentially over 1.5 million housing subsidy beneficiaries who received a state-subsidised house have not had the house registered in the Deeds Registry and do not have formal title.⁶⁸ From 2005, there is a consistent decrease in the number of state-subsidised houses registered “and this is continuing and becoming worse.”⁶⁹ Many houses are not registered or are built on unproclaimed land where there is not even a township register opened.

“This means that, potentially, over 1.5 million housing subsidy beneficiaries who received a state housing asset have not had the house registered in the Deeds Registry and do not have formal title.”

There is also evidence that the number of housing opportunities being created by government is declining and that, while the DHS spends its entire budget, the achievement of targets is “very low”.⁷⁰ In October 2012, the Parliamentary Portfolio Committee on Human Settlements published a report which showed that in terms of the Outcome 8 delivery agreement, only 91 558 serviced sites had been created (22.8 percent of the target to upgrade *in situ* 400 000 households living in well-located informal settlements with basic services and tenure security by 2014).⁷¹ According to the Portfolio Committee, “the slow pace of delivery in the upgrading of informal settlements” is of concern and at

⁶³ See <http://www.info.gov.za/aboutsa/housing.htm>

⁶⁴ See T Sexwale ‘Reply to Question No. 136’ (March 2012).

⁶⁵ DHS ‘Annual Report 2010/2011’ (31 March 2011).

⁶⁶ Shisaka ‘Housing Subsidy Assets: Overall Analysis’ p. 23.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid. According to Shisaka, a significant contributor to this decline is the removal of the requirement that registration of the house is required for a subsidy payment, which occurred in April 2004.

⁷⁰ Portfolio Committee on Human Settlements ‘Budgetary Review and Recommendation Report of the Portfolio Committee on Human Settlements on the Budget Vote 31 – Human Settlements for the financial year end 31 March 2012’ (17 October 2012) p. 23.

⁷¹ Ibid p. 11.

the current pace of delivery it will be impossible to meet the target by 2014.⁷² In terms of the provision of rental housing, only 11 334 units have been provided, which is 14.2 percent of the total of 80 000 units to be built by 2014.

The report also includes findings from the Financial and Fiscal Commission (FFC), which showed that by December 2011, the DHS had reported that the number of houses completed was 88 441 (for three quarters) out of a target of 220 000.⁷³ The FFC states that while the annual target is 220 000 housing units built per year between 2011 and 2014, the actual delivery of houses has in fact never reached 220 000 per year since 2007/2008. During this latter period, housing delivery totalled 146 465 units, while in 2010/11 housing delivery totalled 121 879 units. According to the 2011 Census, the current estimated need for housing is 2.3 million households.

Given the current levels of protest and alleged maladministration, fraud and corruption - as well as the reality of declining state-subsidised housing delivery and an ostensible shift towards informal settlement upgrading and the provision of subsidised rental housing - it is important to analyse the current policies and systems in place around housing demand and allocation of houses.

The following section describes the policies and processes in place at national level, and in Gauteng and the Western Cape, with the aim of highlighting the complexities and contradictions of the different policies and systems in place.

⁷² Ibid.

⁷³ Ibid p. 22.



Housing Demand and Allocation Policies and Systems in South Africa

This section provides three case studies of policies and systems in place around housing demand capture and allocation: at national level and in two provinces - Gauteng and the Western Cape. While not an exhaustive or in-depth investigation into all aspects of the housing allocation process, it provides some information on the current policies, systems and processes undertaken by the DHS at national level, and by the Gauteng Department of Local Government and Housing (GDLGH) and the Western Cape Department of Human Settlements (WCDHS) at provincial level. It is important to note that there is an overlap between national and provincial policies and systems, and that the role of local government in housing is increasing as municipalities receive accreditation. These issues are noted throughout the case studies.

The section begins with a brief overview of the housing waiting list system in South Africa, and the Housing Subsidy System (HSS), as these are important for housing allocation in South Africa.

4.1. Housing Waiting List System

In the 1994 White Paper on Housing the South African government committed to provide housing for all its citizens. In an effort to ensure fair allocation of the limited housing subsidies available per year, provinces and municipalities adopted the housing waiting list system. During apartheid a range of housing lists were drawn up, so after 1994 many people were already registered on one or more list, and municipalities and provinces attempted to merge lists and create consolidated databases of people waiting for houses. People were asked to register by filling in a form with details such as ID number, gender, age, number of dependents, etc. They were then given a receipt called a 'C-form', which took note of the date the individual had registered. The waiting list system was supposed to work on a 'first come first served' basis, i.e. when your name made its way to the top of the list you were allocated a house; however location also became a relevant factor later.⁷⁴ Registering on a housing waiting list (or a demand database) is not the same as applying for a housing subsidy, and these two processes

⁷⁴ Interview with Margot Rubin, PhD student at the School of Architecture and Planning, University of the Witwatersrand (29 February 2012).

are sometimes confused. There are numerous challenges with this system across the country, which are discussed in section 5.1 of this report.

Interestingly, as a response to some of these challenges, eThekweni Metropolitan Municipality took a council decision to scrap the housing waiting lists, with effect from 19 November 2002.⁷⁵ Prior to 2002, however, the municipality was already using various other forms of housing allocation, including a system where

"During apartheid a range of housing lists were drawn up, so after 1994 many people were already registered on one or more list, and municipalities and provinces attempted to merge lists and create consolidated databases of people waiting for houses."

'expressions of interest' in housing opportunities were advertised and people were asked to register during a specific period of time. This system was combined with a random selection or 'lottery' system. According to Sarah Charlton, if a housing project came about, people were invited to apply and thousands of people queued to fill in the necessary forms. The applications that passed

the initial pre-screening test were then placed in a box and numbers were randomly pulled out. These applications were then sent to the DHS for approval, and successful applicants were allocated a house in the project.⁷⁶

This was also done because of an acknowledgement by the municipality that existing housing waiting lists were racially-based, and the system perceived as unfair and unreliable. While accepting that random selection has been critiqued for not catering to a person's geographic and social location, the municipality believes this system is a more equitable and efficient means of allocating houses than the chaotic, and sometimes politically motivated, waiting list system.⁷⁷ According to the CSSR, eThekweni municipality now applies "a project-based register developed specifically for each project and kept only for the duration of that project."⁷⁸ According to the municipality, the majority of housing projects are now informal settlement upgrading projects and most subsidies are allocated to existing residents of settlements. It states that in greenfield developments "a portion of sites will be advertised in the local newspapers for the general public to access. The public will need to respond to such adverts by phoning in and making an appointment to fill in the relevant application forms."⁷⁹ While eThekweni municipality explicitly dispensed with the waiting list system, and opting early on for a form of 'lottery' system, other provinces and municipalities have continued to work with the waiting list

⁷⁵ eThekweni Metropolitan Municipality 'How to Apply for Low-Cost Housing': http://www.durban.gov.za/media_publications/new2/Pages/How-to-Apply-for-Low-Cost-Housing.aspx

⁷⁶ Interview with Sarah Charlton, senior lecturer at the School of Architecture and Planning, University of the Witwatersrand (27 February 2012).

⁷⁷ Ibid.

⁷⁸ CSSR 'The Social Consequences of Establishing 'Mixed' Neighbourhoods' p. 38.

⁷⁹ eThekweni Metropolitan Municipality 'How to Apply for Low-Cost Housing'.

system in some form or other, the latest incarnation being the National Housing Needs Register (NHNR) and provincial demand databases.

4.1.1. Housing waiting lists: some statistics

Of the 1.8 million households nationally with at least one member registered on the housing waiting list, around 25 percent live in shacks in informal settlements, 45 percent live in a dwelling/structure on a separate stand, 12 percent live in a traditional dwelling and 10 percent live in a backyard shack.⁸⁰ According to Stats SA's 2009 General Household Survey (GHS), 458 000 households living in shacks in informal settlements (i.e. in shacks not located in backyards of formal houses) in South Africa have at least one member of the household on a waiting list for a state-subsidised house. This comprises 38 percent of the total number of households living in informal settlements.⁸¹ The GHS states around 506 000 households living in informal settlements (42 percent of households in this category) appear to qualify to be on the waiting list.⁸² In the Western Cape and Gauteng, more than 50 percent of households living in informal settlements with at least one member on the waiting list have been on the waiting list for five or more years. The 2009 GHS also explores whether any household members have received a government housing subsidy. For households living in informal settlements, a very low percentage (3 percent) report having received a subsidy.⁸³

In Gauteng there are 480 796 households whose main dwelling is a shack in an informal settlement, and 215 890 households (45 percent) living in informal settlements claim to be on the RDP waiting list.⁸⁴ However, according to the GHS, only 186 691 households qualify in terms of the NHSS criteria. In contrast to the national picture, therefore, there are more people on the waiting list than currently seem to qualify. Of the 660 543 total households with at least one member on the housing waiting list, one third live in shacks in informal settlements, 38 percent live in a dwelling/structure on a separate stand, 15 percent live in a backyard shack and 7 percent live in a backyard dwelling/house/room.⁸⁵

⁸⁰ Housing Development Agency (HDA) 'South Africa: Informal settlements status' (2012) p. 47.

⁸¹ According to the 2009 GHS, at the time of the survey, 15.3 percent of South African households were living in an 'RDP' or state-subsidised dwelling while a further 13.3 percent had at least one household member on a demand database/waiting list for state-subsidised housing. Ibid.

⁸² The GHS looks at the following criteria: household income of less than R3 500 per month, a household size of more than one individual, no ownership of another dwelling, and no previous housing subsidy received. According to the HDA, "When interpreting this data it is important to recall the definition of households used in surveys. Households are not necessarily stable units nor are they necessarily comprised of individuals who would choose to live together if alternative accommodation was available. It is therefore plausible that some households may reconstitute if one current household member were to obtain a subsidised house; some members of the household may move into the new house while others may remain in the shack." Ibid p. 48.

⁸³ The disclaimer here is that there may be a response bias in this data; households living in informal settlements that have received a subsidy are unlikely to admit to this. HDA 'South Africa: Informal settlements status' (2012) pp. 47-48.

⁸⁴ HDA 'Gauteng: Informal settlements status' (2012) p. 24.

⁸⁵ Ibid.

When asked which year the first household member joined the waiting list, 44 percent of people surveyed said between 2006 and 2009, 33 percent said between 2000 and 2005, and 22 percent said between 1990 and 1999. More than 50 percent of households in shacks in informal settlements have been on the waiting list for five or more years.⁸⁶

In the Western Cape there are 133 952 households whose main dwelling is a shack in an informal settlement, and 47 801 of these households (36 percent) claim to be on the RDP waiting list.⁸⁷ According to the GHS, 56 675 households living in a shack in an informal settlement qualify for a state-subsidised house. When asked which year the first household member joined the waiting list, 45 percent of people surveyed said between 2005 and 2009 and 54 percent said between 1990 and 2004. Therefore, more than 50 percent of households living in informal settlements have been on the waiting list for five or more years.⁸⁸

While these statistics are not necessarily reliable and are drawn from a three-year old survey, they are useful in painting a picture of the situation at national and provincial level regarding how many people are registered on housing waiting lists, and what kind of shelter arrangement they currently have.

4.2. Housing Subsidy System (HSS) and National Housing Subsidy Database (NHSSDB)

In addition to the housing waiting lists and demand databases that have developed over the years, there is the Housing Subsidy System (HSS). The HSS is the operational system in place to keep track of housing subsidy applications and for monitoring the allocation of housing subsidies in terms of the national housing programmes. The HSS is a nationally developed and financed system which is managed by DHS and provincial housing departments (or accredited local government), with provinces being the custodians of the system and responsible for managing authorised users assigned to the system. It is the main operational and administrative tool through which subsidies are allocated in terms of the NHSS.

The HSS allows approved users to register, edit and verify applications, as well as capture budgetary information for different state-subsidised housing projects. Provincial departments receive housing-related information from local governments to input into the system, which is done by provincial HSS administrators. Provincial departments are also responsible for housing subsidy administration on the system,

⁸⁶ Ibid pp. 24-25.

⁸⁷ HDA 'Western Cape: Informal settlements status' (2012) p. 26.

⁸⁸ Ibid.

and must provide accurate information to the DHS on a regular basis.⁸⁹ The HSS also has an online platform – the HSS Online - which serves as a “single point of entry” to housing subsidy-related matters for housing administrators and project managers across local, provincial and national government. The portal also serves as a feedback mechanism, by providing access to reports for provincial and municipal administrators.⁹⁰ Access to housing statistics is also provided for visitors, and these statistics are based on information obtained from provincial housing databases. On the basis of this system, national government is able to determine funds spent and the progress of projects which are uploaded on the database.⁹¹

At national level there is also the National Housing Subsidy Database (NHSDB), which is linked to the HSS and keeps records of all subsidy applicants approved by provinces across the country. The purpose of the database is to prevent households from receiving more than one subsidy allocation, and it is used as a verification mechanism for persons that have already benefitted from a subsidy. Details of any person applying for a housing subsidy are run against the NHSDB to check this. The NHSDB includes information on all historical and current subsidies granted to individuals, including those that benefitted prior to the NHSS and the implementation of the HSS (where the data was available for inclusion into the national database from various sources).⁹² The information is recorded against the ID number of each individual.⁹³

There have been numerous problems with the HSS and the NHSDB, particularly with regard to the loopholes for fraud and corruption around housing allocation that exist; double subsidisation (also known as subsidy ‘double dipping’); delays on beneficiary approvals; and general functionality issues with the system (see section 5.3 below for more on the problems with the HSS and NHSDB).

The following section examines the policies and systems in place at national level to determine housing demand and assist with allocation of state-subsidised houses.

4.3. National

This section outlines processes undertaken by DHS to formulate guidelines around housing allocation in South Africa with the National Housing Allocation Strategy and

⁸⁹ T Munzhelele ‘Knowledge Management and Service Delivery: A Knowledge Management Model for the Housing Sector’ Thesis presented in fulfilment of the requirements for the degree of Master of Philosophy (Information and Knowledge Management) in the Faculty of Arts and Social Sciences at Stellenbosch University (March 2012) p. 13.

⁹⁰ Ibid.

⁹¹ National Gazette No. 32056 (3 April 2009) Vol. 526, p. 54.

⁹² DHS ‘Presentation to the Portfolio Committee on Human Settlements on the administration systems and processes designed to control “double subsidisation”’ (10 August 2010).

⁹³ National Gazette No. 32056 (3 April 2009) Vol. 526, p. 54.

to establish a database to record household demand, through the National Housing Needs Register (NHNR). According to DHS, there has never been an official national housing waiting list and the institution and administration of housing waiting lists is not a national policy requirement. In 2006 then Minister of Housing, Lindiwe Sisulu, responded to reports of corruption and maladministration around housing allocation at the N2 Gateway housing project in Cape Town in the Western Cape by commissioning researchers and risk management consultants to assist the NDoH better understand housing need. According to a DHS official, the rationale at the time was that, while housing is a political problem, "the solution is an administrative one". In 2008 and 2009, consultants conducted a pilot programme in the City of Cape Town, where they administered household-level housing needs surveys to residents of the city.⁹⁴

The National Housing Demand Database (NHDD) was subsequently introduced after Nkonki (the consultants appointed by NDoH) created a web-based system to capture and organise housing needs data that was collected. This system is available online but only to Western Cape residents.⁹⁵ Many people in the City of Cape Town signed up during the pilot programme, and the NDoH received approximately 150 000 forms that had unique numbers (this means that the ID numbers were not duplicated). However, the Western Cape department of housing was unhappy that the project was being conducted only in the City of Cape Town, and wanted the whole province to be involved. During this period, the City of Cape Town was governed by the Democratic Alliance (DA) while the Western Cape Province was governed by the African National Congress (ANC), heightening the politicisation of housing in the province. The methodology of the pilot was then changed by the NDoH and a total of approximately 250 000 people across the province were recorded on the NHDD. The City of Cape Town produced other lists of people who were not registered on the NHDD and the process became fraught as some information could not be verified. In total, after consolidating all lists, about 400 000 people in need of housing were recorded on the NHDD. This was then submitted to the Western Cape, which believes it now has a relatively good idea of housing need in the province.

The NDoH decided not to implement the NHDD further and instead opted for what it called the National Housing Needs Register (NHNR). It is evident that terminology is important in how government conceptualises housing and the state provision of housing. According to a DHS official, the term 'demand' assumes a relationship to 'supply' of housing (which will always be lacking). Merely determining housing demand and providing a 'supply' of houses does not necessarily cater to housing needs i.e. what people actually require. Thus, in ascertaining 'housing needs', the rationale is that

⁹⁴ Telephone interview with Johan Minnie, senior manager at the HDA (6 March 2012); Interview with DHS official (10 April 2012).

⁹⁵ The NHDD is "currently in a process of information verification" according to the website: <http://www.ndd.co.za>.

government is better able to understand and address what people actually require through effective and sustainable housing programmes. Interestingly, during the pilot in the Western Cape, the term 'housing needs list' – as it was referred to – became politicised and was scrapped in favour of a 'database'. The DHS has now moved back to speak of "housing needs".⁹⁶ According to the DHS, the NHNR is a housing needs register and "not a housing waiting list" and it "represents a database for planning and development purposes."⁹⁷

4.3.1 National Housing Needs Register (NHNR)

The National Housing Needs Register (NHNR) developed from the process described above and was officially launched in 2009. According to the DHS, the NHNR is "a tool made available to municipalities to capture the need of their citizens for adequate housing...Designed and implemented to address the issue of waiting lists queue 'jumping' and mal-administration in allocation of subsidies."⁹⁸ It is a web-based system with three phases: capture, view and review; pre-screening; and allocation. The DHS views the NHNR as a tool for effective planning and budgeting of human settlements projects. Each province has a housing budget and decisions need to be made on how to plan and budget for new projects in order to make the biggest impact. Municipalities also have to assess housing demand for the housing sector plans or housing chapters of their IDPs.⁹⁹ The NHNR is based on household surveys that are administered by fieldworkers to households requiring housing assistance. Completed surveys are loaded onto the system by provincial housing departments. The NHNR is administered by the DHS's own web developers, and is apparently relatively cheaper to operate than other systems at provincial level (because of in-house resources and capacity). Importantly, the NHNR is linked to the HSS. While it is a national system, provinces are given training on how to use the NHNR and are responsible for registering people and updating information on the NHNR.

The aim of the NHNR is for project planners to have reliable data on housing demand to enable effective planning of housing projects.¹⁰⁰ The survey includes a number of questions which range from basic demographic information (ID numbers, nationality, marriage status, age, gender and number of people living in a household) to questions around preferred housing type (RDP, rental, or bond housing) and the preferred location. The NHNR goes a step further than just collecting information on housing, and also

⁹⁶ Telephone interview with Johan Minnie, senior manager at the HDA (6 March 2012).

⁹⁷ South African Human Rights Commission (SAHRC) "Economic and Social Rights Unit - 9th Questionnaire on the Right to Housing (2011/2012)" (22 February 2013) p. 12.

⁹⁸ DHS 'Presentation to the Portfolio Committee on Human Settlements on the administration systems and processes designed to control "double subsidisation"' (10 August 2010).

⁹⁹ Interview with DHS official (10 April 2012).

¹⁰⁰ Ibid.

gathers information on a person’s access to water and sanitation, educational level and employment details.¹⁰¹

For example, according to a DHS official, if a housing project is being planned in a specific area, by logging onto the NHNR project planners should ideally be able to gather data on how many people from the area are registered on the NHNR, and accurately determine what the most responsive housing project would look like (e.g. 500 people want rental housing, 1 000 people require BNG houses, 800 require bond housing, etc). The tool gives planners an idea of the housing needs of the area, so they can plan and budget accordingly. Those people who qualify for housing subsidies are pre-screened on the NHNR, and selection criteria can be used to narrow the number of beneficiaries, such as those with special needs or the elderly.¹⁰² Once a project is approved by the MEC, people are then asked to complete the Housing Subsidy Application Form and apply for the subsidy, through which they then move onto the HSS.¹⁰³

It appears that seven provinces (and a number of accredited municipalities within these provinces) are currently using the NHNR system, namely Northern Cape, North West, Free State, Mpumalanga, KwaZulu-Natal (the NHNR is the only official housing list in the province), Eastern Cape and Limpopo. Gauteng has its own demand database but is in talks with DHS about moving to the NHNR. Western Cape has developed the WCHDD, but has uploaded its information onto the NHNR. As of 2013, 261 476 questionnaires were captured in the Western Cape, 112 316 in Mpumalanga, 34 481 in the Eastern Cape and 50 830 in the Northern Cape.¹⁰⁴

The NHNR system has been criticised for a number of reasons, outlined in section 5.2 of this report.

4.3.2. National Housing Allocation Strategy

In 2008, the National Housing Allocation Strategy - comprising guidelines for the allocation of housing opportunities created through the national housing programmes (e.g. housing subsidies allocated in terms of the NHSS) - was adopted by the NDoH. The National Housing Allocation Strategy was developed as a guiding policy for the implementation of the NHNR, which was developed in 2008 and is described above in more detail. The “draft guidelines” (as they are also called) and the NHNR are meant to complement each other, with the NHNR providing a list of credible beneficiaries

¹⁰¹ This kind of information is available from sources like Stats SA, however, the NHNR data is non-aggregated.

¹⁰² According to a DHS official, only five IRDP projects have been undertaken, all at a national level – including Olievenhoutbosch and Cosmo City. Many provinces have not implemented the IRDP as they are used to providing one housing type in one project.

¹⁰³ To register a new user on the NHNR, one must first register on the HSS Online website: <http://www.hssonline.gov.za>. The NHNR is linked to the HSS and is available at <http://demand.hssonline.gov.za>. See DHS ‘Housing Needs Register Training Guide’ (17 August 2010).

¹⁰⁴ SAHRC “Economic and Social Rights Unit - 9th Questionnaire on the Right to Housing” p. 13.

to be drawn from for allocation purposes. The Strategy was approved by the Minister of Housing in an attempt to depoliticise the housing allocation process and tackle some of the problems around maladministration and fraud occurring in the subsidy-based housing programmes. The Strategy provides guidelines on how “to facilitate fair, equitable, transparent and inclusive selection and housing subsidy application approval processes for all housing development projects undertaken through the IRDP and informal settlement upgrading projects.”¹⁰⁵ The Strategy only applies to allocation in terms of IRDP and UISP projects. In terms of the latter, the allocation procedures outlined in the Strategy apply when additional stands are created in an upgrading project for those who have registered their needs on the NHNR, or another demand database.

“The Strategy was approved by the Minister of Housing in an attempt to depoliticise the housing allocation process and tackle some of the problems around maladministration and fraud occurring in the subsidy-based housing programmes.”

The Strategy recommends the formation of Allocation Committees, which comprise at minimum two members from the Office of the City/Municipal Manager and two members from the provincial department of housing. Political office-bearers are not allowed to sit on the Allocation Committee. The Strategy introduces priority selection criteria for allocation, which differ across the two housing programmes. The Strategy states that where there is an existing database (e.g. NHNR, demand databases), the following selection criteria apply:

- **Primary level:** “first come first served” will apply, i.e. earliest date on which the application for housing assistance was made.
- **Second level:** vulnerable groups, i.e. families with children, especially women-headed households with children.
- **Third level:** indigent beneficiaries including disabled persons or beneficiaries with disabled family members residing with them, as well as the aged (for females this refers to a person of 60 years or older, and for males refers to a person of 65 years or older).¹⁰⁶

The Strategy outlines the allocation policy applicable to greenfield housing developments undertaken in terms of the IRDP. In these developments, some housing opportunities are created for persons who do not satisfy the NHSS qualification criteria, e.g. those who earn above R3 500. These households will most probably not be registered on the NHNR so the Strategy recommends that “the MEC will have to invite applications through public

¹⁰⁵ DHS ‘Strategy for the Allocation of Housing Opportunities Created through the National Housing Programmes’ (2008) p. 3.

¹⁰⁶ Ibid. pp. 10-11.

advertisements and consider the applications on a first come first served basis, and may apply the priority criteria where such a need exists and is regarded as feasible."¹⁰⁷

Where there is no existing provincial demand database, NHNR or waiting list system for a specific area or region, the Strategy states that a transition process may be required leading up to the completion of registration of all those on the NHNR of those areas. According to the Strategy, in this situation and where IRDP projects are "implemented based on socio-economic surveys that determine the overall housing needs, the municipality must pursue a public open invitation process, inviting households who satisfy the qualification criteria to tender applications for housing subsidies linked to the housing products to be delivered." Where the number of qualifying applications exceeds housing opportunities available, the municipality must deploy an "open and transparent process of allocation of the housing opportunities" which may entail a process of "first come first served", or an "open lottery system" where this is not feasible.¹⁰⁸

In terms of the selection of prospective housing subsidy beneficiaries, the Strategy outlines a rather convoluted 12-step process to be followed:

- 1 The project manager informs the secretariat of the Allocation Committee that houses will be ready for allocation at a given date in the future and that an approved list of selected prospective beneficiaries is required for publication.
- 2 The secretariat of the Allocation Committee, in terms of the selection criteria decided by the Allocation Committee, requests the manager of the NHNR to draw a list of prospective beneficiaries from the NHNR for submission to the committee.
- 3 The manager of the NHNR applies the criteria indicated in the request of the secretariat of the Allocation Committee, and, in line with the criteria stipulated in this Strategy, draws the targeted names from the NHNR.
- 4 The selected names are verified against the NHNR.
- 5 The national department informs the secretariat of the Allocation Committee of the results of the verification process.
- 6 The Allocation Committee then convenes to evaluate the selection of prospective subsidy applicants against the set qualification criteria and the findings of the verification process.

¹⁰⁷ DHS 'Strategy for the Allocation of Housing Opportunities Created through the National Housing Programmes' (2008) pp. 10-11. According to a Public Service Commission report, allocation on a "first come first served" basis is problematic and a fairer system should be considered, possibly one which is based on need rather than time spent on the waiting list. Special categories for those considered the most vulnerable (i.e. the aged, people with disabilities and women-headed households) are helpful in this regard, however the poverty measure, in and of itself, does not consider dependency ratio (size of household), length of time on the waiting list etc. This leads to dissatisfaction with the perceived unfair allocation process. See Public Service Commission 'Consolidated Monitoring and Evaluation Report on the Department of Housing (Human Settlements): Evaluation Cycle 2009/2010' (July 2010) pp. 11-12; 20-22.

¹⁰⁸ Ibid.

- 7 The secretariat of the Allocation Committee informs the project manager of the approved list of prospective beneficiaries, requesting the project manager to gather the required, completed subsidy application forms for submission to the Allocation Committee for verification.

The process of subsidy application adjudication and verification then begins:

- 8 The project manager must publish the list of prospective beneficiaries in local newspapers, and also display the list at the offices of the City Manager, in the project location, the local post office and any other public office with the approval of the relevant authority.
- 9 The project manager must also extend written invitations to prospective beneficiaries on the approved list to apply for housing subsidies, and provide the required subsidy application forms.
- 10 The project manager must ensure that all the applications are correctly completed and supported by the required documentation as proof.
- 11 The project manager will also enter into a conditional agreement of sale with each beneficiary in respect of the relevant property selected.
- 12 The project manager will then refer the completed subsidy application forms with all the required documentation back to the secretariat of the Allocation Committee for evaluation.¹⁰⁹

According to the Strategy, it is very important that the project manager facilitates the establishment of a community Project Steering Committee (PSC), which will “serve as the community interface mechanism and will facilitate communication with the community on all matters pertaining to the project, including the selection of prospective beneficiaries and the subsidy application process and approvals.”¹¹⁰

“ However, it is not clear how (or if) these guidelines are being followed by provinces and municipalities, and how allocation of houses actually works on the ground. ”

However, it is not clear how (or if) these guidelines are being followed by provinces and municipalities, or how allocation of houses *actually* works on the ground. Also, there is a lack of clarity on how Allocation Committees and PSCs *should* function and how they *do* function in practice, and what spaces are available to individuals and communities to input and engage on selection criteria and allocation processes for specific housing projects. The influence of councillors and government officials in allocation processes is also unclear, although there is the perception by many communities that ‘corruption’ is commonplace. This issue has been discussed over the years with the department. For example, at a Parliamentary Portfolio Committee on Human Settlements workshop

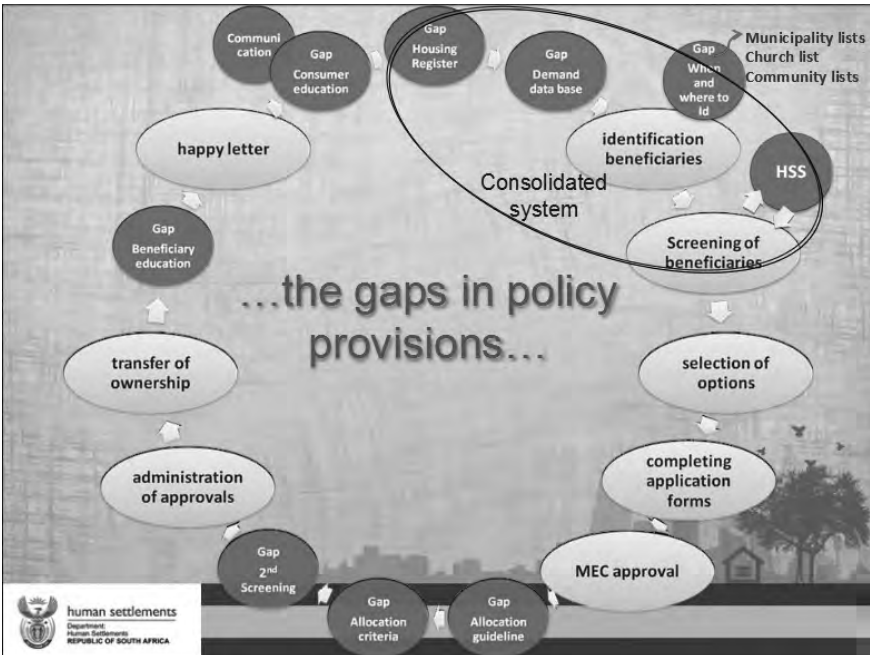
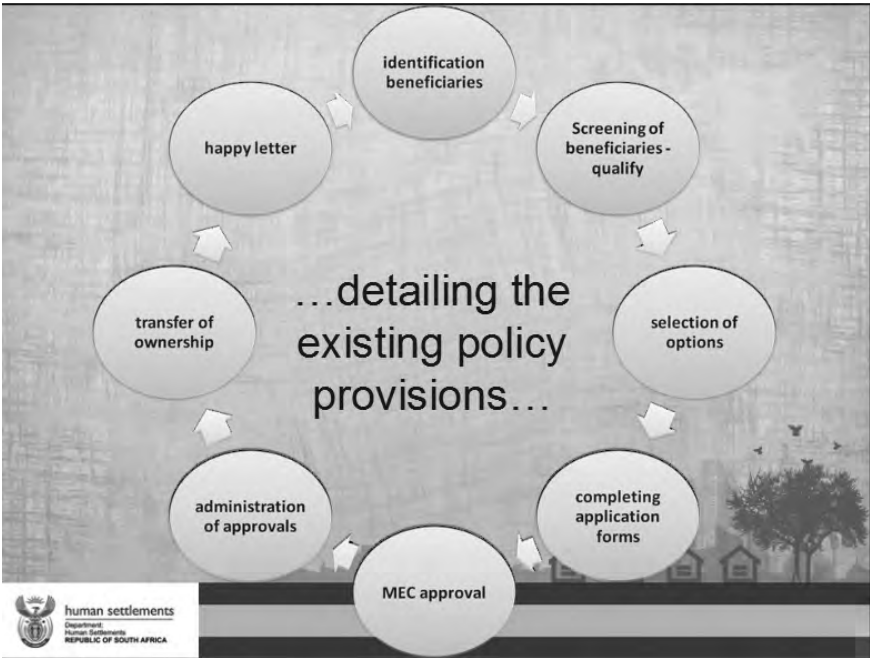
¹⁰⁹ DHS ‘Strategy for the Allocation of Housing Opportunities Created through the National Housing Programmes’ (2008), p. 15.

¹¹⁰ Ibid pp. 15-16.

held in 2009, where the DHS presented on the National Housing Allocation Strategy, the Committee highlighted that the composition of Allocation Committees and the processes for allocating housing to communities represented the foremost challenge for the DHS. Some members raised problems around the non-inclusion of councillors on the Allocation Committees and expressed the view that the structure should be broadly representative and inclusive of existing grassroots community structures and civil society. The politicisation of certain municipal offices and the problems this causes for fair allocation was also highlighted.¹¹¹

The DHS itself has acknowledged that there are "gaps" in the complex process of housing allocation outlined above, as illustrated below in two slides taken from a December 2009 presentation by the DHS to the Parliamentary Portfolio Committee on Human Settlements. The first slide details the existing policy provisions around allocation of state-subsidised houses, while the second identifies the numerous gaps that exist in the process.

¹¹¹ See DHS 'Presentation to the Parliamentary Portfolio Committee on Human Settlements' (2 December 2009).



On the DHS' own version, gaps occur around the following areas: the NHNR and demand databases; when and how to identify beneficiaries; the screening of beneficiaries and the HSS; allocation criteria and second screening of beneficiaries; and 'beneficiary education' and communication.¹¹² There are clearly substantial systemic problems throughout the entire housing delivery process that, even three years later, still exist. Another problem with the national allocation guidelines is that they do not even mention location, let alone as a criterion in allocation of housing opportunities.

4.4. Gauteng

While the NHNR and national guidelines on housing allocation have been adopted by provinces and municipalities throughout the country (to varying degrees), the Gauteng Department of Local Government and Housing (GDLGH) has adopted its own demand database and housing allocation policy, namely the Gauteng Housing Demand Database (HDD) and the Gauteng Housing Demand Database and Allocation Policy. This section thus examines the policies and systems in place in the Gauteng province in order to get a better sense of current practice, and shortcomings, around housing demand and allocation.

4.4.1. Gauteng Housing Demand Database (HDD)

The Gauteng provincial housing department has its own housing allocation policy and HDD, the latter implemented in 2008 as a result of numerous problems with the waiting list system. In 2006, the GDLGH first investigated the implementation of a HDD. By linking 'demand' to projects, the department felt they could then factor variables of housing such as the availability of land into the requirements of the beneficiaries. Similar to the NHNR, the HDD was meant to help the province plan better for housing projects and ensure centralisation of housing demand data. Within the province, a team was set up that conceptualised what the HDD would be and how it would function.

In essence, the HDD is a "re-engineering" of the housing waiting list system. It was launched with a campaign called Operation Ziveze ('Show Yourself'), where all those who had registered on the waiting lists or were wanting to register for housing subsidies, were asked to come forward and verify their information. Only officials at the GDLGH Customer Support Centre (located at 37 Sauer Street in Johannesburg) and at provincial regional offices were able to capture data and upload it onto the HDD. A community awareness campaign was rolled out across Sedibeng District Municipality, Metsweding, West Rand, Tshwane, City of Johannesburg and Ekurhuleni. Teams from the GDLGH were deployed to centres in these areas to update applicants' information.¹¹³ In order

¹¹² DHS 'Presentation to the Parliamentary Portfolio Committee on Human Settlements: Beneficiary List Review Plan (Housing Register and Demand Database)' (October 2009).

¹¹³ *Sowetan* 'Demand Database needs your name' (25 June 2008).

to register on the HDD, people were asked to produce the following information: South African ID; birth certificates or ID book of financial dependents; death certificate of deceased spouse (if applicable); spouse's ID (if married); marriage certificate (if married and bringing a partner); divorce decree (if divorced); pay slip (if working); affidavit (if not working); and housing C-form.¹¹⁴

Similar to the NHNR, the HDD attempts to capture what people want in terms of type of housing, preferred locations, etc. It also ostensibly gathers data to ensure that those who register on the HDD are actually eligible for housing subsidies. According to the GDLGH, the objectives of the HDD are to:

- Obtain relevant and accurate data for housing planning purposes through verification and updating of applicants information;
- Formulate a comprehensive housing allocation framework that accommodates previously disadvantaged groups and special needs categories;
- Help prioritise beneficiaries with special needs (these beneficiaries are identified as the aged, disabled, families, child-headed households and destitute military veterans);
- Ensure that the housing allocation process is implemented across all the programmes of the department in a fair, standardised, equitable and transparent manner.¹¹⁵

Information captured on the HDD is supposed to allow provincial government to “know and understand how many people require houses per region and area and what is their status, but also what type of housing assistance do they require in terms of various housing typologies available.”¹¹⁶ According to the GDLGH, this information is also meant to help:

- Identify housing need both within the area of jurisdiction of each municipality and the province as a whole.
- Identify potential areas for housing projects and serve as a basis for launching housing projects in the province.
- Assist municipalities in counteracting ‘queue-jumping’ by land invaders.
- Provide information to developers and other institutions, thus serving as a basis for launching housing projects.¹¹⁷

According to a GDLGH official, there was some fear from people that they were “starting afresh” by registering onto the HDD; however the date of initial registration is meant to be recorded on the HDD, in order to capture particularly those who registered in 1996/1997. C-forms, the receipt that was used as proof of registration on the waiting list

¹¹⁴ Ibid

¹¹⁵ GDLGH ‘Prioritising beneficiaries with special needs’ press release (26 June 2009).

¹¹⁶ GDLGH ‘Democratic Alliance (DA) claim is nothing but political grand standing’ press release (2 August 2007).

¹¹⁷ Ibid.

system, are no longer used but people who registered in 1996 and 1997 are prioritised. C-forms have been replaced with new HDD computer-generated receipts.

Between February 2008 (when the programme began) and November 2008, a total of 245 213 people had updated their details on the HDD. In addition, 84 447 new applicants registered over the same period.¹¹⁸ These figures were released in a press statement by the GDLGH, which also promised that the MEC would publish the names of those people that had applied, per region and local area.¹¹⁹ The GDLGH also committed that the names of all approved beneficiaries per project would be published and posted in local newspapers and community centres and smses would be sent out to all those that had registered informing them about the status of their applications.¹²⁰ In early 2009, the Operation Ziveze campaign was reinvigorated, with the GDLGH stating that through the HDD, "government will provide accurate and detailed records that will eventually assist in the allocation of houses. This will ease pressure on those who have been waiting long because there was no housing project in their area." The department went on to state that:

“ Those who do not qualify for free low cost (RDP) housing, the demand database will have records of all customers in need of all types of housing, rental accommodation and credit linked or bonded housing. This means that customers not qualifying for free Reconstruction and Development Programme (RDP) houses for various reasons will also be registered on the demand database. Once the department has identified the housing needs of customers based on the information provided by the demand database, the department of housing will plan for the provision of housing to qualifying customers. If the housing need of a particular area happens to be rental, then the department will include rental housing when planning for that identified area. ”

When people registered during the campaign, many expected that they were applying for a subsidy and would get a house. However, Operation Ziveze was just about updating or adding people's information onto the HDD. People were told they would get a house when a unit became available, and people in certain areas were informed of housing projects in their vicinity, but were not guaranteed a house.

There are a number of problems with housing demand databases which are outlined in section 5.2 of this report.

¹¹⁸ GDLGH 'Housing's Ziveze campaign a resounding success' press release (18 November 2008).

¹¹⁹ Ibid.

¹²⁰ Ibid.

4.4.2. Gauteng Housing Demand Database and Allocation Policy

Prior to the Gauteng HDD being launched in 2008, the Gauteng Housing Demand Database and Allocation Policy was formulated in 2007 in response to the challenges and failures of the waiting list system. The policy was adopted in 2009, and is quite similar to the National Housing Allocation Strategy. In 2011, a policy review was conducted in order to bring the policy in line with the accreditation of municipalities, and the revised policy was published in June 2011. The latest policy is intended to provide a more equitable and regulated means of identifying beneficiaries and allocating houses in the province.

The 2011 Gauteng HDD and Allocation Policy provides guidelines on actual allocation, catering to special needs, and the upgrading of informal settlements, and puts programmes in place for those who do not qualify for subsidies. It also provides a framework for institutional arrangements such as the Allocation Committees and the functions of national, provincial and municipal housing departments (including those in accredited municipalities). According to GDLGH officials, the National Housing Allocation Strategy lacks differentiation as it is meant to cater for all nine provinces, therefore the Gauteng housing department needed to develop its own policy to address the specific housing challenges of the province. In addition, policymakers and government officials must confront local politics on the ground around housing and are often ill equipped to do so without specific guidance from a clear policy document on allocation standards and processes.

The Gauteng HDD and Allocation Policy is applicable to all housing programmes in the province and is meant to be implemented by both accredited and non-accredited municipalities in cooperation with the GDLGH and other stakeholders. The policy also describes the specific information to be included in the HDD. The idea is to capture this information in order to identify housing needs and potential areas for housing projects, provide housing information to communities, assist as a tool to provide accountability and transparency in housing allocation, and to guide allocations of different tenure options according to the needs of beneficiaries.¹²¹

In terms of housing allocation, the policy states that the allocation is guided by the following:

- The IRDP, meaning that allocation takes place after properties are developed.
- All previous waiting lists shall “be discontinued and be captured on the HDD” (presumably this means that previous waiting lists are to be integrated into the single HDD).
- A block-by-block approach shall be applicable in all urban renewal projects.
- Applicants will be categorised according to their geographic location where a housing project is identified for development.

¹²¹ GDLGH ‘Gauteng Housing Demand Database and Allocation Policy’ press release (June 2011) p. 14.

- During the process of allocation, the province or accredited municipalities will prioritise those who applied the earliest (presumably this means those who applied the earliest on the waiting list).¹²²

The policy identifies special needs categories as: the disabled, child-headed households, the aged, and destitute military veterans. According to the policy, each housing project will be required to prioritise 5 percent of the housing units to identified special needs categories, and a Special Needs Policy will be adopted by the GDLGH to inform the housing allocation in Gauteng. The policy also describes how allocation works in informal settlement upgrading projects undertaken in terms of the UISP, and defines a series of phases. During Phase 1 of the UISP, beneficiaries for serviced stands are chosen from the project area, i.e. the informal settlement being upgraded. During Phase 2 of the UISP, the HDD may be consulted to allocate housing opportunities or call for applications through an open invitation process.

The policy describes the institutional arrangements for the administration of the selection and allocation process, which largely mirrors that outlined in the National Housing Allocation Strategy. These are summarised as followed:

- **Joint Allocation Committee:** The function of the Joint Allocation Committee is to coordinate and execute the allocations process in the province or accredited municipality and to administer all selection, verification and allocation processes. The Committee must comprise two members of the Office of the Municipal Manager of a municipality, two members of the GDLGH and two other officials nominated by the parties to the Committee. There must be a Chairperson and a Deputy Chairperson. The frequency of meetings is determined by the housing project process, and the secretariat function is performed either by the provincial department or the accredited municipality.¹²³
- **GDLGH:** The provincial housing department is tasked with maintaining and managing the policy and processes, cooperating with municipalities in order to effectively implement the policy, as well as undertaking “necessary administrative and capacity measures to support the accredited and yet-to-be-accredited municipalities in order to fast-track the implementation process.”¹²⁴ The department is tasked with managing the HDD and providing policy information to beneficiaries in the province.
- **Accredited Municipalities:** Accredited municipalities are responsible for the same functions and tasks as the GDLGH, within their area of jurisdiction.

¹²² Ibid p. 16.

¹²³ Ibid pp. 20-21.

¹²⁴ Ibid p. 21.

According to the Gauteng HDD and Allocation Policy, a task team comprising officials from GDLGH and municipalities should be established to “coordinate the coherent operations of the following functionaries of the Department”, which include *inter alia*:

- **Beneficiary Administration Unit:** This unit receives completed subsidy application forms from the project manager and records the applications on the HSS. They are then verified against the selection made and evaluated for compliance with the qualification criteria. The applications found to be in order are submitted to GDLGH for further verification, consideration and approval. The Beneficiary Administration Unit then informs the project manager of the approval of the subsidy applications. The unit is also responsible for compiling regional beneficiary lists for municipalities involved, specifying the area where the housing project shall take place and the number of beneficiaries to benefit. The unit must then inform the beneficiaries to attend a mandatory beneficiary education session and must compile quarterly reports of the status of housing demand in the GDLGH or municipality to inform the planning of housing projects and programmes.¹²⁵
- **Beneficiary Education Unit:** This unit provides detailed information to stakeholders on any relevant issue that relates to housing development and allocation processes.¹²⁶
- **Project Managers:** Project managers must alert the secretariat of the Joint Allocation Committee of the need for the allocation and approval of subsidy beneficiaries prior to the implementation of the project. They then receive a list of selected beneficiaries from the Joint Allocation Committee and must ensure that all subsidy application forms are correctly completed and supported by the required documentation in terms of the qualification criteria.¹²⁷ Project managers must publish the list of prospective beneficiaries and invite them to complete subsidy application forms. They must also conclude conditional agreements of sale with prospective beneficiaries subject to a “suspensive clause in relation to the approval of the subsidy application”. Completed application forms (with all required documentation) are then sent back to the secretariat of the Joint Allocation Committee, and project managers receive confirmation of subsidy approvals from GDLGH or the accredited municipality. They may then proceed with the confirmation of the subsidy approvals and transfer the properties to the approved beneficiaries.¹²⁸

¹²⁵ Ibid p. 23.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid p. 24.

- **Information System Management Unit:** This unit provides IT infrastructure and support, manages and maintains the HDD and synchronises the system with GDLGH or accredited municipalities.¹²⁹
- **Project Steering Committees (PSC):** PSCs receive information regarding housing allocation processes and procedures taking place in accredited municipalities, and are tasked with monitoring and reporting non-compliance to building norms and standards by contractors and project managers. They must attend to community liaison activities to determine community needs in each project.¹³⁰

There are a number of problems with the HDD and the Gauteng HDD and Allocation Policy, which are outlined in sections 5.2 and 5.4 of this report.

4.5. Western Cape

This section outlines processes undertaken by the Western Cape Department of Human Settlements (WCDHS) to implement a demand database and housing allocation policy framework for municipalities (excluding the Level 2 accredited City of Cape Town). The Western Cape Housing Demand Database (WCHDD) and the Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects are discussed in more detail.

4.5.1. Western Cape Housing Demand Database (WCHDD)

The housing backlog in the Western Cape is estimated at 426 711 households. Of this backlog, 280 726 households (over 65 percent) are located within the City of Cape Town.¹³¹ While the City has developed its own housing database and allocation policy; the WCDHS has focused its efforts on the other non-accredited municipalities in the province.

¹²⁹ Ibid.

¹³⁰ Ibid p. 25.

¹³¹ WCDHS 'Western Cape Annual Performance Plan 2011/2012' p. 16

City of Cape Town

City of Cape Town Housing Database

The Greater Cape Town region historically had a housing 'database' which was developed through the integration of the various waiting lists of the former Cape municipalities. In 1985, the housing waiting lists were captured into a spreadsheet format, and kept as both paper and electronic copies. In 1996, following the first local government elections, the Cape Town metropolitan area (comprising a number of separate municipalities) was split into six municipalities, with a total of 174 wards within an umbrella Metropolitan Council.¹³² At this point each of the six municipalities combined their housing waiting list data into a set of spreadsheets. In 2001, following the second local government elections, the City of Cape Town Municipality was formed. In June 2006, all six regions combined their datasets.¹³³ The resulting City of Cape Town database¹³⁴ records the names and personal details of three groups of people: those who have applied for a house and are waiting, applicants who have been assisted by the City with a house, and those applicants whose applications have been cancelled for a range of reasons.¹³⁵

According to a 2008 media release by the City of Cape Town, the integrated housing database contains applicants' and spouses' personal details, ID numbers, marital status, current address and employment details. According to the City, 'not surprisingly, because demand substantially exceeds supply, housing allocations are always a subject of emotional debate and the City administers the allocation process through its integrated housing database that contains the details of approximately 300 000 registered applicants for housing opportunities.'¹³⁶ The media release stresses the difference between the housing database, project lists, final beneficiary lists and registration:

- **Project lists:** area subsets of the housing database extracted according to predetermined selection criteria for a specific project. From this project list the beneficiaries are selected according to the national housing subsidy qualification criteria and in strict date order;
- **Final beneficiary lists:** generated by the provincial housing department's subsidy section

¹³² These municipalities were Cape Town/Central, Tygerberg, South Peninsula, Blaauwberg, Oostenberg and Helderberg – along with a Metropolitan Administration to oversee the whole area.

¹³³ For more information on the registration policies and practice of municipalities in the Western Cape, see Tshangana 'Allocation of subsidized housing opportunities to households in the Western Cape by municipalities' (2009).

¹³⁴ The City's housing database is accessible online to check applications: <http://web1.capetown.gov.za/web1/searchhwl/>

¹³⁵ See City of Cape Town website: <http://www.capetown.gov.za/en/Housing/Pages/Housinglist.aspx>

¹³⁶ City of Cape Town 'City's Housing List is Easy to Access' (19 March 2008). According to a City of Cape Town official, as of February 2012 there were approximately 346 000 people registered on the City of Cape Town's database. Interview with City of Cape Town official (29 February 2012).

when they approve beneficiaries for a specific housing subsidy project;

- **Registration:** means that the person is registered on the City's housing database and each applicant has been issued with a registration number. This does not necessarily mean that they are on either a project list or final beneficiary list or even qualify for housing in terms of the national housing policy subsidy schemes.

City of Cape Town Housing Allocation Policy

The City's Housing Allocation Policy was initially approved in 2004¹³⁷ and revised in 2009, following amendments to the National Housing Code and the publication of the National Housing Allocation Strategy in 2008.¹³⁸ According to the Centre for Social Science Research (CSSR) based at the University of Cape Town, "it seems that the perceived importance of the 2004 policy concerned the allocation of houses to people on waiting-lists, but in practice the allocation of housing continued as before, making little or no use of waiting-lists. Housing continued to be allocated not on the basis of individually-specific criteria (as recorded in a register) but rather on membership of a supposed 'community'."¹³⁹

Between 2004 and 2009, the City sought to clarify what it meant by 'target community' and "some city officials tried to move towards the more open 'source-list' envisaged in the 2004 policy". In 2009, the City passed the new policy, partly to "reiterate the need to strike a balance between 'back-yarders', 'overcrowders' and the residents of informal settlements, as well as between people residing close to the project and people living further away. In particular, people who had been registered and waiting for housing for a long time, but live outside the immediate vicinity, could be prioritised as highly as (if not higher than) people who live nearby but had not been waiting for so long."¹⁴⁰

The 2009 policy applies to allocation of beneficiaries in council rental housing, as well as in new housing developments. In terms of the latter, the policy states that the selection of beneficiaries will be done on a "project-specific split between residents living in informal settlements and applicants identified as backyard dwellers and those in overcrowded conditions on the City's housing database."¹⁴¹ Once the percentage split for backyard dwellers and those in overcrowded conditions have been determined, i.e. the percentage allocation that must come from the City's housing database, the following sub-splits (also based on an agreed percentage) are proposed: priority for those applicants living in areas that are within a determined radius of the proposed development and who have

¹³⁷ For an analysis of the 2004 allocation policy, see CSSR 'The Social Consequences of Establishing 'Mixed' Neighbourhoods' p. 9.

¹³⁸ City of Cape Town 'Housing Allocation Policy 2009' (approved on 26 August 2009) p. 5.

¹³⁹ CSSR The Social Consequences of Establishing 'Mixed' Neighbourhoods' p. 10.

¹⁴⁰ Ibid.

¹⁴¹ City of Cape Town 'Housing Allocation Policy 2009' (approved on 26 August 2009) p. 11.

been on the housing database the longest; and applicants that fall outside the radius who have been on the housing database for longer than those in the above category. Special consideration may be given to vulnerable groups and special needs.¹⁴²

The policy states that the approved beneficiary list recommended by the PSC for a specific project must be made public for a reasonable time in the affected community for comment before submitting for approval to the province. Applicants registered on the City's database may appeal their omission from selection for a project but only on the grounds that due process has not been followed. Such an appeal must be directed to the City Manager in terms of Section 62 of the Municipal Systems Act 32 of 2000.¹⁴³

In February 2010, the City of Cape Town published its Draft Implementation Guidelines to deal with the City's needs regarding the allocation of beneficiaries in low-income housing developments.

In 2007, the Western Cape provincial department of local government and housing implemented a new strategy called *Isidima: the Western Cape Sustainable Human Settlement Strategy (WCSHSS)*, which aimed to deliver sustainable and quality housing through the creation of human settlements. The WCSHSS contains "specific actions" including to "establish a comprehensive housing demand database to support long-term demand-based planning" and to "develop a clear allocations policy for the Province and ensure the revision of waiting lists and allocations processes is credible and transparent."¹⁴⁴ According to the WCDHS's 2011/2012 Annual Performance Plan, the department has a number of planned policy initiatives, including "a fairer allocation of housing opportunities."¹⁴⁵ The document states that the department:

“ will introduce a municipal database support programme that will ensure that proper data is collected, collated and verified. This will ensure that the selection of beneficiaries is based on accurate, comprehensive and up-to-date information, and minimise the risk of non-qualifiers benefiting. In addition, the department will implement a standardised, transparent and fairer allocation policy and process with minimum criteria which municipalities will need to include in the selection of beneficiaries.”¹⁴⁶

¹⁴² Ibid.

¹⁴³ Ibid pp. 11-12.

¹⁴⁴ Western Cape Department of Local Government and Housing 'Isidima: The Western Cape Sustainable Human Settlement Strategy' (2007) pp. 51 and 63.

¹⁴⁵ WCDHS 'Western Cape Annual Performance Plan 2011/2012' p. 13.

¹⁴⁶ Ibid.

The WCDHS also states that it will “develop a consumer education programme for municipalities to engage with communities about the selection of beneficiaries for a project. By communicating clearly with potential beneficiaries about the number of people who will be accommodated and getting their buy-in to the selection process before beneficiaries are selected (sic).”¹⁴⁷ Two of the key challenges faced by the province are the “selection process of the beneficiary process which varies from municipality to municipality” as well as the “inadequate coordination between the different spheres of government and among provincial government departments.”¹⁴⁸ To address these challenges and policy priorities, the WCDHS has embarked on a focused programme, which is outlined in more detail below.

When the NDoH pilot project in the City of Cape Town began in 2006 (see section 4.3.1 of this report for more on this), service providers were hired to collect information and to present the data in electronic format. This was presented to the NDoH as a National Housing Demand Database (NHDD). However, as mentioned above, the national department chose to use the NHNR instead. The Western Cape department of housing experienced some difficulties after the NHNR technical support contract lapsed, and decided to identify an alternative provincial database solution. The WCDHS appointed Pricewaterhouse Coopers (PwC) in March 2010 to assist with developing a Western Cape HDD (WCHDD) aligned to the City of Cape Town.¹⁴⁹ As a result, the Housing Demand Database Improvement Programme (HDDIP) was implemented in April 2010, which was also a response to widespread dissatisfaction among communities regarding the integrity of waiting lists and the recognition of the need for good quality housing demand information for planning purposes and to run fair beneficiary selection.

The WCHDD is located within the HDDIP, and the latter aims to improve data collection, management systems and practices so that beneficiaries are chosen in a fair and efficient manner. PwC began this process by collecting demand/needs data from the 24 non-metropolitan municipalities in the province, and then converting this data into a format tailored to the NHNR. Of the 24 municipalities, 22 were using MS Excel systems, and the other two were using hardcover books to capture housing demand. The consultants were required to devise a strategy on how to improve WCHDD data collection. According to the WCDHS, the findings of the research point to questions around the quality and integrity of data and confirm inefficiencies and gaps in the following components of the housing demand ‘value chain’:

- poor alignment of municipal housing policies to statutory requirements;
- insufficient internal controls in data management processes and procedures;

¹⁴⁷ Ibid p. 14.

¹⁴⁸ Ibid p. 18.

¹⁴⁹ Interview with WCDHS official (1 March 2012).

- housing officials lack training on the National Housing Code, housing policy, and good governance;
- the majority of municipalities utilise manually-driven systems, e.g. MS Excel, and this uncontrolled access poses a risk to the integrity of data.¹⁵⁰

The Western Cape MEC for Human Settlements announced that the housing allocation process was under review, with qualifying criteria set to become stricter, and priority afforded to disabled people, elderly people and households headed by women

The result of the initial research was the decision in September 2010 to link all demand data to the NHNR, as functionality exists and the system is linked to sources of verification, e.g. Department of Home Affairs, Unemployment Insurance Fund (UIF), etc.

The data of all 24 non-metropolitan municipalities was standardised into the WCHDD and uploaded to the NHNR. According to a WCDHS official, Western Cape became the first province to have all municipalities submit housing demand information to the NHNR. In July 2011, it was reported that “corruption and bribery stemming from housing allocations could become a thing of the past, with local data set to be aligned with that at national level.”¹⁵¹ The Western Cape MEC

“The Western Cape MEC for Human Settlements announced that the housing allocation process was under review, with qualifying criteria set to become stricter, and priority afforded to disabled people, elderly people and households headed by women.”

for Human Settlements announced that the housing allocation process was under review, with qualifying criteria set to become stricter, and priority afforded to disabled people, elderly people and households headed by women. The report stated that the linking of the 24 non-metropolitan municipalities in the Western Cape to the NHNR would make it very difficult for someone in a municipality to shift names around, and that a support strategy to train people to use the system was being implemented in nine pilot municipalities - George, Drakenstein, Swartland, Breede Valley, Cape Agulhas, Saldanha Bay, Prince Albert, Swellendam and Witzenberg - and would be rolled out to remaining municipalities.¹⁵²

In 2011, the City of Cape Town entered into a memorandum of understanding with the WCDHS around the WCHDD. PwC upgraded the WCHDD to a web-based database to ensure that other municipalities feed into it, and is transferring data from all municipalities to this centralised database online for verification of applications.¹⁵³ The WCHDD is a ‘backbone database’, which municipalities populate separately, even though they can

¹⁵⁰ WCDHS ‘Housing Demand Database Improvement Programme (HDDIP)’ presented to the National Research Task Team (23 February 2012).

¹⁵¹ *Cape Argus* ‘New system to curb housing graft’ (25 July 2011).

¹⁵² Ibid.

¹⁵³ Interview with WCDHS official (1 March 2012). The WCHDD is available online: www.wchddb.co.za

only see their own information. To do so, they require access to the internet, which is difficult in remote areas. It was envisaged that sometime in 2012 the website would be live and accessible to the public, however WCDHS is developing restriction mechanisms and controls for the data so that it cannot be corrupted.¹⁵⁴ Currently, municipal officials are being trained on data-capture into the new WCHDD, and the WCDHS is pushing municipalities to use this system.

The following section outlines in more detail the review of beneficiary selection and housing allocation processes that is currently being undertaken by the WCDHS, and specifically the recent publication of the Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects.

4.5.2. Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects

As mentioned above, in 2008 the National Housing Allocation Strategy was published as a guideline for provinces and municipalities around housing allocation in UISP and IRDP projects; however this only serves as a broad framework. In the Western Cape, due undoubtedly in large part to the immense political pressure facing the province, an intensive research process was undertaken by the WCDHS to identify various problems arising around housing allocation processes, and to develop rational, appropriate and consistent selection criteria guidelines for non-accredited municipalities in the province (i.e. all municipalities other than City of Cape Town). In August 2012 this process culminated in the adoption and publication of the Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects (Framework Policy). By 30 June 2014, the WCDHS expects all municipalities to develop municipal selection policies compliant with the core elements outlined in the Policy Framework, otherwise project applications submitted by municipalities may not be approved.¹⁵⁵

According to a WCDHS official, a number of beneficiary selection and data management issues were identified in the course of the research, including:

- the selection approach by the municipality is often not spelled out;
- some households are in “desperate need” and should be prioritised (e.g. permanently disabled persons);
- proximity-based selection are often dealt with in an ad hoc manner leading to exclusion and lack of transparency;
- gaps in registration data can undermine consistency in registration date ordering;
- “unfair discrimination” happens in some cases, e.g. selection on the basis of marital status;

¹⁵⁴ Ibid.

¹⁵⁵ WCDHS ‘Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects’ (August 2012) p. 5.

- there is an imbalance between the selection of informal settlement dwellers and backyarders in housing projects, i.e. distribution of opportunities/quotas across projects;
- there are inadequate internal processes and controls for the collection and storage of data;
- data quality is often questionable and not able to adequately serve selection purposes – often there is little information on household income and structure, etc.¹⁵⁶

According to the WCDHS, there are a number of sticking points around the development of selection policies.¹⁵⁷ Some thinking by the provincial department around key questions was outlined in a presentation by the WCDHS to a National Research Task Team workshop in February 2012, and is summarised below.

Should individuals be allowed to register in more than one municipality?

According to WCDHS, if a system is designed that does not allow people to register in different municipalities, people will have to decide in which municipality to register and when they do, they will be allocated a new date. While simple, this system could be perceived as “unfair, discourage job search, encourage informal transfers, and place the burden of being a landlord on the beneficiary.”¹⁵⁸ On the other hand, if the system allows people to register in more than one municipality, then they cannot be in the active part of more than one municipal database and will be placed in the archive. Only when they have been “ordinary residents” for two continuous years in the municipality will they be moved into the active part of the system. They will be required to inform the municipality of this and provide evidence. If “ordinary residence” is proved, the individual or household should remain in the active part of the system and be checked once a year.

How to deal with poor registration date data?

The issue of poor registration date data is clearly the bane of Western Cape provincial housing officials. The WCDHS states that before implementation of the policy or system, an analysis of all registration data is required. In terms of the verification of registration date data, this often means looking for a correlation between the age of the oldest member of the core household and the registration date amongst other entries in the database, or other methods available. If the registration date data (actual or inferred) is deemed adequate by the municipality, this can be used. However, if a significant proportion of the data is deemed inadequate and beyond improvement, the municipality

¹⁵⁶ WCDHS ‘Selection of beneficiaries: Some key design issues in the Western Cape’ presented by Paul Whelan to the National Research Task Team (23 February 2012).

¹⁵⁷ Ibid. Other design issues identified by the WCDHS include: the legal imperative to prioritise households in desperate need; persistent exclusion of certain groups e.g. farm workers; registered households who cannot be contacted; and balancing informal settlement dwellers with people living in overcrowded formal conditions.

¹⁵⁸ Ibid.

will make use of a composite age/registration data index across ALL database entries. The 'new' registration/age data will be worked out by the following equation:

$$\frac{\text{Current date} - (\text{Current age} - 18) + (\text{period registered for})}{2}$$

Another option is to use length of residence in the municipality after 18 years of age as a proxy for the 'period registered' for entries with neither real nor inferred dates, in combination with the two options outlined above. Clearly, this is a very complicated system of ensuring some form of equitable and fair date ordering in housing databases. According to a WCDHS official, achieving buy-in from local citizens is critical. According to the WCDHS, ideally municipalities should display all entries with registration dates and be able to predict when each entry will receive a housing opportunity. A local appeals process around registration dates should be established, which could involve a tribunal.¹⁵⁹

What are the sources of independent individual/household level data to support claims by individuals and how can use of that data be facilitated?

The WCDHS is looking for other sources of disaggregated data that could be used to supplement existing data or gaps in data. For example, for length of residence in the municipality, IEC voter registration information, school reports and municipal utility bills, etc. could be used as verification. Sources of verification for different criteria could also come from the various social grants given to permanently disabled people or adult caregivers.

How can the exclusionary impact of town-based selection practices be managed?

The WCDHS recommends a single database for an entire municipality, with no "town-based selection" (this refers to the selection of beneficiaries based on the town they live in, where the housing project is being built, as opposed to drawing beneficiaries from the entire municipality), but with the "optional proximity quota". This quota should preferably not be used, but if it is, certain conditions apply. The quota means that a certain percentage (up to half) of housing opportunities may be set aside for households residing within a certain proximity to the project site (selected in registration date order, i.e. those who registered earliest get preference when it comes to selection). The proximity quota can only be used in the selection of beneficiaries where the municipality wishes to prioritise households who have "strong, provable economic and social links to the broader area of the project site" and will be displaced from the broader area as a result of the project.¹⁶⁰ According to the WCDHS, the proximity area around the project site will be "designated using a circle, centred on the middle of the site with a radius between

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

0.25 and 3.2 km, depending on the town size.¹⁶¹ Further conditions include the following: the proximity quota is not to be used in projects/project components of greater than 500 opportunities; and, in order to be part of a proximity quota, a household must be currently resident within the proximity area and the database must reflect this before the call to establish a PSC is announced.

During the course of the WCDHS's research, information apparently came to light about how problematic the data is at municipal level, particularly in regard to registration dates. This makes drawing from the housing database in registration date order very difficult; however, this is the main criterion that the WCDHS wants municipalities to use in their selection policies. One reason for the poor data at municipal level is that the systems set up did not cater for allocating houses in terms of current programmes, with the WCDHS and municipalities having to now "retrofit" systems built for other purposes, e.g. allocating rental housing opportunities.

In August 2012, the final Framework Policy was approved, in terms of which "all municipalities need to adopt a selection policy covering the selection of beneficiaries in all subsidised human settlement projects resulting in ownership where the municipality is involved in deliberately selecting beneficiaries." Further, municipal selection policies should "provide sufficient information to allow officials charged with selection to carry out their tasks in a predictable manner, without ambiguity" and should "provide sufficient guidance on how the role of policy making played by elected politicians is kept separate from policy implementation undertaken by appointed officials."¹⁶² The Framework Policy covers the following types of housing projects: greenfield, non-relocation projects; relocation of a portion of informal settlement in the process of upgrade; and institutional and affordable housing projects. This report will focus on the issue of selection in the first category of housing project.

According to the Framework Policy, the general core elements that should be included in all projects are as follows:

¹⁶¹ Ibid. The radius in small and very small towns is 0.25 – 1km; medium towns it is 1 –1.5km; and in large towns it is 1.5 – 3.2 kms.

¹⁶² WCDHS 'Western Cape Provincial Framework Policy for the Selection of Housing Beneficiaries in Ownership-Based Subsidy Projects' (August 2012) p. 5.

- Registration date ordering as a primary criterion;¹⁶³
- Promote systematic inclusion of eligible groups;¹⁶⁴
- Avoid perverse incentives;
- Independent verification of individual or household information;¹⁶⁵
- Use of readily measurable and verifiable indicators;¹⁶⁶
- Balancing people in overcrowded conditions and informal settlement dwellers;¹⁶⁷
- Length of residence in municipality a prerequisite for selection.¹⁶⁸

In terms of greenfield housing projects, the Framework Policy states that "municipalities must prioritise individuals and households in desperate need in a registration date ordered list. Within the category of individuals or households in desperate need, earlier registration dates should be prioritised."¹⁶⁹ The Framework Policy also states that where

¹⁶³ According to the Framework Policy, if a municipality decides to use a points-based system, the majority of points should be allocated to the date of registration. The manner in which the date of registration is assigned to individuals or households and applied in selection should be consistent across all database entries where possible. Ordering by the age of adults in the core household is a permissible basis for selection, although when used, it must be used in combination with registration date ordering. The length of residence of individuals/households in a municipality can be used as a proxy for registration dates as a last resort, provide that claims made by all registering individuals/households about their length of residence are verified by independent means." Ibid p. 7.

¹⁶⁴ For example, "municipalities should ensure the application of the policy includes households who are located outside of towns in which housing projects tend to be concentrated. Furthermore, municipalities should take account of registration practices that might have occurred in the past and that lead to situations in which households with young adults in the core tend to be selected before households with older adults in the core." Ibid p. 8.

¹⁶⁵ "Municipalities must verify claims made by households or individuals in the registration or updating process and used to select beneficiaries. The means of verification should be objective and independent of beneficiaries or potential beneficiaries as well as the municipal officials responsible for making selections. The 'community' must not be used to identify possible false claims made by households or individuals during registration or updating." Ibid.

¹⁶⁶ "Selection criteria should be based on indicators that can be measured and verified accurately and readily. Because income is an indicator that is difficult to verify accurately, its role in selection should be avoided, except to determine the eligibility of the individual or household for the subsidy." Ibid.

¹⁶⁷ "The number of people in formal overcrowded conditions and informal settlement dwellers receiving subsidised housing opportunities should be balanced against each other. The balancing should occur over successive multi-year periods and over the portfolio of housing projects planned and executed in the municipality." Ibid p. 9.

¹⁶⁸ "The length of residence in a municipality can only be used as a prerequisite for selection if claims made by all registering individuals/households in a municipality about their length of residence are verified by independent means. If such verification is possible and is done, the following conditions must pertain: an individual/household selected must have resided within the municipality for a continuous period directly before selection; the individual should have resided in the municipality for some minimum total period defined in the Selection Policy by the municipality, although this period may not necessarily be continuous; minimum periods of residence should be long enough to stop people from outside the municipality locating in the municipality for the express purpose of receiving a housing opportunity." Ibid.

¹⁶⁹ The Framework Policy defines a desperate need as "a severe need that endures over time as opposed to an acute episode of desperation and hardship. Households in desperate need experience a desperate situation due to their lack of services and shelter than other households in the eligible population because of characteristics (often physical) of an individual person in the household or of the household collectively that endure over time." Ibid p. 10

there is little correlation between registration dates and the age of the individuals or heads of households, municipalities must ensure that the selection of beneficiaries occurs “in a manner that is skewed towards elderly and middle aged individuals or households headed by elderly or middle aged persons in a registration date ordered list.”¹⁷⁰

The Framework Policy outlines the institutional arrangements for municipal selection policies. While the municipal manager is responsible for implementing the municipal selection policy and accounting to the council, the Framework Policy recommends that, where possible, an oversight body “consisting municipal officials not involved in setting selection parameters or managing data and officials from appropriate government bodies other than the municipality should be established to check whether municipality’s selection policy is being applied correctly when beneficiaries are being selected for projects.”¹⁷¹ According to the Framework Policy, eligible households or their representatives or community groups “should not play a direct role in the selection of beneficiaries (but must be consulted on the determination of project-specific parameters where appropriate).”¹⁷² It stresses that there is a need for individual households and communities to make input into the selection parameters before they are finalised, and that the results of a particular selection, preliminary and final, should be communicated to affected communities. Further, municipalities must establish a system to deal with objections to a preliminary selection list, after the list has been pre-screened by themselves and the WCDHS.¹⁷³

It remains to be seen how this Policy Framework will be adopted by municipalities, and how selection criteria will be determined on a project basis, given the specific dynamics in different areas of the province. The provincial government has developed a highly technical framework to deal with beneficiary selection and housing allocation; however given the political implications of housing delivery, and the levels of dissatisfaction within the province, it is unclear whether this will form part of the ‘solution’ or exacerbate the problem further.¹⁷⁴

¹⁷⁰ Ibid.

¹⁷¹ Ibid p. 13.

¹⁷² Ibid.

¹⁷³ Ibid p. 14.

¹⁷⁴ Recently the WCDHS uploaded a step-by-step housing allocation process guide on its website here: http://www.westerncape.gov.za/eng/your_gov/200266/pubs/public_info/A/272351#01



Systemic Problems with Policies and Processes

The previous sections have outlined some of the policies and systems in place around housing demand capture and housing allocation at the national level and in the Gauteng and Western Cape provinces. Much of what is set out refers to what ought to happen in terms of policies and processes; however it is clear that what is happening on the ground is often very different. This section therefore outlines a number of systemic problems related to the current policies and processes, including:

- 5.1. Problems with the 'waiting list' system;
- 5.2. Problems with demand databases;
- 5.3. Problems with the HSS;
- 5.4. Problems with allocation of houses; and
- 5.5. Problems around municipal accreditation.

While these problems are discussed separately below, they are interrelated and form part of a bigger question around how best to match housing needs of communities, households and individuals with appropriate solutions in South Africa. This section relies on a review of secondary literature, as well as interviews with government officials. Where applicable, perceptions of academics, CBOs, NGOs and community members around housing demand and allocation in Gauteng and the Western Cape have been included.

5.1. Problems with the 'Waiting List' System

In Gauteng and the Western Cape (and, presumably, across the country), it is clear that there is no all-encompassing housing 'waiting list' that operates in a fair and rational manner to allocate houses on a 'first come first served' basis. Furthermore, no housing waiting 'queue' exists in the sense that it is currently understood by most people. Thus it is unclear what exactly is meant by 'jumping the queue', a phrase that is constantly used by government officials.

Queue-jumping

The issue of 'queue-jumping' was raised a number of times during the Gauteng discussions held for this study. One participant questioned the existence of a genuine housing 'queue', given the continued 'myth of the waiting list', while another raised the question that, if the waiting list actually exists and if there is a functioning system, what is the role of litigation as a means of 'queue-jumping'.¹⁷⁵ The issue was raised of emergency accommodation being provided as a temporary solution to people, but becoming de facto permanent because people stay in the accommodation for years, without permanent options being provided. Another NGO participant highlighted the fact that there are different entry points into the system or so-called 'queue' for housing and that these need to be acknowledged and unpacked, bearing in mind issues of equity.¹⁷⁶

According to a recent report on allocation in managed land settlement projects,¹⁷⁷ there are challenges with dominant public policy, and its political and ideological links:

- ¹⁷⁵ In many eviction cases in South Africa, courts have referred to the "housing waiting list" or to the "housing queue." In a number of cases where the City of Johannesburg was ordered to provide temporary accommodation to those made homeless by an eviction, the City attempted to argue that these people are effectively 'jumping the queue', which should not be permitted. However the recent landmark *Blue Moonlight* judgment by the Constitutional Court has the following to say on the issue of 'queue-jumping' in this context: "Opportunists should not be enabled to gain preference over those who have been waiting for housing, patiently, according to legally prescribed procedures. But, as the Supreme Court of Appeal found, queue jumping is not in issue in this case. The Occupiers do not claim permanent housing, ahead of anyone else in a queue. They have to wait in the queue or join it." The Court further stated that the occupiers in the *PE Municipality* case could also not accurately be defined as 'queue jumpers', as they were "a homeless community that had been evicted once and then found land to occupy with what they considered to be the owner's permission where they had been residing for eight years. They did not deliberately invade land with an intention of disrupting the housing programme and placing themselves at the front of the queue." *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another 2012 (2) SA 104 (CC)* paras 93-94.
- ¹⁷⁶ In a discussion of eligibility and allocation in managed land settlement projects, Royston and Eglin differentiate between state-led and community-led allocation. They observe that for state-driven allocation, eligibility tends to be driven by the municipal waiting list/demand database and generic housing subsidy criteria. Allocation to a project could be driven by qualifying for a subsidy, being on top of the waiting list or coming from a particular informal settlement. For community-driven allocation, eligibility could take into consideration whether the person is a member of the savings scheme, if they have saved a minimum target savings amount, if they live in a certain informal settlement, etc. Allocation in the case of the latter could be based on savings points, attendance at community meetings, being on the list the longest, etc. Royston and Eglin 'Allocation Thought Piece for Managed Land Settlement' p. 7.
- ¹⁷⁷ Managed land settlement is a form on incremental tenure upgrading advocated by organisations like Afesis-corplan and Urban LandMark. Under a managed land settlement initiative, the outer boundary of an existing informal settlement earmarked for future upgrading, or a new piece of land identified for phased and incremental settlement, could be identified and communities are afforded the right to settle on a plot and granted permission to build certain types of structures on it. The proponents of this incremental approach are lobbying for government support for a pilot and demonstration projects to explore these different tenure arrangements. See R Eglin 'Between a Shack and an RDP House: Alternative Forms of Tenure Security' *Transformer* 15, 5 (October/November 2009) pp. 3-5. See also <http://www.landfirst.org.za/>

“ if an organised community takes initiative, or wins a court case, then the public system is not very adept at being responsive to a departure from the “waiting patiently” (for your name to come up on a waiting list) mentality. It could be said that this mind set has actually disempowered people over the last fifteen years or so, as it has undermined some community’s ability or will power to get on with it themselves. In contrast, some of the social movements stand in contrast to this (“nothing for us without us”)...¹⁷⁸ ”

In the Gauteng CBO discussion a concern was raised that backyard shackdwellers are not included in the province’s housing policy and, while they have “waited patiently and done the right thing” those who have occupied land illegally and who reside in informal settlements are catered for in terms of the national upgrading programme. This view was countered by one of the participants, who stated that backyard shackdwellers and people living in informal settlements are in the same predicament, and that all people are entitled to access housing subsidies and to be provided with housing opportunities. Another participant raised concerns about access to housing subsidies by inner city Johannesburg residents, who were seen to be left out of housing delivery and allocation processes.

In practice, “housing subsidy beneficiaries are derived from a variety of different sources, not simply the waiting list or demand database. This is because in a programmatic development approach certain informal settlements may be identified for upgrading and their occupants may not be high on the list or might not be on it at all. The impetus for development is not always the next name on a waiting list, even although this is the perception that exists among people who have waited decades for their name to come up.”¹⁷⁹ According to Lauren Royston and Ronald Eglin, “the notion of waiting patiently is also reinforced politically,”¹⁸⁰ and this can cause problems in situations where the allocation system driven by a ‘first come first served’ principle comes into conflict with an area-specific upgrading agenda e.g. the Alexandra Renewal Project (see below in this section for more on this project).

During the Gauteng NGO discussion, the waiting list system was referred to as a tool of political and social control in housing delivery, and the criticism was levelled that current systems generate very specific behaviour and do not take into account growth and split of families, multi-nodal survival strategies, etc. One participant mentioned that

¹⁷⁸ Royston and Eglin ‘Allocation Thought Piece for Managed Land Settlement’ pp. 4-5.

¹⁷⁹ Ibid p. 9.

¹⁸⁰ Ibid.

registering one's name on the waiting list or demand database has become "a rite of passage for people when they turn 18", however there is no sense of how long they will wait for a house, or what options are available to them in the interim.

There are numerous challenges with the waiting list system that have been raised by government officials and others. In the early years of housing delivery it did not matter where a housing project was built, if your name was on top of the list, you were allocated a house in that project (in theory). According to a report by the CSSR, South African housing policy "does not leave scope for personal choice in terms of the location housing project. One key reason for this is that housing implementation is totally supply driven and potential beneficiaries can always decide to not take up a housing place and wait for the project, but the queuing system does not always leave scope for this."¹⁸¹ Therefore, housing allocation did not take into the account the social and economic links which beneficiaries had to their areas of previous residence.¹⁸² This problem was eventually addressed by making location a factor in the housing allocation process. However area-based or in situ housing projects had the effect of rendering the waiting list system ineffective, as these projects used different criteria altogether.¹⁸³ Furthermore, waiting lists did not take into account people with 'special needs', placing them within the same registration-date-based list as everyone else. The waiting list system also depended on reliable, updated information; however, this data was not obtained or maintained by

¹⁸¹ CSSR 'The Social Consequences of Establishing 'Mixed' Neighbourhoods' p. 27

¹⁸² According to research undertaken by Marie Huchzermeyer, housing interventions (specifically project-linked subsidies) have "undermined community initiatives, spurred inequalities and promoted the pursuit of individualistic rather than community driven objectives." Her case studies identify "two important tensions which may arise as a result of the implementation of differential housing projects. There is an explicit tension between the individual-focused housing policy and the tendency of communities, especially vulnerable and poor communities, to function as a collective, relying on committees and civic organisation structures to satisfy their goals. Thus, while established communities have the potential to apply the strength of their social bond in the fight for housing, they may not all be rewarded equally for their efforts. This may give rise to a second tension – individuals may well work as a collective to secure housing access, but they also hold ideals which align with an individualised model of suburb life." Ibid p. 34.

¹⁸³ In his research on participation in the Alexandra Renewal Project (ARP) in Johannesburg, Luke Sinwell describes how in April 2006 the ARP shifted away from the use of waiting lists to allocate housing in its upgrading project at Alexandra township in Johannesburg. The waiting list approach to allocation, which had been used since the beginning of the ARP in 2001, was scrapped in favour of an exclusive block-by-block approach. This change in policy resulted from pressure by the Alexandra Development Forum (ADF), as well as the perceived failure of the waiting list approach to show any sign of de-densification or improvement in Alexandra as a whole. Sinwell describes how the ARP called the waiting list the "pop-corn approach" because as soon as people were moved out of densely populated areas in backyards, others occupied the vacant area and it was impossible to regulate and prevent 're-densification'. However, according to Sinwell, the block-by-block approach "has serious implications for local politics in Alexandra" and "reprioritised limited resources from one poor group to another...The housing waiting list approach meant that it would be primarily old residents who were on the waiting list who would benefit, but the block by block approach changed this completely by benefiting primarily shack dwellers and excluding and frustrating those who had been on the waiting list." L Sinwell 'The Alexandra Development Forum (ADF): the tyranny of invited participatory spaces?' *Transformation* 74 (2010) pp. 38-39. See also Royston and Eglin 'Allocation Thought Piece for Managed Land Settlement' p. 9.

municipalities (for example, according to a City of Cape Town official one of their biggest struggles is to contact people who have been selected for a housing opportunity, as contact details are not up-to-date). Finally, in some areas, numerous waiting lists would be drawn up by different groups with competing political agendas. As mentioned above, due to these problems and others, eThekweni Metropolitan Municipality took a decision in 2002 to scrap the housing waiting lists and moved to a project-based approach using random selection.

The existence of people who registered on waiting lists in 1996/1997, but who have still not received state-subsidised houses, needs to be more systematically addressed and it is unclear if the new systems developed by Gauteng and Western Cape housing departments are going to be able to deal with this contentious and emotive issue, particularly in line with a focus on informal settlement upgrading and geographic targeting. Perceptions of corruption are fed by the fact that waiting lists have not been ‘made public’, that allocation processes are not transparent, and that many people have been on ‘the list’ for years (and in some cases, decades). Hence the numerous protests, occupation of unfinished houses and

“The existence of people registered on waiting lists in 1996/1997 who have still not received houses needs to be more systematically addressed...”

court cases witnessed over the years. There needs to be a deeper appreciation by government of these realities on the ground, and an acknowledgment of the unhelpful myths it has created around housing delivery. This is clearly something politicians do not want to tackle head on, as it has the potential to foster distrust, resentment and anger.

The challenges with the waiting list system - which include administrative difficulties, maladministration and fraud - have been acknowledged by government in the past.

According to the GDLGH in 2009:

“ The waiting list has not been a very effective tool to address housing challenges in the province... The investigations conducted by the Gauteng Department of Housing revealed that various irregularities have taken place during the allocation process and the occupation of RDP houses. This was precipitated by maladministration, fraud and corruption that contributed to the displacement of innocent beneficiaries.¹⁸⁴ ”

Audits conducted in Gauteng revealed that the waiting lists included deceased individuals, a lack of residential addresses, invalid ID numbers and general other misinformation.¹⁸⁵

¹⁸⁴ GDLGH ‘Building sustainable communities’ press release (15 July 2009).

¹⁸⁵ GDLGH ‘An appeal to update your details on demand database’ press release (27 May 2009).

Furthermore, there was a lack of transparency with lists, and conflicts with area- or location-based projects. According to a GDLGH official, it was found that municipalities worked offline and demand/needs data would then be sent to the province to upload to the HSS. Loopholes were created during this process, which led to fraud and corruption. Further, according to the provincial department, during an audit of the waiting list a few years prior, “it was discovered that 50 percent of beneficiaries’ ID numbers were invalid, while 65 percent did not match the applicants’ records. It was further found that some residential addresses are blank and deceased applicants still appear on the list.”¹⁸⁶

Overall, it was found that municipalities in Gauteng did not have the capacity to effectively manage and verify data on the waiting lists. Thus the waiting list system presented numerous administrative challenges, compounded by the politics around housing allocation, fraud and corruption. These sentiments have been echoed across provinces using the waiting list system, hence the move to demand databases. However this system also has its challenges, which are discussed in the following section.

5.2. Problems with Demand Databases

As mentioned above, to get around the myriad problems with the waiting list system, Gauteng and the Western Cape provinces introduced centralised demand databases to capture housing demand and assist with the allocation process. The national department also developed the NHNR, which is used by the other provinces and accredited municipalities, and is linked to the HSS. However, there are a number of broader problems with housing delivery which affect the efficacy of these systems. Further, there is a lot of distrust, scepticism and confusion around the databases from community and CBO members. In Gauteng, the fact that at registration on the HDD, “C-forms were confiscated” and people were given a database receipt and told that this supersedes all previous applications, concerned people. Prior to the HDD, people were told to go to the municipal offices, however now all information is collected at regional provincial offices, and the waiting lists are controlled by the province.

In the Gauteng NGO discussion, a number of people raised the fact that the HDD is really just a glorified waiting list, with one participant referring to it as the “waiting list rebranded”.

One participant expressed her concern that there is no sense of how the HDD links with housing chapters in IDPs (if at all), and if there is a way for people to be given more information on how long they would wait for a project in their area, or to be allocated a house elsewhere. Another problems is that in Gauteng and the Western Cape the demand databases are not linked directly to the HSS, and really should be (in other provinces the HSS and the NHNR are linked). In the Western Cape, some discussion

¹⁸⁶ GDLGH ‘A call to update your details on Demand Database’ press release (21 May 2009).

participants expressed the fear that the "so-called database" may be used as evidence in court to evict people by claiming that people are 'queue-jumping'.

According to GDLGH officials, some of the challenges that the provincial department currently experiences around housing delivery include: fulfilling promises made by politicians and political agendas in a context of limited resources (e.g. existing housing projects often suffer as new projects need to be created in order to fulfil political ends); as well as tensions between national, provincial and local government. The provision of housing is a long term programme, and often cuts across a Minister of Housing and MEC's terms of office. However, changing leadership often results in a change in the goals and aims of the DHS or provincial housing department, which makes planning for housing projects extremely difficult and frustrating. According to the GDLGH, the HDD is a typical example of this. While the previous Minister was very focused on developing equitable allocation strategies, policies and plans in response to the waiting lists, these are not the aims of the current Minister. The HDD has thus become somewhat stagnant in its progress.

While demand databases and allocation policies exist at national and provincial level, it is at municipal level that policies are implemented. During our research we encountered a number of problems facing municipalities on the ground. One challenge raised is the lack of information available to communities around policy shifts and developments, and the effects of these. Many people believe that the waiting lists still exist, and put faith in them. However in Gauteng, for example, the housing policy focus has ostensibly shifted away from this system (and greenfield developments) towards location-based allocation and in situ informal settlement upgrading. While this shift was intended to benefit people so that they would no longer have to wait for their name to move to the 'top of the list', it may cause tension with those people who have been waiting for housing for many years, but who do not live in an informal settlement, or area targeted for development.

In reality, the Gauteng HDD has not been fully implemented and interim arrangements are in place pending a decision to move to the NHNR. There appears to be a state of limbo at the provincial department. The HDD is only to be used for allocation to greenfield housing projects in Gauteng, whereas the reality is that in the province a large percentage (one official put the figure at 80 to 90 percent) of housing projects are in situ upgrading (in theory) and there is no need to find beneficiaries via the HDD.¹⁸⁷ According to provincial housing officials, the HDD is not really being used at all (at least not in the first instance) to allocate housing. Informal settlement upgrading projects do not use the HDD as people are identified by existing stands in a settlement. However there have been cases where a mixed approach has been applied such as in the Lufereeng in situ upgrade, where some beneficiaries who had been waiting since 1996/1997 were taken from the HDD. Generally what happens in in situ upgrading projects is that project managers check the lists they get from communities against the HDD, highlighting the 1996/1997 applicants that can be found on the system. Once subsidies are approved on

¹⁸⁷ Interview with GDLGH official (12 April 2012).

the HSS, the beneficiary is given a reference number. However, the province does not like giving people printouts because there is confusion that the reference number equates to a house or stand number, which it does not.¹⁸⁸

In Gauteng there are clear tensions between the province and municipalities in relation to the HDD. The HDD is a web-based application and some municipalities do not have the necessary resources and capacity to implement the system. Before, in Tshwane Metropolitan Municipality it was possible for people to register on the waiting list at one of seven municipal housing satellite offices. With the shift to the HDD, people now have to travel long distances to the provincial office to register on the HDD.¹⁸⁹ The financial and time costs of travelling to the provincial offices may deter people from updating their information on the HDD. Municipal satellite offices have also been closed in the City of Johannesburg and Ekurhuleni Metropolitan Municipality.¹⁹⁰

There are also clearly many problems with the NHNR. Currently, the NHNR appears to collect a lot more data than is deemed necessary by municipalities, and the question needs to be asked how best to effectively determine individual and household needs and 'housing demand' at the local level, and if centralised systems like the NHNR are missing the mark completely. Secondary research has shown that municipalities using the NHNR struggle with the system. According to Pixley ka Seme District Municipality, while the NHNR is operational, "there are too many changes and [it is] not properly communicated."¹⁹¹ In 2012, the district municipality reported that it "had since approached the Provincial and Regional offices of the Department to allow it to use their offices for capturing data on the needs register. There were a number of challenges associated with the needs register unavailability of reports and there was little help forthcoming from the provincial Department and the National Department. The filling of forms was still being done at local municipalities due to lack of funding."¹⁹² It appears that the consultants who used to work on this system were dismissed and there is no capacity at national level to assist municipalities use the NHNR.¹⁹³ According to Frances Baard District Municipality, it has been working on the NHNR since 2009 and while it is operational, challenges exist and "information was difficult to retrieve from the costly system".¹⁹⁴ The district municipality also stated that there is a lack of support for the system, all the information cannot be retrieved, and it is costly to run.¹⁹⁵

¹⁸⁸ Interview with GDLGH official (12 April 2012).

¹⁸⁹ Ibid.

¹⁹⁰ Telephone interview with Ekurhuleni Metropolitan Municipality housing official (6 March 2012); Interview with GDLGH official (12 April 2012).

¹⁹¹ Pixley ka Seme District Municipality 'Presentation on Municipal Accreditation Progress' (8 June 2011).

¹⁹² Pixley Ka Seme District Municipality 'Presentation on Municipal Accreditation' (13 June 2012).

¹⁹³ Pixley ka Seme District Municipality 'Presentation on Municipal Accreditation Progress' (8 June 2011).

¹⁹⁴ Frances Baard District Municipality 'Presentation on Municipal Accreditation Programme' (23 May 2012).

¹⁹⁵ Ibid.

5.3. Problems with the HSS and NHSDDB

The HSS has also posed a number of problems over the years, and has been the site of a substantial amount of maladministration and fraud, which is discussed in section 5.4.2 below. In addition, there are clearly more systemic problems with the HSS that were raised by a number of government officials during the course of our research. According to a local government official, the HSS is "slow and inefficient", and municipalities sometimes wait up to three months for approvals.¹⁹⁶

Our research has shown that other municipalities across the country struggle with the HSS. According to Pixley Ka Seme District Municipality (which has recently received Level 2 accreditation), it has had access to the HSS Online since 2006, but "the system has just been a major disappointment since inception" and operates at "a snail's pace."¹⁹⁷ More recently the district municipality reported to the Parliamentary Portfolio Committee on Human Settlements that the HSS is not reliable or user-friendly, and that the HSS line for the district municipality was problematic.¹⁹⁸ As a result of these challenges the municipality "approached both the Regional and Provincial offices of the Department to allow us to do the capturing on their system in their offices, to try and catch up on our backlogs and we are now making use of the Regional Office."¹⁹⁹ According to Frances Baard District Municipality (which also recently received Level 2 accreditation), it has been working on the HSS Online since 2008 (and the HSS since February 2012), but experiences problems with the system as the connection is "not stable".²⁰⁰ In May 2012 it reported to the Parliamentary Portfolio Committee on Human Settlements that problems are still experienced with the system, and these have never been fully resolved.

In the Gauteng province, the GDLGH has a subsidy department that deals with the HSS, and housing subsidy applications are sent to the subsidy department by project managers to be checked. Provincial housing officials run the applications through the HSS, where they are either approved or rejected. This information is then handed back to project managers, who use the approved application forms to conduct housing allocation based on the selection criteria. Ideally, any rejected applications should be handed back to applicants with the reasons for rejection provided; however a major problem is encountered at this point. There is no clarity on what happens in the case of rejected applications or what recourse people have if they are denied at this point in the process. A further problem concerns approved subsidy applications. Approved subsidy applications are marked as "Approved" on the HSS/NHSDDB, prior a house actually being

¹⁹⁶ Telephone interview with Tshwane Metropolitan Municipality housing official (5 March 2012).

¹⁹⁷ Pixley ka Seme District Municipality 'Presentation on Municipal Accreditation Progress' (8 June 2011).

¹⁹⁸ Pixley Ka Seme District Municipality 'Presentation on Municipal Accreditation' (13 June 2012).

¹⁹⁹ Ibid.

²⁰⁰ Frances Baard District Municipality 'Presentation on Municipal Accreditation Programme' (23 May 2012).

built and transferred. This means that people can be classified as “Approved” on the HSS but may have not actually received a house. Research conducted by Shisaka, comparing a data set from the NHSDB to that against data in the Deeds Registry, has corroborated that this serious problem exists.²⁰¹

What should happen is that a prospective beneficiary is approved for a subsidy and then allocated a house. The beneficiary then signs an Occupation Certificate and/or a “Happy Letter” (a certificate certifying that the qualifying beneficiary is satisfied with the property), moves in and at some point in the future receives a title deed for the house. Those who are approved for a subsidy, but do not receive it are, ideally, carried over to the second phase of the project (if more houses are to be built). In this case, they should be considered first in line to receive a subsidy and be allocated a house. However, according to a DHS official, if a person moves or if there is no second phase of a project, the onus is on the individual applicant (not the project manager) to cancel the subsidy application and state that, despite approval, no subsidy was actually allocated to the individual.²⁰² This often requires an affidavit stating that one did not benefit from the subsidy, which is presumably submitted to the provincial department. In practice, when applicants see that they have been approved and have a reference number, they assume that they have been allocated a house, which is not necessarily the case. Further, approved beneficiaries who have not actually benefitted have created a backlog of people who should be prioritised. Due to this sizeable backlog, there are attempts to investigate a way to archive applicants on the system so that they are separated from actual beneficiaries, and can be considered as potential beneficiaries in future housing projects.²⁰³

The situation of people being approved for subsidies on the NHSDB but not having received a subsidy or house is worrying, given that they remain approved on the HSS. The fact that people must themselves cancel their subsidy application and submit an affidavit to the provincial department to have their status changed is even more worrying. Clarity on this issue is urgently required, as is better communication to the public on how the HSS operates and links with demand databases, the NHNR and housing allocation more generally

“The situation of people being approved for subsidies on the NHSDB but not having received a subsidy or house is worrying, given that they remain approved on the HSS.”

²⁰¹ According to Shisaka, the data set from the NHSDB was problematic in other ways. For example, it only provided the names of approved beneficiaries (which, as mentioned above, does not mean these people actually received a house); it did not contain the dates when the subsidy was approved; and there was no database of actual state-subsidised houses built. Further, only ID numbers were provided and the list did not indicate what type of subsidy the beneficiary was approved for, or if a house was received, where it is located. Shisaka ‘Housing Subsidy Assets: Overall Analysis’ pp. 79-80.

²⁰² Interview with GDLGH official (27 March 2012).

²⁰³ Interview with GDLGH official (12 April 2012).

In terms of abuse of the HSS, in April 2011 then MMC for Housing in the City of Johannesburg, Ruby Mathang, issued a statement warning residents of fraudsters who collect money from people applying for houses with a promise of helping them 'jump the queue' and get to the top of the housing waiting list. He stated that "applicants are offered assistance with application [for] a Housing Subsidy Scheme and upon approval are misled into believing that the reference number is an allocation to a specific house."²⁰⁴ A City of Johannesburg spokesperson further stated that "the housing database lies in the hands of the provincial department of local government and housing, not of the City. No-one has the power to change names on the housing list."²⁰⁵ The City's press statement outlined the "process of applying for a government subsidised house" as follows:

- The applicant applies for a project linked to the subsidy through the Housing Subsidy Scheme, which is administered by the national Department of Human Settlements.
- The applicant is given a reference number, which is reflected on a demand database receipt.
- On meeting the criteria, the applicant is then entered into the demand database for approval.
- When the housing project construction begins, the successful beneficiaries from the targeted project area are formally informed.
- The applicant will thereafter be allocated a house by a housing official only.²⁰⁶

This 'explanation' of the process is not particularly helpful, as it does not address the different ways in which the process breaks down at various stages, from registering on the demand database and how information is captured, to the assumption that this information is actually used in housing allocation, to the problematic way in which housing allocation happens on the ground.

²⁰⁴ K Mabotja 'City warns of housing fraud' *Joburg News* (15 April 2011).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

5.4. Problems with Allocation of Houses

A major source of frustration expressed by community and CBO members in both Gauteng and in the Western Cape is the lack of information available to communities around housing delivery, and the lack of transparency in the housing allocation process. Throughout the CBO discussions, people stated that they do not have enough education about their rights, housing policy in general, and processes/systems of allocation.²⁰⁷ While they are aware that policies have changed, they are unaware of what these changes mean and how they affect communities and individuals. In the Gauteng discussion, a view was expressed that the policies were all in place; however for effective implementation to take place, people need to be aware and educated. As one participant stated, “government’s policies are like a beautiful lady with no one to propose [to her]. What a waste.”

There is clearly a critical lack of transparency in housing allocation processes, and a need to unpack what this lack of transparency means and where along the extremely complex housing allocation process more transparency can be injected. There is also a general lack of communication and information-sharing around policies and processes, from the municipality and/or province to communities. This lack of communication of policies and lack of transparency in the housing allocation process often results in communities alleging corruption.²⁰⁸

“There is clearly a critical lack of transparency in housing allocation processes, and a need to unpack what this lack of transparency means and where along the extremely complex housing allocation process more transparency can be injected.”

The problem of poor monitoring and no transparency in the housing allocation process was raised in all the focus group discussions, with one civil society participant posing the question: exactly how transparent can the process be made? He stated that “the system as it stands is opaque, you have no idea what is happening inside or what is going

²⁰⁷ In August 2010, the Soweto Forum (a community-based organisation working on housing issues in Soweto who was present at the CBO discussion) with the assistance of the South African Human Rights Commission (SAHRC) submitted an access to information request to the GDLGH for information on the allocation lists for RDP houses in the Soweto area from 2000 to 2010; database information from 1996 to 2002 reflecting priority allocations for Soweto, housing allocation policies and implementation plans for the Soweto region and for the province as a whole; and records detailing information-sharing processes followed in relation to informing Soweto communities about subsidy amounts, availability and allocation. In November 2010, GDLGH responded stating that its response was based on sections 34(1) and 38 of the Promotion of Access to Information Act 2 of 2000 (PAIA) which state that a public body may refuse a request if the disclosure would reveal personal information about a third party or if the disclosure could reasonably be expected to endanger the life or physical safety of an individual. The letter states that “it is our response...that the record of information you are requesting contains personal information about housing subsidy beneficiaries, and its disclosure might put the lives of the listed beneficiaries at risk.” GDLGH ‘Response to request in terms of Promotion of Access to Information Act 2 of 2000 (PAIA)’ copy of letter with the author (16 November 2010).

²⁰⁸ S Phaliso ‘Claims of illegal RDP sales in Mandela Park’ *West Cape News* (9 September 2012).

to come out the other end. It is unpredictable and disempowering." This question on transparency resonated with the group, and it is clear that more thinking is required on the issue of how transparent the process can be made, particularly around what selection criteria are used for specific projects, what exactly is the system used for allocation in practice, who is involved in this process, etc. Recognising that there are not enough houses being built (indeed, the lack of supply was raised as the 'elephant in room' on a number of occasions), community participants accepted that there had to be some sort of selection criteria to determine who has first access to housing.

Participants in the Gauteng discussion said that there should ideally be an agreement between communities and the state to identify suitable beneficiaries. One participant raised the fact that the N2 Gateway housing project in Cape Town attempted to register everybody, but there was still contestation in the project, particularly around allocation processes. It was understood that when people register on the waiting list or demand database, it should start development in the area. If a housing project is being developed, community organisations are asked to take on the responsibility to ensure that an existing settlement does not grow. Generally, settlement growth occurs during the planning and building phase, resulting in local re-negotiations in the allocation process. Even if no official waiting list exists, a participant argued that there is almost always a community list, and the community knows who "must receive houses". There was quite a bit of consensus that local negotiations will always be present in housing allocations, and one example given was the Cato Manor housing project in eThekweni, where there was an acceptance of community challenges and the need for long-term engagement.

A rarely articulated but relevant issue is that there are in practice two phases of housing allocation which determine who ends up occupying a subsidised house. The first is the formal allocation phase during which ownership is transferred from the state to the individual or household. Most of this report has been concerned with the confusion relating to this phase and the roles of the state as the main allocating agent, theoretically governed by extensive regulations. The second phase, however, is what happens once the house has been transferred to the beneficiary.

"A rarely articulated but relevant issue is that there are in practice two phases of housing allocation which determine who ends up occupying a subsidised house."

As the next section describes, these owners often pass on the houses quite quickly, even though they are by law not allowed to sell them within the first eight years of occupation (see section 3.1 of this report above). The main allocating actor in this phase is the private individual, not the state. The logic of the market (selling or renting to the highest bidder) makes it unlikely that the 'buyers' would be among the most needy to whom subsidised houses should be allocated. Community perceptions of corruption in allocation and anger about inappropriate individuals (including professionals or foreign nationals, for example) occupying subsidised houses may therefore often relate to this

second 'phase' of allocation, which is hardly regulated or monitored. There is also clearly a lot of grey area between the two phases of allocation.

5.4.1. Informal Housing Transfers and Sales

Recent studies have confirmed the fact that many beneficiaries of RDP houses no longer reside in them, and have either rented or sold them informally. While the formal sale of registered state-subsidised houses is "extremely low" (due to the sales restriction contained in the Housing Act), comprising 90 858 houses between 1994 and 2009, informal transfers are commonplace.²⁰⁹ Research shows that people have "substantial fear and anxiety" around the selling these houses, perceiving this to be illegal, and resort to informal transactions even though there is an acknowledgment that this is high risk for both buyer and seller.²¹⁰ The main reason people sell their house is a change in living circumstances or to access employment.²¹¹ According to the 2008 Western Cape Occupancy Study, commissioned by the Western Cape Department of Human Settlements (WCDHS), which surveyed nearly 3 000 households in subsidised houses built after 2002, 28 percent of houses surveyed were not occupied by the original owner.²¹² The study found that in 57 percent of these cases the occupants knew the owner and indicated that they were living elsewhere, in 31 percent of cases the registered owner was deceased, and in 12 percent of cases the occupants indicated that they did not know the registered owner.²¹³ The study further revealed that of those people who said they had bought the house from the original owner (20 percent of the total cases sampled), the majority appear to have done so through informal sales, e.g. through an affidavit or contract with the owner as opposed to official registration at the Deeds Office.²¹⁴

According to research conducted by Urban LandMark in 2010, since 2005 approximately 11 percent of all RDP houses were unofficially traded by their owners who were barred from selling their houses due to the mandatory lock-in period of 8 years. Over half of these were transactions for between R5 750 and R17 000, i.e. well under what a serviced house should trade at on an open and competitive market.²¹⁵ In 2010 the Minister of Human Settlements, Tokyo Sexwale, stated that, based on a random sample consisting of 10 percent of housing units completed between 1994

"Recent studies have confirmed the fact that many beneficiaries of RDP houses no longer reside in them, and have either rented or sold them informally."

²⁰⁹ Shisaka 'Housing Subsidy Assets: Overall Analysis' p. 34.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Western Cape Department of Local Government and Housing, 'Western Cape Occupancy Study 2008' (February 2009) p. 13.

²¹³ Ibid p. 16.

²¹⁴ Ibid p. 94.

²¹⁵ According to Kecia Rust, "[The black market] is an indication of failure on the part of the delivery system - they're either targeting the wrong people or building houses in the wrong areas." L Wessels 'Black market highlights RDP cracks' *Fin24* (31 March 2010).

and 2008, 34 percent of the original beneficiaries are still occupying houses allocated to them.²¹⁶ This implies that over 60 percent of beneficiary households sampled were not living in the house they had been allocated.

There have been attempts by government to 'crack down' on those who rent out their state-subsidised houses and/or use them to generate income e.g. convert them to spaza shops. In a response to a 2010 incident in which a provincial MEC threatened to evict an owner of a RDP house for renting it out to a tuckshop owner, a *Business Day* op-ed argued that:

« the MEC's attitude belies a common perception of the usefulness of RDP houses. Why would a subsidy beneficiary choose to rent out their house for R700 a month? One could point to the failure of the current RDP system and the predominant model of providing individual title in peripheral areas, where there are few socioeconomic amenities and limited job opportunities. One could also point to the success of the RDP system in the way it generates new and alternative economies that enable people to sustain their livelihoods amid high unemployment. The latter situation, however, is possible only where people are allowed to make rational choices about their own productive tradeoffs, housing arrangements and income-generation activities.²¹⁷ »

This issue is undoubtedly a contentious one, particularly given fears of 'downward-raiding' by higher income groups who obtain possession of subsidised houses. However, there is also clearly "a need to understand the choices people are making in difficult economic circumstances, with a view to supporting successful endeavours rather than punishing people who are leveraging their RDP houses in rational and understandable ways."²¹⁸

Another issue relates to the informal transfer of RDP/BNG houses to foreign nationals. Participants in both Gauteng and Western Cape focus groups voiced suspicions that houses were being sold cheaply for cash to immigrants. They further asserted that the community's effort to evict immigrants from subsidised houses was one of the causes of the xenophobic violence witnessed in the Western Cape in 2008. Indeed, according to a report by the Human Sciences Research Council (HSRC) shortly after the xenophobic attacks, "one of the most important triggers of the recent violence has been the occupation of national housing stock by non-South African citizens. RDP houses were constructed to enable South African citizens to reside in them. The sale or rent of RDP

²¹⁶ Parliamentary Question No 2692 and reply from the Minister of Human Settlements (2010).

²¹⁷ K Tissington, K Rust, R McGaffin, M Napier and S Charlton 'Let's see the real value in RDP houses' *Business Day* (31 August 2010).

²¹⁸ Ibid.

houses to non-South African citizens exacerbates the housing shortage, compounds the pressure on informal settlements and foments community tensions around housing.”²¹⁹

It is clear that the perception of houses being sold to immigrants for cash relates often to the above mentioned ‘second phase’ of allocation, where private individuals (e.g. people who originally benefited from subsidised housing) sell or rent their houses. There are also other ways in which foreign nationals “can legally gain a right to occupy RDP houses; through for example the acquisition of citizenship by naturalisation or a citizen spouse or partner.”²²⁰ However, there is also evidence of government officials involved in corruption. According to one foreign migrant living in Alexandra:

“ [...] I blame South Africans themselves, especially the officials at the RDP programmes. It is never easy for me as a foreigner to just get an RDP house here in this country. There is a list that will show when you registered for the house, what you do, where you live, what is going on. Look, when you go to register, they not only ask for a passport, there are other documents that they require, that prove whether you qualify or not. So the officials that are meant to deliver the houses are the ones that are corrupt, because they demand money from people, then they tamper with the lists. I suspect the people that are supposed to deliver the houses. Even if I had to go there, I can't just bribe anyone I do not even know. They are the ones that send out information asking for people that need houses, how much they will charge. I won't know what is happening. They are the ones that delete certain people, reallocate numbers, that kind of thing.”²²¹

Nonetheless, the fact that foreign nationals are occupying RDP houses is clearly a burning issue in many communities, and the anger is expressed by targeting foreign nationals, rather than it being understood as a problem relating to the much broader practice of South African housing recipients selling or renting out subsidised housing, or instances of corruption by government officials when allocating houses. Providing communities and civil society at large with correct, up-to-date information would mean that false accusations should decrease and real occasions of corruption could be exposed and prosecuted.

²¹⁹ Human Sciences Research Council (HSRC) ‘Citizenship, Violence and Xenophobia in South Africa: Perceptions from South African Communities’ (June 2008) p. 48.

²²⁰ Organization for Migration (IOM) ‘Towards Tolerance, Law, and Dignity: Addressing Violence against Foreign Nationals in South Africa’ Research conducted by the Forced Migration Studies Programme, University of the Witwatersrand (February 2009) p. 20.

²²¹ Ibid.

5.4.2. Maladministration, Fraud and Corruption

In the Gauteng and Western Cape focus groups, community and CBO members described housing allocation at provincial and municipal level as one of the biggest areas of corruption in South Africa. A recent report by NGO, Corruption Watch, showed that 5 percent of all complaints to the organisation in the past year relate to housing, including around "manipulation of RDP housing allocation lists" and "allocation of houses to those loyal to councillors or bribe payers."²²² According to Royston and Eglin, "people don't believe in waiting list as the allocation mechanism in practice – views are widely held that they are corrupt and that people can pay and jump to the front of the queue."²²³ One civil society participant in Gauteng stated that the top-down administrative system and decision-making processes mean that negotiations around allocation are led by the developers of housing projects, which is a problem. There was general agreement that centralised systems are predisposed towards corruption and there needs to be decentralised local processes for registration which "give power back to the beneficiary". One participant noted that while communities are generally quite organised, the problem lies in the system that is premised on the idea of a waiting list, with a single name placed on a list.

A number of oversight bodies have investigated corruption in housing delivery and allocation. In 2005, an Auditor-General's report was tabled before the Minister of Housing based on a performance audit of the approval and allocation of housing subsidies at provincial housing departments.²²⁴ The findings were so serious that, in June 2006, a meeting was held with members of the Standing Committee on Public Accounts (SCOPA), members of the Parliamentary Portfolio Committee on Housing and officials from NDoH to discuss it further. The report identified a number of loopholes in the allocation of housing subsidies process, especially subsidy approvals to government employees earning salaries in excess of the housing subsidy threshold. This was verified by comparing the housing applicant data on the HSS with the electronic government personnel salary database (PERSAL) to identify instances of subsidy approvals to government employees who earned more than R42 000 per year. Other problems encountered included:

- subsidy approvals to applicants under the age of 21 years, in contravention of the National Housing Code;
- subsidy approvals to applicants with invalid ID numbers;
- duplicate subsidy approvals for a specific property;
- manual overrides of the HSS in the approval of housing subsidies (all users and

²²² Corruption Watch 'First Annual Report: Turn up the Volume' (2013) p. 5.

²²³ Royston and Eglin 'Allocation Thought Piece for Managed Land Settlement' p. 11.

²²⁴ See Auditor-General 'Report of the Auditor-General on the findings identified during a performance audit of the approval and allocation of housing subsidies at provincial housing departments' (January 2006).

- administrators had the authority to override the provincial HSS); and
- approved housing subsidies not listed on the NHSDB.²²⁵

On 25 April 2007, the President mandated the Special Investigating Unit (SIU) to conduct an investigation into “any fraud, corruption and maladministration in respect of the development and delivery of low-cost housing in South Africa through the national Department of Housing, the provincial departments of housing, the former housing development boards and corporations and local authorities and their appointed agents.”²²⁶ A five year service level agreement was signed between the SIU and the NDoH, with the key aims of the project to: cleanse the national housing database of disentitled housing subsidy beneficiaries; recover losses suffered by the department as a result of maladministration and corruption; identify weaknesses in the HSS, including the absence of internal controls and policies; make recommendations on improving systemic deficiencies through tighter policies and better control mechanisms; and to institute corrective action, which includes civil, criminal and disciplinary action.²²⁷

A *Business Day* op-ed published in November 2007 reported that 50 000 public servants who appeared to have received low-cost houses irregularly had been identified, and the state was “in the process of bringing them to book.” The article went on to state that the SIU had also started investigations into an estimated R3 billion fraud committed between 1994 and 2004 by unscrupulous housing developers and contractors. The article highlighted a number of key problems in investigating corruption cases as “housing fraud probes at municipal level are mostly ad hoc and narrow in focus. They tend to be strictly restricted to those local authorities where fraudulent activity has already been uncovered.”²²⁸ The article concluded by recommending that in order “to properly address the low-cost housing fraud problem, nationwide probes into non-qualifying private beneficiaries and municipal employees are imperative. The scale of the problem is likely to be far bigger than just public servants, private developers and contractors. Left unchecked, low-cost housing fraud may thwart the government’s quest to eliminate informal settlements by 2014.”²²⁹

According to the SIU’s 2007/2008 Annual Report, by 2008 it had signed almost 400 acknowledgments of debt (AODs), with an approximate value of R5.2 million, and prepared a hundred criminal cases which had been handed over to the police for criminal action. The SIU identified the following challenges and constraints faced by NDoH and SIU with the investigation into housing subsidies:

- information on the HSS is inaccurate;

²²⁵ *Polity* ‘This Week in Parliament’ (12 June 2006).

²²⁶ Special Investigating Unit (SIU) ‘Annual Report 2007/2008’ p. 13.

²²⁷ *Ibid* p. 31.

²²⁸ A Sokomani ‘Stones unturned in crackdown on housing graft’ *Business Day* (26 November 2007).

²²⁹ *Ibid*.

- filing systems are poor, with missing and untraceable files;
- the HSS system is often offline;
- site numbers in the field are unreliable;
- tracing officials is difficult;
- if non-qualifying beneficiaries are prosecuted, there could be challenges in the justice system, including insufficient police resources, overburdened courts and lengthy court case postponements;
- tracing debtors to sign AODs is challenging.²³⁰

According to the SIU's 2010/2011 Annual Report, investigations into the mismanagement and misuse of the state's housing scheme, which results in subsidies being approved for non-qualifying beneficiaries, resulted in 1 291 AODs being signed to the value of R16 275 157. A total of 625 unlawful beneficiaries were arrested and taken to court in joint operations with the South African Police Service (SAPS), and 528 beneficiaries were convicted.²³¹

In 2009, the NDoH announced plans to improve the HSS, following another audit and review process conducted by the Auditor-General into housing corruption in 2008.²³² Following from this process, the NDoH stipulated that applications must be authorised at a second level by a senior official to prevent the manual override of the system by a junior official, however requests for overrides can be submitted to senior officials for their consideration. The NDoH also maintained that better checking mechanisms needed to be put in place to verify information such as ID numbers. According to NDoH, the "application verification mechanism" of the HSS has also been enhanced, and applications are now tested against other databases such as PERSAL, the government employee pension fund, the unemployment insurance fund and the Deeds Office. The director-general of the national department has stated that provincial housing departments have upgraded their "filing systems, information management and data capturing systems" and instituted relevant training programmes to enhance overall performance.²³³

Despite these undertakings by government in 2009 to sort out problems with the HSS, it is clear that challenges persist across the country. One recent exposé of corruption occurred in the Gauteng Province, when in March 2012 gross irregularities in the GDLGH emerged in a provincial SCOPA report, particularly in relation to the allocation of over R7 million which is "related to housing subsidies paid to beneficiaries not appearing on the Housing Subsidy System."²³⁴ In the report, concern was expressed that "whilst the waiting

²³⁰ SIU 'Annual Report 2007/2008' p. 32.

²³¹ SIU 'Annual Report 2010/2011' p. 24.

²³² Auditor-General 'Report on the performance audit of the allocation housing subsidies to municipal employees and the administration of low-cost housing projects by certain provincial housing departments' (March 2008).

²³³ NDOH 'Housing Introduces Improvements to Housing Subsidy System' press release (17 March 2009).

²³⁴ Gauteng Legislature Standing Committee on Public Accounts (SCOPA) 'Scopa Report on the Auditor-General's Report on the Financial Statements and Performance Information of the

list for housing is growing annually, subsidies for housing are being transferred to people who are not qualified and approved beneficiaries.”²³⁵ The report made recommendations that the MEC conduct a forensic investigation into the HSS and report the outcome of each investigation to the provincial SCOPA. The report clearly shows that in the Gauteng province, corruption and fraud around housing allocation is rife.²³⁶ According to the department’s Anti-Fraud and Corruption Unit, it has been “working tirelessly to bring such culprits to book.”²³⁷

In the Gauteng CBO discussion, a former ward councillor described how the Allocation Committees in place are corrupt, and how people in these structures only want to engage with those who are willing to partake in corrupt activities. According to a qualitative survey conducted by Shisaka the process of accessing a state-subsidised house “is a political process” and it is clear that “councillors play a powerful role, often deciding who accesses housing and who does not.”²³⁸ According to Winnie Mandela informal settlement residents, communication with the ward councillor often involved highly politicised negotiations, concerned with local party politics. According to one community member, “if you are an ANC member, a comrade, then you get first preference for a house.” Numerous participants in the Gauteng community focus group accused “councillors of selling houses”, with one participant describing how only (membership) card-carrying ANC members are allowed in meetings where information is given on registering for projects, and how councillors are involved because they influence the Community Liaison Officer (CLO)²³⁹ and manipulate the allocation process. Indeed, the nexus of local level influence and decision-making between ward councillors and committees, CLOs, community leaders, allocation committees, provincial and local government officials, project managers, etc needs to be unpacked and problematised in

“...the process of accessing a state-subsidised house ‘is a political process’ and it is clear that ‘councillors play a powerful role, often deciding who accesses housing and who does not. ”

Department of Local Government and Housing for the Year Ended 31 March 2011 [Pr166/2011]’ (9 March 2012) p. 8.

²³⁵ Ibid.

²³⁶ C Benjamin ‘Call to probe ‘rot’ in Gauteng housing scheme’ *Corruption Watch* (22 March 2012).

²³⁷ GDLGH ‘RDP fraudster goes to jail’ press release (30 July 2012); GDLGH ‘Land Grabbers to spend time behind bars’ press release (2 August 2012).

²³⁸ Shisaka ‘Housing Subsidy Assets: Overall Analysis’ p. 32.

²³⁹ Community Liaison Officers (CLOs) are appointed by a municipality to facilitate communication between community members and government on specific projects. For example, CLOs would be appointed as the liaison between the municipality, community and contractor appointed on a housing project. The ward councillor is often responsible for the selection of CLOs, however the latter are meant to be seen as neutral by all parties involved. For an example of a CLO involved in housing allocation fraud, see GDLGH ‘Corrupt official to spend time behind bars’ press release (13 February 2012).

order to understand where corruption is occurring, or where perceptions of corruption are being created in the housing allocation process.²⁴⁰

In addition to forensic investigations and audits into housing allocation, the media have over the years exposed a number of cases of fraud and corruption around housing allocation. A few examples are highlighted here, but there are hundreds of other examples. According to a 2011 study by Margot Rubin, in 2007 the media reported on Ekurhuleni municipal councillors who were accused of allocating housing only to their friends and supporters. The clientalism was so advanced in this case that the municipal allocation procedures had to be changed.²⁴¹ In 2008, the media exposed a senior Gauteng housing official who was arrested for 'selling' stands that were allocated to beneficiaries of government's housing programme for R100 000 each. Furthermore, it was stated in 2008 that there were 7 363 reported cases, most of which were in Gauteng, of government officials fraudulently acquiring RDP housing units and living in them, selling them or renting them out.²⁴² There were a further 31 000 officials who were under investigation "for possibly using fraudulent and corrupt means to acquire low-cost housing."²⁴³

Community experiences and perceptions of fraud and corruption around housing allocations are commonplace, reinforced by incidents reported in the mainstream media. In terms of the former, Rubin describes how in the course of a study on land-use management practices in three sites in Gauteng, "parallel accounts of corrupt housing practices surfaced in the three areas, exposing a wide variety of accusations of corruption in the housing process, from putting friends into positions of power and manipulating the allocation procedure, to illegally selling title deeds and controlling the deeds register. Participants perceived the entire housing process, from beginning to end, as quite rotten."²⁴⁴

While maladministration, fraud and corruption around housing allocation undoubtedly exist, there is also confusion and anger over the housing waiting list system, demand databases, selection criteria and the allocation process. This confusion can lead to

²⁴⁰ In both the Gauteng discussions the 'politics of housing' in South Africa was raised as a very negative factor, particularly the way in which politicians make promises they cannot keep. These raise unrealistic expectations from communities about what officials are able to deliver. CBO members generally expressed frustration with attempting to engage the state, be it through ward councillors, the Office of the Speaker at municipal and provincial level, government officials, etc. A common experience shared by participants was around election campaigns, when people are promised houses and made to believe that they will benefit from housing developments in the near future. Politicians are then not seen again until just before the next election. The need for accountability around the system and promises made by politicians was raised.

²⁴¹ Rubin 'Perceived Corruption in the South African Housing Allocation and Delivery Programme' p. 483.

²⁴² M Plaut 'South Africa: Behind the violence' *BBC News* (2009).

²⁴³ *IOL News* 'Public servants face fraud rap' (22 April 2008).

²⁴⁴ Rubin 'Perceived Corruption in the South African Housing Allocation and Delivery Programme' p. 481.

perceptions of corruption as a means of explaining why certain people received housing and not others, even if there actually was no corruption involved. Lack of understanding about the allocation processes includes lack of clarity on whether houses are allocated on a 'first come, first served' basis, based on a 'waiting list' or based on other criteria such as racial integration (as described above in the Western Cape), or on residence in a specific area for 'in situ' informal settlement upgrades. Rubin refers to work done by Tinyiko Nkuna in Kliptown, Johannesburg, who:

“ in her work on the housing allocation process in Kliptown, Soweto, identified four different housing waiting lists: national, provincial, and municipal compiled during a specific housing project. To add to the confusion, project-based lists are also compiled in order to prioritize beneficiaries from the project area. Although, many beneficiaries and those in need of housing assume that 'waiting lists' reflect a chronological prioritisation of access to housing, in practice there are multiple strategies used for allocating housing.²⁴⁵ ”

This confusion and frustration at long and unpredictable waiting periods lead people who expect to be beneficiaries to search for reasons to explain why they have not yet received houses while others have. The effects of such anger can be extremely serious, including:

- general distrust of local authorities and accusations of corruption, undermining trust in the state;
- violent protests, including invasion/occupation of incomplete or unallocated housing as well as broader protests targeting counsellors' houses, public buildings or roads;
- violence against foreign nationals who are seen as illegally occupying subsidised housing.

Indeed, the link between xenophobic violence and dissatisfaction about housing allocation is widespread in the country, as mentioned in section 5.4.1 above.²⁴⁶

²⁴⁵ Ibid p. 484.

²⁴⁶ See, for example, HSRC 'Citizenship, Violence and Xenophobia in South Africa' (2008) and IOM 'Towards Tolerance, Law, and Dignity' (2009).

5.5. Problems around Municipal Accreditation

South African municipalities are eager to be accredited to fully undertake the housing function so that they can get around the historically dominant role of the provincial departments in housing delivery, and the resulting failures of inter-governmental relations. These failures have included:

- the provincial allocation of housing subsidies on an ad hoc basis and local governments' resulting inability to plan long-term;
- the lack of a mechanism to negotiate the number of subsidies allocated, and confusion over what to do to improve allocations;
- little control over the appointment of developers; and
- difficulties in multi-year planning in housing development.²⁴⁷

A particular challenge raised by municipalities is that the housing allocation process is usually slow and can lead to situations where a project is finalised, but no housing allocations have been made. The municipality then faces the possibility of vandalism of the empty houses, as well as angry communities who see empty houses when they have been waiting for a long time.²⁴⁸ Despite these systemic problems, provincial governments have been unwilling to relinquish control over the housing function and have resisted accreditation of municipalities. There remains clear antagonism between provincial governments and municipalities over accreditation, which was particularly

obvious in cases where the Western Cape and Gauteng provinces resisted giving accreditation to municipalities for some time.²⁴⁹

"With the accreditation of municipalities, the role of provinces changes quite considerably, resulting in the restructuring of the provincial departments."

With the accreditation of municipalities, the role of provinces changes quite considerably, resulting in the restructuring of the provincial departments.²⁵⁰

A question remains around how funding will be allocated between accredited municipalities and provincial departments when Level 3 accreditation occurs in 2014 and beyond (see section 8.2 in the annexure below for more on the different levels of accreditation). Provinces will require training and capacity to play an effective oversight and support role to accredited municipalities carrying out housing functions.²⁵¹ According to a GDLGH official, the province has the personnel that municipalities need in order to undertake the various components of the housing

²⁴⁷ M Mokoena and L Marais 'The Missing Link in Cooperative Governance and Housing Delivery: Lessons from Mangaung Local Municipality' *Urban Forum* 18 (2007) pp. 318-319.

²⁴⁸ Telephone interview with West Rand Municipality official (2 March 2012).

²⁴⁹ A Makinana 'D-Day set for Cape's housing ambitions' *Cape Argus* (27 August 2009)

²⁵⁰ For a comprehensive overview of how accreditation works and changing roles and responsibilities of the different spheres of government, see DHS 'Accreditation Framework for Municipalities to Administer National Housing Programmes' (2011).

²⁵¹ Interview with DHS official (10 April 2012).

function and the possibility of secondments are currently being discussed. The province is considering moving personnel to the City of Johannesburg and integrating the GDLGH Johannesburg regional office into the municipality to retain people with institutional knowledge and skills, avoid duplication of roles, and minimise potential job losses.²⁵²

While in Gauteng, the Western Cape and the Northern Cape, Implementation Protocols have been signed with Level 2 accredited municipalities and district municipalities, there remain challenges of intergovernmental cooperation. For example, in the Northern Cape there have been clear challenges with the rollout of processes and systems. According to Pixley Ka Seme District Municipality in mid-2012, there is no coordination between the province and the accredited district municipality and “the roles and responsibilities between the Department and accredited municipalities [are] not clearly defined.” Further, the district municipality asserts that the provincial department “by-passes” the accredited municipality and “communicate allocations directly to local municipalities (sic)”, with the latter sometimes changing beneficiaries with the district municipality’s knowledge) and the district acts “as fire fighters.”²⁵³ These tensions may have a lot to do with the specific challenges characterising the nexus between local municipalities, district municipalities and provincial departments in the housing delivery process; however they do illustrate some of the frustrations felt at municipal level around accreditation and housing delivery processes.

From national government’s perspective, there are also concerns with accreditation, which relate to the lack of proper administrative capacity and process to deal with the housing functions at municipal level. National government is concerned that the ‘carrot’ of receiving additional funding from National Treasury has shifted direction away from municipalities acquiring the training and resources required to ensure effective housing delivery (i.e. the process) to the goal of receiving more funding from the national fiscus.²⁵⁴ Indeed, there appear to be tensions between all levels of government around housing delivery, including between provincial departments and the DHS. The breakdown of inter-governmental relations was a recurring theme in the course of our research. In the words of one of the participants in a discussion session: “national doesn’t know what’s happening in province, province don’t know what’s happening in the city.” While this may not be strictly true, it is clearly the perception of many communities and CBOs, and is bolstered by our interviews with government officials.

²⁵² Interview with GDLGH official (12 April 2012).

²⁵³ Pixley Ka Seme District Municipality ‘Presentation on Municipal Accreditation’ (13 June 2012).

²⁵⁴ Interview with DHS official (10 April 2012).



Conclusions and Recommendations

Despite the South African government's construction of millions of state-subsidised houses, there remains a housing crisis in South Africa, which has political, technical, social and racial dimensions. Community protests, xenophobic violence, illegal occupation of RDP houses, court cases and corruption charges mar the housing delivery landscape. The ubiquitous 'waiting for RDP houses' (in many cases by people who have been on a list for over 16 years) is juxtaposed with an extremely top-heavy administrative and bureaucratic systems around housing delivery, and challenges around inter-governmental relations.

Politicians and officials responsible for housing policy in South Africa, at all levels of the state, have sought to create the impression that housing allocation is a rational process, which prioritises those in the greatest need, and those who have been waiting for a subsidised house the longest. The ideologically charged concept of 'the waiting list' is

"...there are a range of highly differentiated, and sometimes contradictory, mechanisms in place to respond to housing need."

emblematic of this. However, the reality is that there is no waiting list, whether one conceives of 'the waiting list' as a mechanism which simply allocates housing to those who have waited the longest, or as a slightly more complicated device meant to take special needs and/or geographical

location into account. Instead, there are a range of highly differentiated, and sometimes contradictory, policies and systems in place to respond to housing need. These range from demand databases and the NHNR which attempt to respond flexibly to the rapidly changing nature of housing need, in a more or less rational way; lottery systems, which allocate housing to qualifying beneficiaries by chance, in a manner that has nothing to do with need or the length of time spent on the list; and other, highly localised, idiosyncratic and often community-based methods of allocating housing developed to adapt to local situations.

Beyond this, there are new housing policies which appear to contradict the logic of a waiting list altogether. There is the Emergency Housing Programme, which concentrates on addressing exigent housing crises emerging from eviction or natural disaster. There is also the UISP, which takes as its major qualification criterion residence in a set geographical area. Neither of these policies depend on the length of time someone has been on a waiting list. They do not even require beneficiaries to have registered

themselves for housing before the beginning of any particular project undertaken in their terms. While the informal settlement and emergency housing programmes cater for people irrespective of how long they have been registered for a housing subsidy (or whether they are in fact registered at all), they can at least be said to be targeted towards those in the most acute housing need. But there is also partially state-subsidised rental housing delivered in terms of the social housing, and public rental housing in terms of the CRU programme (although rollout of this programme has been extremely slow, with very few units developed country-wide). Social housing projects do not even claim to prioritise the poorest of the poor, and depend on beneficiaries demonstrating stable employment and income.

Ultimately, even on the official version, there simply is no housing waiting list in the sense that it is widely understood by the public, as well as by many politicians and government officials. There is a range of projects and programmes aimed at responding to the complex, multi-dimensional nature of housing demand. The way in which people are 'chosen' for these projects is far from clear. The process is often shrouded in secrecy, bureaucratic complexity, and corruption. This lack of transparency frustrates intended beneficiaries (whether they are currently registered or not). It creates the impression that there is more corruption than there likely is, and leads to public protest, often in the form of unlawful occupation of publicly funded and constructed houses.

On top of all of this, there are various unofficial, and often illegal, mechanisms at play. In the first place, there is a great deal of corruption in the allocation of housing, with thousands of public servants managing to get themselves allocated state-subsidised houses (in some cases more than one house each) which are presumably intended for people in greater need. Secondly, people who would otherwise qualify for state-subsidised housing often take occupation of houses without them 'officially' allocated. In this category, there are overtly political 'invasions' of housing, as well as less formal processes which might involve payment of a bribe, or might just reflect administrative error. Third, because of the way the HSS functions, it may be that there are people recorded as having qualified for and been allocated a house, who simply have not been given one. Fourth, even after a house has been allocated, it may be sold or informally transferred by poor beneficiaries in need of ready cash and/or wanting to live closer to economic opportunities elsewhere in the country, or within urban areas.

What is needed in response to all of this is an acceptance that housing allocation is not a simple queue-bound process. Public officials, in their words and deeds, need to abandon the language of 'the queue', in favour of accepting that the allocation of housing responds to a range of pressures which change over time. There are multiple entry points into the state system, ranging from being evicted or displaced from one's home by a natural disaster, through applying for and being given a house in a greenfield housing project, through to having one's informal settlement upgraded in situ, and, finally, being accepted into a social housing scheme. Concerted efforts to tackle corruption are

also required, as is an expansion of state-owned public rental housing stock and the proactive unlocking of serviced urban land for settlement. Public rental housing stock

will enable the state to target housing assistance more precisely, as it retains ownership over housing units, and can prevent them from being informally sold or rented, perhaps to those who are in no real need, but can afford to 'buy' a state-subsidised house.

"Public officials, in their words and deeds, need to abandon the language of 'the queue', in favour of accepting that the allocation of housing responds to a range of pressures which change over time..."

Whatever the solution, the housing waiting list is a myth. It should be treated as such and eradicated

from public discourse on housing, in favour of a more nuanced way of characterising the rational, appropriate and humane responses to the broad range of housing needs in South Africa, which are not currently catered for by the market.

6.1 Recommendations

In addition to the above recommendation to shift the public housing discourse away from the current misplaced fixation with the 'housing waiting list' and 'the queue', a number of more specific recommendations are offered to address some of the key gaps and fault lines identified in the course of our research. Some are quite specific and technical, while others require more high level analysis and intervention on the part of government departments. While these recommendations are directed at DHS, provincial housing departments, GDLGH, WCDHS and municipalities respectively – they naturally depend on collaboration and cooperation between government departments.

The Department of Human Settlements (DHS) should:

- 1 Investigate the usefulness, efficacy and cost of the NHNR. The DHS needs to further undertake a comprehensive review of the system, taking into consideration the issues raised by municipalities around the cost of the system (which contradicts the department's assertion that the NHNR is cheaper to run than provincial demand databases).
- 2 Provide an indication of the extent to which the NHNR is actually being used by project planners to link 'demand' with housing supply. Also, the DHS should address the issue of capacity and training on the NHNR to provinces and accredited municipalities. For an effective system, resources and capacity need to be provided to municipalities, and more focus needs to be placed at this level. Communication between DHS and municipalities needs to be improved, as it is currently quite poor.
- 3 Reconsider the restrictive clause in the Housing Act around sale and transfer of state-subsidised houses. There is research around this issue and it should be seriously engaged with by national government, particularly in light of worrying

calls for an extension of this period and greater penalisation of those who informally transfer their state-subsidised houses.

- 4 Report on what steps have been taken to address the myriad challenges with the HSS, as highlighted by the SIU. The DHS should also report on what is being done around the archiving of applicants on the HSS so that those, who are flagged as having benefited from receiving a house but have not, are not disqualified in future.
- 5 Clarify the roles and responsibilities of accredited municipalities and provincial departments around housing allocation and delivery, and investigate ways in which development planning processes, such as municipal IDPs, can be linked more substantively to housing needs/demand capture processes and systems. DHS should be in better communication with municipalities, as they are (or are in the process of becoming) the implementing agents for housing projects.
- 6 Investigate the current de facto allocation processes at municipal level across the country. There is a critical lack of transparency in housing allocation processes and thus the need to look at which points in this complex process greater transparency is most urgently required.

Provincial housing departments should:

- 1 Produce posters or other materials clearly detailing existing housing allocation processes in terms of prevailing systems and policies. These materials should explain the technical language of the HDD and HSS in layman's terms, ensuring that all common misunderstandings are addressed.
- 2 In line with recommendations made by SCOPA, conduct forensic investigations into the HSS and report the outcomes. This process should be conducted at a high level, and the findings should be made public.
- 3 Investigate the influence of ward councillors and CLOs in the housing allocation processes of current projects.
- 4 Ensure that municipalities are linked up to internet so that people do not have to go to regional offices to capture their housing needs data.
- 5 Analyse to what extent the NHNR or demand databases really capture the complexity of housing needs in South African towns and cities.

The Gauteng Department of Local Government and Housing (GDLGH) specifically should:

- 1 Account for the use to date of the HDD as a planning tool for future housing projects, and how it has been used to allocate houses on the basis of its HDD and Allocation Policy. It should also conduct a review of the HDD (it has been 5 years since it was implemented), account for the stagnancy of the HDD and explain why Phase 2 never commenced, as well as the rationale behind the move to the NHNR, if this is indeed in the pipeline.
- 2 Provide an indication of how much the HDD costs to run, and whether the time and resources being ploughed into a seemingly obsolete system are appropriate.
- 3 Report on the undertakings made in 2008 to publish the names of all those who have applied, per region and local area.
- 4 Make the following public in the interests of transparency:
 - How many people have registered on the HDD?
 - How many people have registered in each area (as captured on the HDD)?
 - How many people have registered on the HDD who first registered on waiting lists in 1996 and 1997?
 - The number of people who were identified from the HDD in the first instance to be allocated a house in a project i.e. not identified because they were residing in a specific informal settlement?
 - How many people, if any, have been drawn from the HDD to be accommodated in rental housing?
- 5 Ensure that all municipalities accredited to undertake the housing function have the technical expertise and human resources required to undertake the necessary functions in an efficient and sustainable manner. The possibility of secondments or moving personnel from the provincial department to municipalities needs to be investigated.

The Western Cape Department of Human Settlements (WCDHS) specifically should:

- 1 Report on what steps it has taken to "develop a consumer education for municipalities to engage with communities about the selection of beneficiaries for a project."
- 2 Make the following public in the interests of transparency:
 - How many people are registered on the WCHDD?
 - How many people are registered in each area (as captured on the WCHDD)?
 - How many people are registered on the WCHDD who first registered on waiting lists in 1996 and 1997?

- The number of people who were identified from the WCHDD in the first instance to be allocated a house i.e. not identified because they were residing in a specific informal settlement?
 - How many people, if any, have been drawn from the WCHDD to be accommodated in rental housing?
- 3 Report on what steps are being taken with regard to its WCHDD and the migration to the NHNR.
 - 4 Ensure that all municipalities that are accredited to undertake the housing function have access to the internet as well as the technical expertise required to undertake the necessary in an efficient and sustainable manner.

Municipalities (particularly accredited ones) should:

- 1 Produce posters or other materials clearly detailing existing housing allocation processes in terms of prevailing systems and policies. This could be undertaken jointly with the relevant provincial department.
- 2 Publish the selection criteria for specific housing projects within in their jurisdiction, which should be prominently displayed at municipal offices and in locations within the vicinity of the project.
- 3 Ensure that they facilitate meaningful community engagement in the shaping of housing policies and, more importantly, in the planning of new housing developments which affect communities directly. This relates to bottom-up planning in terms of the IDP.
- 4 Investigate the establishment of oversight bodies (consisting of those not involved in setting selection parameters or managing data, and officials from appropriate government bodies other than the municipality.) These bodies would be responsible for checking whether municipal selection policy is being applied correctly. There should be civil society representation on these bodies.
- 5 Establish systems to deal with objections to allocation lists, after the lists have been pre-screened by municipalities and provincial departments.
- 6 Acknowledge that the use of consultants to run systems is not sustainable and systems that can be managed internally, and are linked in meaningful and rational ways to other processes and systems within municipalities, should be developed. The current reliance on consultants and the lack of institutional memory around housing policy and implementation is of concern, and accredited municipalities should take the opportunity to institutionally realign themselves in a strategic manner.

- 7 Ensure that they engage and communicate effectively with communities at settlement, community and neighbourhood level, and not just through the politicised structures of ward committees and ward councillors. Municipalities implement projects and liaise with communities at the coalface, often with the help of CLOs, and it is often at this level that local political struggles are fought. Municipalities must be aware of these dynamics and respond timeously to reports of fraud in the housing allocation process.

Civil society should:

- 1 Document the allocation processes in housing projects, highlighting any challenges faced, opportunities for more transparency, better ways of selecting beneficiaries etc. There is a need to pull together in-depth case studies on what is happening at the local level around housing allocation and delivery.
- 2 Push to be consulted on the determination of project-specific selection parameters and to be included on oversight bodies set up to monitor allocations in line with selection policies.
- 3 Provide information to communities on housing policy and implementation and assist to escalate problems to the relevant authorities/institutions when they arise. There is a need for more coordination and government lobbying around housing-related issues that affect communities.



7

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Annexure: Housing Legislation and Policy

8.1. Housing Act

The Housing Act 107 of 1997 is the primary piece of legislation on housing and sets out the powers and functions of the three spheres of government in respect of housing development. In terms of Part A of Schedule 4 in the Constitution, housing is a functional area of concurrent national and provincial legislative competence. However, section 10(2) of the Housing Act allows for the administration of one or more of the national housing programmes by municipalities through being accredited by the Minister of the Executive Council (MEC). The powers and functions of the three spheres of government as regards housing are summarised below:

8.1.1. National Government

National government is responsible for determining national housing policy and setting broad national housing delivery goals; monitoring the performance of the three spheres of government against housing delivery and budgetary goals; providing assistance and support to provinces and local government; and promoting consultation with civil society and other stakeholders on matters regarding housing development. National government allocates its portion of the state budget for national housing programmes to provincial governments (including funds for programmes administered by municipalities in terms of section 10 of the Act). For this study, national government's most significant function is the establishment and maintenance of a national housing data bank and a national housing information system.²⁵⁵

8.1.2. Provincial Government

Provincial government must act within the framework of national housing policy and create an enabling environment by promoting and facilitating the provision of adequate housing in its province. This includes the allocation of housing subsidies to municipalities. Provincial government is tasked with supporting and strengthening the capacity of municipalities to effectively perform their duties in respect of housing development. The Provincial Minister of the Executive Council (MEC) for Housing must administer every national housing programme

²⁵⁵ According to the 2000 Housing Code, a number of systems and data banks have been established to provide for this need, including the National Housing Subsidy Database (NHSDB) and the Housing Subsidy System (HSS). Read more on these in section 4.2 of this report.

and every provincial housing programme which is consistent with national housing policy and the Act. For this purpose, an MEC may, in accordance with that programme and the prescripts contained in the National Housing Code, approve any projects and finance them out of money paid to the province. An MEC must also determine provincial housing development priorities in accordance with national housing policy.

8.1.3. Local Government

Local government must, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis. Local government must set housing delivery goals; identify and designate land for housing; create and maintain a public environment conducive to housing development; provide bulk engineering services; and plan and manage land use development. Municipalities may participate in the national housing programmes in a number of ways e.g. acting as a developer in respect of planning and execution of a housing project, or facilitating and supporting the participation of other role-players in the housing development process. Municipalities may administer any national housing programme, as section 10(2) of the Housing Act provides for the accreditation of a municipality by a provincial MEC after it has met certain capacity criteria (as determined by the national Minister in consultation with the MEC).²⁵⁶

8.2. Accreditation of Municipalities

A major shift is taking place in South Africa regarding housing delivery, as the various housing functions (including beneficiary management, administration of national and provincial housing programmes, subsidy registration, financial administration, etc.) are decentralised to those municipalities deemed to have sufficient capacity to take on these functions. As mentioned above, in terms of Part A of Schedule 4 in the Constitution, housing is a functional area of concurrent national and provincial legislative competence. However, section 156(4) of the Constitution and section 10(2) of the Housing Act allow for the administration of the national housing programmes by municipalities through being accredited by the respective provincial MEC. Since 2009, the accreditation process has been emphasised as a key government priority with a view to locating "the decision-making authority and funding capacity for local development at the most local sphere

²⁵⁶ This is in line with section 156(4) of the Constitution, which states that national government and provincial governments must assign to a municipality the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if that matter would most effectively be administered locally and the municipality has the capacity to administer it.

of government.”²⁵⁷ The process entails delegation²⁵⁸ and ultimate assignment²⁵⁹ of housing functions to municipalities so that they are responsible for all decisions with regards to the implementation of national housing programmes.²⁶⁰

In order to be accredited, municipalities must demonstrate sufficient capacity to plan, implement and maintain housing projects and programmes that are integrated within municipal Integrated Development Plans (IDPs). The aim is for accreditation to result in improved efficiencies in the housing delivery process.

There are three levels of accreditation and for each level certain capacity and functionality is required. The three levels are:

- **Level 1:** beneficiary management, subsidy budget planning and allocation, and priority programme management and administration (delegated functions);
- **Level 2:** all Level 1 functions as well as full programme management and administration of all national and provincial housing programmes, which includes project evaluation and approval, subsidy registration (via the Housing Subsidy System (HSS) into the National Housing Subsidy Database (NHSDDB) – see section 4.2 below for more on these), programme management (including cash flow projection and management) and technical (construction) quality assurance (delegated functions);
- **Level 3:** all Level 1 and Level 2 functions are formally assigned and there is the additional responsibility of financial administration including subsidy payment disbursements and financial reporting/reconciliation (all functions are assigned).

The accreditation of municipalities was expected to occur over 10 years, beginning in December 2004 with nine municipalities and followed by 20 more per year until all 284 municipalities had been accredited.²⁶¹ However, the process has been much slower than anticipated. According to the 2008/2009 National Department of Housing (NDoH) Annual Report, 18 municipalities applied for Level 1 accreditation as per the approved Municipal Accreditation Framework.²⁶² In June 2009, the DHS established the municipal accreditation Capacity and Compliance Assessment Panel (CCAP) to assess the existing

²⁵⁷ DHS ‘Accreditation of Municipalities’ Volume 3, Part 3 of the National Housing Code (2009) p. 9.

²⁵⁸ “Delegation” is not a permanent transfer of functions and does not include the transfer of the authority role nor does it entitle the municipality to legislate on the issue or direct funding from the fiscus. It entails the exercise of a function on behalf of the delegating authority as an “agent” where the ultimate authority still vests in the delegating authority i.e. provincial or national government.

²⁵⁹ “Assignment” is a permanent transfer of a function which includes the transfer of the authority role. It includes the right to directly receive the funds and assets necessary to perform the function.

²⁶⁰ Certain functions will be retained at provincial level. These are the approval of extraordinary applications i.e. special approval of non-qualifiers and the administration of the Individual Subsidy Programme (both credit linked and non-credit linked subsidies). DHS ‘Accreditation of Municipalities’ Volume 3, Part 3 of the National Housing Code (2009).

²⁶¹ NDOH ‘Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements’ (2004)

²⁶² NDOH ‘Annual Report 2008/2009’ p. 66.

capacity of priority municipalities to perform the housing function in terms of the municipal accreditation framework.

As of February 2013, Level 1 accreditation had been granted to seven municipalities, Level 2 accreditation to 15 municipalities, and Level 2 accreditation (with conditions) to three municipalities. It is important to note that there are Level 2 accredited municipalities that have received compliance certificates and signed memorandums of agreement (commonly referred to as Implementation Protocols) with their provincial government departments. This process authorises the municipalities to administer the national housing programmes and manage housing subsidies and beneficiaries, in line with the Implementation Protocols signed. These municipalities include: City of Cape Town in the Western Cape province; City of Johannesburg, Tshwane Metropolitan Municipality and Ekurhuleni Metropolitan Municipality in the Gauteng province; and Siyanda District Municipality, Pixley Ka Seme District Municipality, Frances Baard District Municipality, Sol Plaatje Local Municipality and //Khara Hais Municipality in the Northern Cape province.²⁶³ The intention is to completely shift the housing function to six metropolitan municipalities (Ekurhuleni, Tshwane, Johannesburg, eThekweni, Nelson Mandela Bay and Cape Town) by 2014.²⁶⁴

8.3. National Housing Subsidy Scheme (NHSS)

The NHSS was introduced in 1994 and provides once-off capital subsidy assistance to low-income households earning below R3 500 per month. This is done through a variety of subsidy and programmatic instruments, but predominantly through the project-linked subsidy. Over the years, the NHSS has evolved and resulted in a variety of national housing programmes, which are contained in the National Housing Code. There is a set of generic qualifying criteria that must be fulfilled by those applying for housing subsidies under the NHSS for these programmes. However, there are also specific rules that apply to each subsidy programme and in some cases there are specific eligibility criteria that apply over and above the generic criteria.²⁶⁵ The generic qualifying criteria include:

- **Citizenship:** applicant must be a citizen of the Republic of South Africa, or be in the possession of a Permanent Resident Permit.
- **Competent to contract:** applicant must be legally competent to contract (i.e. over 18 years of age, or married or divorced and of sound mind).
- **Not yet benefited from government funding:** the applicant or their spouse may not have received previous housing benefits from the government. In the event of a

²⁶³ DHS 'Annual Report 2010/2011' p. 23; information provided by DHS on municipal accreditation (per email, 4 February 2013).

²⁶⁴ Financial and Fiscal Commission (FFC) 'Presentation to Portfolio Committee on Human Settlements on Department of Human Settlements 2011/12 Annual Performance and Audit Outcomes' (9 October 2012).

²⁶⁵ DHS 'Technical and General Guidelines' Volume 2, Part A of the National Housing Code (2009) pp. 11-16.

divorce involving a person who previously derived benefits, the terms of the divorce order will determine such person's eligibility for further benefits.

- **First time property owner:** the applicant or their spouse may not have owned and/or currently own a residential property. Except for the following cases:
 - disabled persons;
 - persons who:
 - own a vacant stand that was obtained through the Land Restitution Programme;
 - have acquired a residential property for the first time without government assistance and the house/dwelling on the property, if any, does not comply with the National Norms and Standards in respect of permanent residential structures.
- **Married or financial dependants:** the applicant must be married or cohabiting. A single person with proven financial dependants (such as parents or parents-in-law, grandparents or grandparents-in-law, children, grand children, adopted children, foster children) may also apply.
- **Monthly household income:** the applicant's gross monthly household income must not exceed R3 500. Adequate proof of income must be submitted.
- **Beneficiaries of the Land Restitution Programme:** beneficiaries of the Land Restitution Programme, should they satisfy the other qualification criteria, may apply for housing subsidies.
- **Persons classified as military veterans as confirmed by the SANDF:** military veterans who are single without financial dependants may also apply for housing subsidies.
- **Persons classified as aged:** aged persons who are single without financial dependants may also apply for housing subsidies. Aged persons are classified as male and female persons who have attained the minimum age applicable to Government's old age social grant scheme.
- **Persons classified as disabled:** persons who are classified as disabled, whether single, married or co-habiting or single with financial dependants, may apply for housing subsidies. If a person who has already received state funding for housing and/or who already owns or owned a house, is or becomes disabled, or if his or her dependant(s) is/are or become disabled, such a person may receive an additional variation on the subsidy amount to finance special additions to provide independent living conditions.

In terms of the 2009 revision to the Code, the following national housing subsidies form part of the NHSS and its general framework: individual subsidy, Integrated Residential Development Programme (IRDP), consolidation subsidy, institutional subsidy and rural subsidy.²⁶⁶

²⁶⁶ Ibid.

This research report analyses perceptions and practice around housing demand and allocation in South Africa, looking at the policies and processes operating at national, provincial and local level. Despite the South African government's construction of state-subsidised houses since 1994, there remains a housing crisis in the country, which has political, technical, social and racial dimensions. Community protests, xenophobic violence, 'illegal' occupation of state-subsidised houses, court cases and corruption charges mar the housing delivery landscape.

Politicians and officials responsible for housing policy, at all levels of the state, have sought to create the impression that housing allocation is a rational process, which prioritises those in the greatest need, and those who have been waiting for a subsidised house the longest. The ideologically (and emotionally) charged concepts of 'the waiting list' and 'the housing queue' are emblematic of this. However, the situation is far more complicated.

This report attempts to unpack some of the complexity and provide recommendations to government departments at all levels. It argues that the housing waiting list is a myth and should be eradicated from public discourse on housing in favour of a more nuanced way of characterising the rational, appropriate and humane responses to the broad range of housing needs in South Africa, which are not currently catered for by the market.

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