The Grootboom case and women’s housing rights

This brief provides an overview of the paper titled “Rights, roles and resources: An analysis of women’s housing rights – the implications of the Grootboom case”. The paper was written for the Women’s Budget Initiative by Karrisha Pillay, Rashida Manjoo and Elroy Paulus. It was edited by Debbie Budlender and Sandra Liebenberg.

Introduction

Bringing about access to adequate housing remains a key challenge in South Africa. In 1997, it was estimated that 2.2 million households in South Africa were without adequate housing. It was further estimated that this figure would increase by 204 000 every year because of population growth, barring any effective intervention (Department of Housing 2000:2). The housing crisis has particularly devastating consequences for vulnerable and disadvantaged groups, such as women living in poverty.

The South African Constitution protects the right of access to adequate housing. Section 26 provides that:

- Everyone has the right to have access to adequate housing.
- The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 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.

Section 9 of the Constitution endorses the right to equality, which includes “the full and equal enjoyment of all rights and freedoms”. The state has an obligation to prohibit unfair discrimination in respect of all rights. To achieve equality, it can adopt special measures to protect or advance the rights of disadvantaged groups.

In the groundbreaking Grootboom case, the Constitutional Court sought to give effect to housing rights as provided for in section 26. In doing so, it pronounced on key principles. These principles specifically relate to people “who have no access to land, no roof over their heads, ... people who are living in intolerable conditions and ... people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition” (para 52).
Because women are more likely than men to be living in intolerable conditions, the case provides a useful framework for an analysis of women’s housing rights.

The aim of the paper is to analyse the implications of the Grootboom case for women and housing policy and budgets. Part 1 motivates the need for a gendered analysis of housing rights. Part 2 discusses the Grootboom judgment, pointing to themes highlighted by the court. Parts 3 and 4 analyse the housing programme and budget against the background of the previous two sections. The Western Cape is used as a case study when looking at sub-national levels, as it was in this province that the Grootboom case occurred. The study concludes with recommendations that seek to advance women’s access to adequate housing in South Africa.

[Box:] **Grootboom case – the facts**

Irene Grootboom initially lived in Wallacedene, an informal squatter settlement in the municipal area of Oostenberg. The residents of Wallacedene live in severe poverty, without any basic services such as water, sewage or refuse removal. The area is partly waterlogged and lies dangerously close to a main thoroughfare. Many Wallacedene residents had long since placed their names on a waiting list for low-income housing. As time wore on, a group of about 900 people, including Irene Grootboom, began to move from Wallacedene onto adjacent, vacant, privately-owned land that had been ear-marked for low-cost housing. The private landowner obtained an eviction order and the sheriff was ordered to dismantle and remove any structures remaining on the land. The magistrate granting the order said that the community and the municipality should negotiate in order to identify alternative land for the community to occupy on a temporary or permanent basis.

The evicted community now had nowhere to go. Since they had lost their former sites in Wallacedene, they moved onto the Wallacedene sports field and tried to erect temporary structures. With legal assistance, the community formally notified the municipality of the situation and demanded that the municipality meet its constitutional obligation to provide temporary accommodation. Without a satisfactory response from the municipality, the community – under the name of ‘Irene Grootboom and 900 others’ - launched an urgent application in the Cape High Court. The Grootboom community based their case on two constitutional provisions:

- Section 26 of the Constitution provides that everyone has a right of access to adequate housing. It obliges the state to take reasonable measures, within its available resources, to make sure that this right is realised progressively.
- Section 28(1)(c) says that children have a right to shelter.

The Cape High Court rejected the first argument. It said that government’s housing programme was reasonable and thus fulfilled the requirements of the Constitution. In terms of the second argument, the court said that parents are primarily responsible to provide shelter for their children. If, however, they are unable to do this, section 28(1)(c) places an obligation on the state to do so. Further, the court found that the parents should be able to live with their children in the shelter as it was not in the best interests of children to be separated from their families.

Government took the decision of the High Court on appeal to the Constitutional Court. The Constitutional Court affirmed that national government bears the overall responsibility for ensuring that the state complies with its section 26 obligations. It further found that:

- the current housing programme fell short of the state obligation to provide relief to people in desperate need. It said that a reasonable part of the national housing budget should be
devoted to providing such relief. If this was not done, the state’s housing programme could not be considered reasonable for the purposes of section 26(2).

- the state’s direct obligation would apply primarily when children were removed from their families, orphaned or abandoned.

The Constitutional Court also recognised the close relationship between the right to equality and socio-economic rights, including housing rights. It noted that the realisation of socio-economic rights is key to the advancement of equality and the development of a society in which both men and women are equally able to fulfil their potential (Para 23). [end box]

**Part 1: Contextualising women’s access to housing**

Housing is not exclusively a ‘women’s issue’. However, housing policies, programmes and budgets - if they are to be reasonable and effective - must address the realities of women’s lives. The full and equal enjoyment by women of their housing rights requires that account be taken of women’s historical, social and economic realities.

**Historical context**

Both colonial and apartheid laws and policies restricted black urbanisation, particularly African urbanisation. These laws disproportionately affected women’s access to housing. Explicit laws and policies to control the mobility of African women were enacted from the 1930s. These laws made women dependent on their male partners or fathers for their right to remain in urban areas. In addition to the explicit legislation and policies, officials had vast discretionary powers, which were often exercised in an arbitrary manner with negative consequences for women. The overall result has been that many women were denied housing rights. Where they have been able to find housing, they have largely been relegated to the outskirts of economic centres, and have been disadvantaged by the poor quality of their housing.

**Economic context**

Women’s economic realities have implications for their rights of access to housing. In 2001, 40% of all employed women were in unskilled jobs (Budlender 2002: 44). Close to 20% of employed women earned R200 or less per month, compared to only 9% of employed men (Budlender 2002: 46). African women, as a demographic grouping, face higher levels of unemployment and earn less when employed. Women aged 10 years and above spend an average of 216 minutes per day on unpaid housework, care work and community work, compared to an average of only 83 minutes for men (Budlender, Chobokoane & Mpetsheni 2001: 36). The need to undertake this work prevents many women from finding and taking up paid jobs. The interrupted work patterns also negatively impact on mobility and earnings in the workplace and ultimately on women’s access to credit and their ability to afford housing.

**Social context**

The social context within which women seek access to housing is informed by factors such as patriarchy, customary and religious laws and practices, domestic violence and HIV/AIDS:

- In most societies, including South Africa, *patriarchal norms and values* underpin gender relations. These norms can have serious consequences in the area of housing. For example, most male partners register homes in their own names. This forces women to forge and remain in relationships to meet their housing needs. Housing policy also often favours
couples. Single female-headed households are frequently discriminated against in housing practices, as they do not fit the traditional concept of a family.

- **Discriminatory customary and religious laws and practices** often work to the detriment of women’s housing rights. In particular, patrilineal succession under customary law has had serious implications for women’s rights to land and housing. In addition, customary land practices are based on communal tenure with rights vested in male traditional leaders. The allocation of land and housing by traditional authorities is to heads of households, who are almost always male. Women’s right to land and housing is, as a result, dependent on their relationship to male heirs. Historically, the minority legal status of women under customary law (regardless of age or marital status) has resulted in women not being able to own property except with the consent of a male relative. Polygamy, whether formal or informal, also has an adverse impact on women and housing.

- **Domestic violence** has a profound effect on women’s housing rights. The fact that housing is usually in the name of the man makes women’s housing situation particularly tenuous in instances of domestic violence. Shelters for battered women are limited to some urban areas. In addition, most shelters only provide accommodation for a limited period of time. Hence, fleeing from an abusive situation brings with it the impossible choice between homelessness and staying in an abusive relationship.

- Women are disproportionately affected by **HIV and AIDS**. This further constrains women’s access to housing. Disclosure of HIV status may bring about stigmatisation, rejection, domestic violence, abuse and abandonment. Once the virus moves beyond the asymptomatic stage, it may place women in increasingly dependent positions, particularly in respect of their child care responsibilities. Once women have AIDS symptoms, they are often precluded from formal work. This, in turn, adversely affects their financial position and ultimately their housing needs. Women’s caring responsibility for those living with HIV/AIDS limits their employment prospects and renders access to housing increasingly unaffordable.

Women’s access to adequate housing is thus informed by the historical, social and economic context within which women seek to access housing. Discriminatory laws and practices have limited women’s access to housing and other socio-economic rights. They have disproportionately affected black women.

**Part 2: The constitutional right of access to adequate housing**

The introduction to this brief set out the constitutional provisions relating to the right to adequate housing. Section 7(2) of the Constitution mandates the state to respect, protect, promote and fulfil the rights in the Bill of Rights, including housing rights. Other parts of the Constitution make it clear that national, provincial and local spheres of government all bear some of this responsibility in respect of housing. However, the Constitution does not specify the exact mechanisms and strategies for the effective realisation of housing rights.

In the Grootboom case, the Constitutional Court pronounced on the interpretation of key elements of section 26. This interpretation was assisted by international law, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR). A number of important principles and themes emerging from the judgment are highlighted below. In each case, the principles and themes are used to build out a gendered framework for interpreting women’s housing rights.

2.1 **The context within which section 26 should be interpreted**

The court noted that an interpretation of section 26 requires a consideration in both its textual and social/historical contexts. The textual context illustrates the close relationship between housing
rights and other rights. The social and historical context requires that housing rights be seen against the legacy of deep social inequality.

This interpretation has implications for women’s rights of access to adequate housing. The context within which women seek to gain access to housing (as outlined in part 1) must inform the cost, type, location and design of housing. Because women do not constitute a homogenous group, the particular context within which different groups of women claim access to housing rights must also be acknowledged. This would include consideration of the different family forms within which women seek to access housing and the provision of ‘emergency housing’ where women are forced to leave their homes as a result of domestic violence.

2.2 What is ‘adequate housing’?

The court did not provide a comprehensive definition of ‘adequate’ housing in the Grootboom judgment. However, it did note: “For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling” (Para 35). The court emphasised that access to housing must be enjoyed by everyone at all economic levels of society. It noted that the “poor are particularly vulnerable and their needs require special attention” (Para 36).

According to General Comment No. 4 of the UN Committee on Economic Social and Cultural Rights (CESCR), certain core factors are associated with adequate housing. These include the legal security of tenure, availability of services, material and infrastructure, as well as the need for housing to be affordable, habitable, accessible, appropriately located and culturally adequate. In terms of services, materials and infrastructure, the CESCR suggests that these include access to clean drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

This interpretation of ‘adequate housing’ is important from a gender perspective. Realising security of tenure is clearly a key component of reducing women’s vulnerability. As women are more likely to be poor, the issue of affordability is of key importance. The element of habitable housing has particular significance for women. On average, women tend to spend more time per day in their own dwellings than men (Budlender et al 2001: 43). Inadequate space can limit women’s capacity to undertake income-generating activities from home, and has been shown as a contributing variable to increased levels of sexual violence (Liebenberg & Pillay 1998: 15). Similarly, the appropriate location of housing is particularly important for women in light of their child care responsibilities and the high levels of gender-based violence. Given that cultural adequacy is often determined by a male standard, it is important for women’s perspectives to be reflected in the types of housing that is appropriate. The services itemised by the CESCR are also particularly relevant, as many of the tasks associated with these services have traditionally been and continue to be undertaken by women.

2.3 Who has the duty to realise housing rights?

The court noted that section 26 (1) gives everyone the right of ‘access’ to adequate housing. This means that the state must create conditions through laws, budgets and other measures that enable individuals and groups to gain access to housing. Further, both the state and private actors such as banks and landlords must not prevent access to housing rights. The CESCR recognises the particular vulnerability of women in forced evictions because of lesser property rights and vulnerability to violence.
2.4 What measures must be adopted and what standard must be satisfied?

Section 26(2) of the Constitution obliges the state to take “reasonable legislative and other measures” to progressively realise the right of access to adequate housing. The terminology implies that, in addition to legislative measures, administrative, judicial, economic, social and educational measures must be taken. In Grootboom, the court indicated that the measures adopted must establish a coherent public housing programme, directed towards the progressive realisation of the right of access to adequate housing within the state’s available resources. The court noted that “legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive” (Para 42). Policies and programmes must thus be reasonable both in their conception and their implementation.

2.5 What constitutes ‘reasonable’ measures?

In interpreting the term ‘reasonable’, the court paid particular attention to the housing needs of those living in extreme conditions of poverty, homelessness or intolerable housing. It noted that a programme that excludes a significant segment of society cannot be said to be reasonable: “It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right… If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test” (Para 44). This interpretation is clearly relevant in discussing women and housing given women’s disproportionate vulnerability to poverty.

2.6 The ‘progressive realisation’ of housing rights

The court understood the term ‘progressive realisation’ as acknowledging that the right to housing could not be realised immediately for everyone, but that the state must take steps to achieve this goal. It observed that housing must thus be made more accessible not only to a larger number of people but to a wider range of people as time progresses. The court also endorsed the view of the CESCR that ‘retrogressive measures’ should not be taken without justification. These are measures which, for example, cut back on housing programmes without putting other measures in place to facilitate access to housing by the poor. Again, this has specific implications for women given their likely greater reliance on the state for access.

2.7 Subject to ‘available resources’

The qualification of ‘within its available resources’ acknowledges possible budgetary constraints on what can be provided. On this point, the CESCR stated that even where available resources are demonstrably inadequate, the state should still strive to ensure the widest possible enjoyment of the right under the prevailing resource constraints (General Comment No.3, para 11). Further, available resources must be effectively and equitably utilised. Unfortunately, in Grootboom the court gave minimal attention to the issue of resource availability. It also failed to address some of the thorny issues in respect of how the availability of resources is determined.
Part 3: Implications of the housing policy and programme for women

This part of the brief shifts the focus onto housing legislation, policy and programmes that have been adopted by the South African government to give effect to housing rights. These measures are analysed against the framework constructed above, in order to assess the extent to which they facilitate women’s access to adequate housing.

All three spheres of government play a role in the delivery of housing rights. The National Department of Housing (NDoH) is tasked to develop national housing policy, to manage national housing programmes, to monitor and assess the impact of housing delivery, to manage housing information and to provide the necessary support to housing institutions. Through the Housing Development Funding Programme, the national department allocates funds to the provincial governments to finance national and provincial housing programmes. Provincial housing departments are thus the main direct implementers of housing policies. Local government meanwhile acts as developers and providers of internal bulk and connector infrastructure.

3.1 The national legislative and policy framework

Since 1994, various legislative and policy developments have been introduced at a national level to provide an adequate framework for housing development. Some key contributions are summarised briefly below:

a) The Housing Act

The Housing Act (No. 107 of 1997) is a key piece of legislation in the housing sphere and sets out the principles that must underpin the realisation of housing rights. The act shows sensitivity to vulnerable groups, by placing a specific obligation on all spheres of government to prioritise the needs of the poor in housing development and to promote the housing needs of marginalized women and other groups disadvantaged by unfair discrimination. Section 1(vi) of the Housing Act commits government to:

“the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will on a progressive basis, have access to –

- permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and
- potable water, adequate sanitary facilities and domestic energy supply.”

This approach to housing development has positive implications for women, echoing many of the key features of women’s housing rights discussed in parts 1 and 2 above. However, the impressive legislative framework is not always reflected in the actual quality of housing development.

b) The housing subsidy

The main vehicle of the housing programme is a capital subsidy mechanism. Beneficiaries with a household income of not more than R3 500 per month, who have not owned fixed residential property previously, and who satisfy a range of other related criteria, can apply for the subsidy. The programme is used mainly to fund the acquisition and servicing of stands and to erect top structures. It facilitates access to tenure, provision of services and building of housing units. The 2002 subsidy level is R16 000 for first-time homeowners. The subsidy scheme represents an
important measure through which women are able to access housing. However, depending on the cost of land and infrastructure funded through the housing subsidy, the end product may be incomplete or fitted with the barest of necessities. This has particularly serious implications for women in light of the challenges they face in accessing credit and finance.

c) The People’s Housing Process

The People’s Housing Process Trust supports home-building initiatives by individuals, families, or communities. The programme is designed to assist multi-household groups to play an active role in their own housing development. It facilitates access to housing subsidies, as well as technical, financial, logistical and administrative support. Households are often committed to providing ‘sweat equity’ in the construction process, either by building directly or by managing the building process. The development of this project was heavily influenced by the experience of the South African Homeless People’s Federation. The Federation has over 70 000 very poor members, almost all of whom are women. The project’s success in addressing the plight of shack dwellers and helping them to build houses themselves inspired government in its formulation of the People’s Housing Process Project.

d) Alternative tenure forms: rental housing and hostel redevelopment

The Rental Housing Act (No. 50 of 1999) recognises rental housing as a tenure option. It acknowledges that individual home ownership is not at all times appropriate for all persons in the country. The act encourages all spheres of government to promote a rental housing market, and addresses tenant and landlord rights and responsibilities. Rental policy development has positive implications for women given that, due to their low economic status, the home ownership model is often not an option.

The hostels redevelopment programme provides grant funding of R16 000 per family or R4 000 per individual living in a hostel owned by a municipality or provincial government. The grant is to be used for the upgrading or conversion of hostels to create suitable living conditions, which can be rented out or sold to single persons or families, or used as schools or community centres. This programme goes some way in addressing the disadvantage suffered by single women. However, because men have historically inhabited hostels and largely continue to do so, the impact for women in general is limited.

e) Land tenure and ownership

Housing delivery as envisaged in the Housing Act requires the availability of appropriate, well-located land for settlement development. The Development Facilitation Act (No. 67 of 1995) has as one of its central objectives the speeding up of land release, especially for the purposes of low-income housing, although it gives no particular priority to women in doing so. A number of other laws and policies contribute, in principle, to greater security of tenure and ownership for poor or vulnerable citizens. The Recognition of Customary Marriages Act (No. 120 of 1998) has to some extent ameliorated the position of women in respect of ownership of property. A rural housing subsidy was also introduced to eliminate discrimination in accessing the subsidy on the basis of the type of land rights. The Extension of Security of Tenure Act (No. 62 of 1997) provides that tenure may only be terminated where it is just and equitable to do so, having regard to all relevant circumstances. However, no reference is made to the continued right of occupation of the spouse or dependants of the occupier. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No. 19 of 1998) offers further protection to existing housing arrangements by stipulating the circumstances under which evictions by both private persons and the state may occur. It calls for specific consideration of the needs and rights of “the elderly, children, disabled persons and households headed by women” (section 4(6) and 4(7)).
f) Housing norms and standards
The National Norms and Standards in respect of Permanent Residential Structures aims to promote affordable and quality housing. They include rules relating to services such as water, sanitation, roads and the size of a top structure. Further infrastructural policies and standards governed by other government departments are also applicable, for example, a minimum supply of water. The norms and standards also protect housing subsidy beneficiaries against exploitation by developers who deliver unacceptably small and poorly constructed houses, as well as local authorities that disregard the principle of affordability and demand unreasonable standards and expensive engineering services. Furthermore, the Housing Consumer Protection Measures Act (No. 95 of 1999) provides protection for all new housing consumers. It ensures that builders comply with prescribed standards.

g) Housing finance
The Community Reinvestment (Housing) Bill of 2002 aims to provide minimum targets for financial institutions’ lending to low- and medium-income households for housing purposes. This Bill might assist some households, but it will not assist the poorest and the homeless. Similarly, the Home Loan and Mortgage Disclosure Bill aims to promote fair lending practices by financial institutions, thereby addressing one of the key constraints that women face in accessing housing, namely access to credit.

h) Emergency relief
The Accelerated Managed Land Settlement Programme was initiated to facilitate the provision of land and progressive access to basic services for people in crisis situations. The NDoH has also initiated the development of a National Housing Programme for Housing Development in Emergency Circumstances (Pillay 2001:21). While this programme will provide for much-needed dedicated funding and shortened development processes, it is of concern that the programme is still in the planning stages.

However, in the Western Cape, the provincial housing programme reveals inadequate consideration for vulnerable groups in need of emergency housing relief. In spite of the introduction of the Accelerated Managed Land Settlement Programme, the implementation of this policy at provincial level has been constrained by scarcity of resources, and at local government level, by the municipal restructuring process (Pillay 2002: 19). The Western Cape Provincial Government’s inability or unwillingness to deal with the plight of poor persons in crisis was seen when a freak tornado hit the communities of Manenberg, Nyanga and Gugulethu on the Cape Flats in August 1999. Five people were killed, close to 200 injured and 5 000 left homeless. The Department of Planning, Local Government and Housing’s reaction was to wait for national intervention. The Western Cape provincial government’s poor handling of this situation raises serious questions about its ability to handle other crisis situations. Whilst the impending Disaster Management Bill is an encouraging initiative, it is unclear to what extent it will result in immediate tangible relief for women experiencing housing crises.

3.2 Housing delivery and the housing backlog
The NDoH noted that in the five years after the housing programme was introduced, a total of 745 717 units were either completed or under construction across the country. The government reached its target of 1 million houses in April 2000 (SAHRC 2001:295). This progress must be measured against the housing backlog and absolute need. Thus the Human Rights Commission noted that there were still approximately 2.7 million households in need of adequate shelter in South Africa, and about 5.9 million households qualifying to receive housing subsidies (SAHRC
The allocated housing budget is thus clearly insufficient to cover the demand for subsidies across provinces.

In the Western Cape in early 2001, the housing backlog in the City of Cape Town amounted to 270 500 housing units, which was 69% of the backlog in the entire province (Western Cape Provincial Housing Plan 2001). Table 1 shows that almost half of the households affected by housing backlogs in 2001 were within the lowest income bracket, having an income of R1 000 or less a month. It also shows that the backlog is likely to increase in the future. According to the Western Cape provincial housing plan, the delivery of 18 800 housing units per annum would address the current demand for housing. It would not, however, reduce the backlog to zero. In addition, migration from rural to urban areas to seek employment and better access to basic services is likely to exacerbate the problem. Although the table does not provide any gender-specific data, women will obviously be particularly affected by the growing backlog.

Table 1: Distribution of housing backlog by income band in the Western Cape

<table>
<thead>
<tr>
<th>Income band (per month)</th>
<th>Backlog in 2001</th>
<th>Projection for 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>R2 500 – R3 500</td>
<td>44 640</td>
<td>14</td>
</tr>
<tr>
<td>R1 500 – R2 500</td>
<td>69 099</td>
<td>22</td>
</tr>
<tr>
<td>R1 000 – R1 500</td>
<td>64 139</td>
<td>21</td>
</tr>
<tr>
<td>R0 – R 1 000</td>
<td>132 122</td>
<td>43</td>
</tr>
<tr>
<td>TOTAL</td>
<td>310 000</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Western Cape Housing Consortium 2001

3.3 Does current policy and practice facilitate women’s access to adequate housing?

The above legislative and other initiatives represent some positive steps. However, several hurdles remain. For example, it has been noted that title deeds are often still not registered in women’s names (Surplus People Project and Centre for Rural Legal Studies 1998: 48). Attention has also been drawn to the inadequate number of state-funded women’s shelters (Commission on Gender Equality 1998: 33). The absence of any comprehensive policy that results in adequate state shelters for women who seek to escape situations of domestic violence points to a housing programme that is not sufficiently equipped to deal with one of the most pressing crises experienced by women. Because the housing subsidy scheme operates on a once-off basis, it has further been noted that many women are forced to stay in abusive relationships in order to retain their housing (Surplus People Project 1997:7). In addition, the quality of housing - coupled with severe limitations in access to credit - has particularly negative consequences for women. So despite the impressive array of legislative initiatives, there are still certain glaring gaps in facilitating women’s access to housing.

Part 4: Implications of the housing budget for women

Section 26(2) of the Constitution requires that the state take reasonable measures to realise housing rights ‘within its available resources’. Budgets are not the only resources, but they are a key resource without which the desired housing access will not be possible. Unfortunately, analysing the housing budget from a gender perspective is very difficult. Recent reforms have stressed the need for measurable outputs to assess performance. In the housing sector, the proposed delivery indicators would include subsidies approved, serviced/unserviced sites allocated, housing units built, and so forth. However, both provincial and national departments have thus far concentrated mainly on developing targets and have been much less diligent in
reporting on past delivery. Further, neither targets nor proposed delivery measures are gender-disaggregated in any way.

4.1 The housing budget

Table 2 lists the past, current and projected expenditure of the NDoH between 1998/99 to 2004/05. The figures for 1998/99 to 2000/01 represent actual expenditure, those for 2001/02 are the revised estimate, while 2002/03 to 2004/05 are the budget and MTEF estimates.

Table 2: Current and projected expenditure of the Department of Housing, 1998/9-2004/5

<table>
<thead>
<tr>
<th>Programme (Rm)</th>
<th>1998/99</th>
<th>1999/00</th>
<th>2000/01</th>
<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>22.1</td>
<td>24.9</td>
<td>32.6</td>
<td>43.9</td>
<td>54.7</td>
<td>38.7</td>
<td>45.9</td>
</tr>
<tr>
<td>Policy Planning</td>
<td>2.9</td>
<td>3.6</td>
<td>3.5</td>
<td>6.9</td>
<td>14.2</td>
<td>13.9</td>
<td>14.9</td>
</tr>
<tr>
<td>Human Settlement Policy &amp; Integration</td>
<td>1.0</td>
<td>1.4</td>
<td>2.0</td>
<td>2.7</td>
<td>4.6</td>
<td>4.9</td>
<td>5.1</td>
</tr>
<tr>
<td>Program Management</td>
<td>634.2</td>
<td>413.3</td>
<td>69.7</td>
<td>225.9</td>
<td>177.9</td>
<td>308.5</td>
<td>297.2</td>
</tr>
<tr>
<td>Housing Performance</td>
<td>54.0</td>
<td>298.9</td>
<td>193.3</td>
<td>172.9</td>
<td>177.9</td>
<td>308.5</td>
<td>297.2</td>
</tr>
<tr>
<td>Communication</td>
<td>1.0</td>
<td>4.1</td>
<td>4.2</td>
<td>7.5</td>
<td>13.2</td>
<td>10.2</td>
<td>11.8</td>
</tr>
<tr>
<td>Housing Development Fund</td>
<td>3 033</td>
<td>2 750</td>
<td>3 026</td>
<td>3 254</td>
<td>3 768</td>
<td>4 167</td>
<td>4 375</td>
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<tr>
<td>Total</td>
<td>3 747</td>
<td>3 494</td>
<td>3 329</td>
<td>3 711</td>
<td>4 245</td>
<td>4 663</td>
<td>4 899</td>
</tr>
</tbody>
</table>

Source: National Treasury, 2002a: 373

Adjusting for inflation of 6.9% per annum, the increase from R3.7 billion in 2001/02 to R4.2 billion in 2002/03 represents a real increase of 7.5%. However, the 2001/02 figure is, in nominal terms, lower than that for 1998/9. The housing budget still constitutes only 1.5% of total government expenditure, compared to the national housing goal of allocating 5% of government expenditure to housing. While the real increase of the 2002/03 housing budget is to be welcomed, it is still not sufficient to reduce the housing backlog significantly. By 2001 more than five million South Africans still did not have a roof over their heads, and many were living in houses of substandard quality. Yet the pace of delivery annually had decreased from 300 000 in 1997 to about 200 000 in 1998, and further slowdowns were foreseen.

The South African Housing Fund

The Housing Development Fund programme is the source of transfers for housing subsidies. Table 2 shows that allocations to this programme increased from an estimated R3.2 billion in 2001/02 to R3.8 billion in 2002/03, a real increase of 8.9%. Funds for housing subsidies are transferred to each province in the form of a conditional grant, which means that it must be used exclusively for housing subsidy purposes. However, all funds received by provincial housing departments must be deposited into the provincial revenue fund. All expenditure incurred with respect to housing is, therefore, included in the provincial budget and should be reported on in terms of delivery indicators.

Transfers by national government for the housing subsidy grant have been substantial. Between 1994 and 2001/02, more than R16 billion was allocated for this programme. At first glance, table 3 seems to show increases each year, at least from 1998/99. However, real total provincial spending decreased at an annual average rate of 6% between 1997/98 and 2000/01. One of the main reasons for the decrease is that the Special Integrated Presidential Projects, which focussed on 13 violence-torn communities in the country, was completed at the end of 1999. The decrease means that effectively less and less money has been allocated to housing through this important subsidy over the years, if one adjusts for the effects of inflation.
Table 3: SA Housing Fund – actual expenditure and forward estimates

<table>
<thead>
<tr>
<th>Province</th>
<th>Actual expenditure</th>
<th>Medium-term estimates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>245</td>
<td>378</td>
</tr>
<tr>
<td>Free State</td>
<td>123</td>
<td>184</td>
</tr>
<tr>
<td>Gauteng</td>
<td>737</td>
<td>639</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>800</td>
<td>628</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>157</td>
<td>100</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>71</td>
<td>55</td>
</tr>
<tr>
<td>Limpopo</td>
<td>173</td>
<td>231</td>
</tr>
<tr>
<td>North West</td>
<td>249</td>
<td>170</td>
</tr>
<tr>
<td>Western Cape</td>
<td>366</td>
<td>364</td>
</tr>
<tr>
<td>Total</td>
<td>2950</td>
<td>2749</td>
</tr>
</tbody>
</table>

Source: National Treasury, 2001a: 74

Provinces have also not always spent their total housing allocation in a financial year, resulting in budget roll-overs. The following year’s allocation is then calculated as the difference between the allocation and the money rolled over from the previous year. Effectively, the provincial department loses scarce resources that are critical to addressing the housing backlog. According to the National Treasury, rollovers in provincial housing budgets over this period can be attributed to several factors, including:

- a lack of incentive for developers to complete projects on time;
- unfavourable weather patterns that interfere with construction deadlines;
- weak capacity and poor planning within departments that slowed down spending; and
- local government elections in 2000 and restructuring towards newly demarcated municipalities.

Rental housing

The post-apartheid government inherited 384,894 rental stock units, of which 77,824 were in the Western Cape. After 1994, these were transferred to provinces and municipalities, and managed by provincial housing boards and municipal housing departments. The properties include vacant serviced sites, houses, flats, and other properties. Currently, subsidy mechanisms do not cover rental housing for the lowest-income groups. The rental mechanism is targeted at the R1200–R3 500 per month income groups – a poor group, but not the poorest. This goes against the spirit, if not the letter, of the Grootboom judgment in that it does not provide for those in desperate need.

The Western Cape aims to provide 45,000 units by 2003/04 through rental housing (Western Cape Provincial Housing Plan, Western Cape Housing Consortium, 2001). As a short term and interim measure, it has its inherited rental stock available to give effect to the Grootboom judgment. To date, it has chosen not to use this resource.

The provision of emergency housing

The Intergovernmental Fiscal Review (2001:82) made specific reference to the Constitutional Court judgment in the Grootboom case. It stated that provincial housing departments should reserve between 0.5 and 0.75% of their allocations to provide for a contingency fund. For the Western Cape, an amount of between R1.9 and R2.9 million should thus be reserved as the contingency fund. However, until the national policy
guidelines are formally approved, there is little pressure on provinces to set these funds aside. No mention is made of a contingency fund for housing in the latest budget of the Western Cape.

4.2 The Western Cape provincial housing budget

The Western Cape has placed the housing function under the control of the Department of Planning, Local Government and Housing. Since 2000/01, it is one of three provinces that have managed to spend their entire housing budgets in each financial year (Intergovernmental Fiscal Review 2001: 72-74). Between 1997/98 and 2000/01, 12.7% of all houses built via housing subsidies were in the Western Cape, although it contains less than 10% of the country’s total population (Ibid: 77). However, the estimated housing backlog of 316 000 in the Western Cape has already been noted. In a sworn affidavit to the Constitutional Court in the Grootboom case, the Western Cape Department of Planning, Local Government and Housing stated:

“The department remains unable to provide housing according to housing needs in the Western Cape and the limited funds at its disposal unfortunately cannot be used to provide temporary shelter” (Affidavit for Case No: CPD 6826/99, 10 March 2000).

In 2002/03, the Western Cape received conditional grant housing allocations from national government to the amount of R372.8 million for the Housing Fund and R13.0 million for the Human Settlement Grant. The latter grant is intended for the development of integrated housing. If the role of the province is seen merely as being an agent of delivery of national government, then this allocation of funds for housing are indeed insufficient to meet existing housing needs in the province. However, this is only true if conditional grants are interpreted to be the sole source of funding for the poor. Within a broader understanding of cooperative governance and the autonomy of the different spheres, the province could have found more creative means to address the backlogs and ensure the realisation of socio-economic rights.

Table 4 shows the budget of the Western Cape Department of Planning, Local Government and Housing for the MTEF period 2002/03 to 2004/05. It reflects a nominal increase of 3.3% on the R489.2 million allocated in 2001/02. However, if one adjusts for inflation, there is a decrease of 3.6% in real terms. The decrease per person or per household is even greater if population growth and migration are taken into account.

Table 4: Budget of Department of Planning, Local Government and Housing

<table>
<thead>
<tr>
<th>Programme (R million)</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA Housing Fund</td>
<td>372.8</td>
<td>412.5</td>
<td>433.4</td>
</tr>
<tr>
<td>Human Settlement Programme</td>
<td>13.0</td>
<td>13.5</td>
<td>14.3</td>
</tr>
<tr>
<td>Total</td>
<td>505.4</td>
<td>548.3</td>
<td>571.9</td>
</tr>
</tbody>
</table>

Source: Western Cape Provincial Government, 2002b: 257

The Human Settlement Programme has, as one of its objectives, the de-densification and formal development of several areas, including greater Wallacedene. It aims to establish 6 000 residential erven and the necessary community facilities. This is perhaps one of the few positive developments directly linked to the Grootboom judgment. It does not, however, address the needs of other communities in the Western Cape facing similar situations. There is an urgent need for a coherent policy to prioritise the housing needs of the very poor, rather than relying on ad hoc interventions. It is also crucial for the Accelerated Managed Land Settlement Programme (which was meant to have started in 2000 in Cape Town) to be implemented (Pillay 2002: 19).
Western Cape provincial housing plans

In its provincial housing plan, the Western Cape housing department asserts that “in the light of the housing backlogs, a provincial housing plan was designed which aims to address ... backlogs, within the ambit of given resources” (emphasis added). The 2002 housing budget of the Western Cape confirms the priorities of the housing plan, namely:

- to provide 20 000 housing opportunities;
- to implement the rapid land release programme; and
- to implement the Human Settlement Redevelopment Programme.

The province projects three scenarios, as summarised in table 5 below. The department’s budget allocation for 2001/02, of just over R321 million, places it somewhere between the low and medium roads. However, the 2002/03 budget target of 20 000 housing opportunities per annum is squarely on the low road.

<table>
<thead>
<tr>
<th>Scenario &amp; required funds</th>
<th>Housing delivery rate</th>
<th>Backlog reduction</th>
<th>Waiting period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low road : R289 million</td>
<td>20 000 per annum</td>
<td>Never reduced to zero</td>
<td>More than 15 years</td>
</tr>
<tr>
<td>Medium road: R463 million</td>
<td>32 000 per annum</td>
<td>Reduced to zero in over 24 years</td>
<td>More than 10 years</td>
</tr>
<tr>
<td>High road: R589 million</td>
<td>40 000 per annum</td>
<td>Reduced to zero in over 15 years</td>
<td>More than 8 years</td>
</tr>
</tbody>
</table>

The province’s housing programmes are categorised as either primary or secondary. Primary programmes are seen as the more urgent priorities, with committed funding allocated to them. In its 2001 housing plan, primary programmes include the Managed Land Settlement programme, ‘greenfields’ project-linked schemes, a low-cost cement-block housing development on the Cape Flats, in situ upgrading and top-structure initiatives, allocation of subsidies to individuals, rent to purchase programmes, new rentals, hostels redevelopment and the reduction of backyard shacks (de-densification). Secondary programmes include the People's Housing Process and housing support centres, disability allowances, relocation assistance and, lastly, emergency housing. The province’s plan thus places the provision of emergency shelter as the last of its secondary programmes. This suggests unwillingness on the part of the provincial authorities to view the directive from the judiciary as a priority.

In its housing plan, the province makes repeated reference to the inadequacy of resources. It points out that its conditional grant of R321.6 million for 2001/02 is clearly insufficient to meet the national basic standard of a ‘subsidy house and a serviced site’. As a way forward, the department proposes that it either receives an increase in funds for housing (presumably from national government), or that it delivers housing incrementally subject to available funding. It thus suggests the right to housing needs to be phased in progressively, from a lower standard to the mandated minimum standard. The department argues that with this approach, it will be able to provide a wider distribution to the very poor through the provision of a site and basic services. It proposes that the top structure (that is the actual dwelling) be acquired through savings or sweat equity.

4.3 Budgets and housing in the City of Cape Town

According to the Constitution, the local sphere of government is not directly responsible for the realisation of housing rights. However, it does have significant responsibilities in respect of related services such as land allocation and infrastructure provision. Local government is also responsible for the provision of basic services such as water, electricity and other services that are
critical to fulfilling the standard of ‘adequate’ housing. It can therefore be said that local
government indirectly plays a significant role in alleviating some of the gendered barriers for
women and housing.

The City of Cape Town is one of the six unicities in South Africa. It thus has a substantial budget.
It is, in fact, more or less equal in size with the budgets of provinces such as the Free State and
Mpumalanga. The operating budget of Cape Town is the one of the largest in South Africa. The
draft operating budgeting for 2001/02 amounts to R7.1 billion. Table 6 shows the functional
classification of the unicity’s operating budget for 2001/02. Electricity distribution accounts for
almost 30% of total operating expenditure. Water and sanitation is the next largest function,
comprising 15%, while housing accounts for only 3% of operating expenditure.

Table 6: Operating expenses of the city of Cape Town: functional classification 2001/02

<table>
<thead>
<tr>
<th>Functional operating expense</th>
<th>Amount (Rm)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity</td>
<td>2 024</td>
<td>29.6</td>
</tr>
<tr>
<td>Water and sanitation</td>
<td>1 054</td>
<td>15.4</td>
</tr>
<tr>
<td>Finance and administration</td>
<td>507</td>
<td>7.4</td>
</tr>
<tr>
<td>Public safety</td>
<td>540</td>
<td>7.9</td>
</tr>
<tr>
<td>Roads, stormwater and drainage</td>
<td>473</td>
<td>6.9</td>
</tr>
<tr>
<td>Housing</td>
<td>216</td>
<td>3.2</td>
</tr>
<tr>
<td>Health</td>
<td>252</td>
<td>3.7</td>
</tr>
<tr>
<td>Other</td>
<td>1775</td>
<td>25.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6 841</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

*Source: National Treasury, 2001b: 160*

The capital budget of the City of Cape Town is R1.27 billion for 2001/02. Of this amount, R835.5
million is reserved for committed capital projects and R300 million for ad hoc projects already
approved by council. The fact that these two sub-categories exhaust the total, suggests that no
new major capital projects were envisaged for the 2001/02 year. Ad hoc items include R20
million for land and R35 million of housing. Very few details are supplied as to how these
amounts will be utilised. The capital budget also records progress on many housing projects and
related services. Several of the projects have as their source of funding the provincial department.
In these cases the municipality is performing an agency function for the province. Significantly,
there appear to be many projects with committed funding to upgrade and develop historically
marginalised areas, although no further details are provided.

It is useful to compare the acquisition of funding for the promotion of business opportunities with
funds received or generated for poverty alleviation and addressing the needs of the indigent
communities. For example, the City of Cape Town raised R520 million in municipal loans for an
industrial and commercial complex near the Mitchell's Plain town centre (City News, 28 March
2002). The construction of this South Park City project is due for completion in 2005. The project
is anticipated to create at least 8 000 direct jobs and possibly 25 000 indirect development
opportunities. The City Council has also demonstrated its capacity to generate revenue in the
recent sale of the old Power Station site on the Foreshore to Boshard Construction for a record
price of R19.5 million. The site is earmarked for the construction of an office block.

By comparison, the city has applied for a R8 million grant from the Department of Land Affairs,
to be used for the purchase of private land in the Wallacedene area for the resettlement of the
2001 winter flood victims. The construction of the bulk earthworks for the Mfuleni Flood Relief
Project near Delft will begin after the approval of a R6.5 million tender. The project consists of
about 4 000 sites for the resettlement of victims of the same floods. Other projects aimed to
address the needs of indigent communities include R2 million for the conversion of the Lwandle Hostel and R180 000 for a community housing project in the Smartie Town development at Macassar (City News, 28 March 2002).

Some of the city’s capital expenditure has thus been allocated to meet the housing needs of Wallacedene and Mfuleni residents, and can be seen as constituting ‘emergency’ relief of some sort. However, the city does not appear to have serious fundraising constraints. In spite of this, the bulk of its funds are used for economic development and the promotion of business projects rather than more direct alleviation of poverty-related conditions.

4.4 Do housing budgets reflect a gendered perspective?

Women (and children in their care) have special needs in respect of housing. These special needs must be reflected in terms of both the policy and legislative framework for housing as well as the budgetary framework. Sadly though, no mention of women or gender features in the budgetary documentation examined for this paper. This is a problem, as budgets need to include key performance indicators that measure physical delivery as well as money amounts. Further, these indicators need to be dis-aggregated by gender and other variables. Dis-aggregation by gender would enable provincial and local authorities to understand the implication of their plans in a more gender-sensitive manner. It would also allow public representatives and civil society to monitor what is happening.

Part 5: Conclusions and recommendations

The Grootboom case, whilst open to criticism in some respects, generally provides a good framework for an analysis of women’s housing rights. Using this framework, this paper has assessed the extent to which the current housing framework, when applied to women, complies with the court’s framework. While South Africa has made great strides in realising housing rights, our analysis suggests many remaining challenges. These include:

- **Inherited backlogs**: South Africa’s long history of land dispossession, forced removals, and racially determined access to state housing has created a housing crisis of phenomenal proportions. This represents an enormous challenge in respect of the required pace of housing delivery.

- **Political tensions**: In the Western Cape, housing delivery has to some extent been constrained by party political tensions. The fact that these tensions are ongoing does not bode well for service delivery. This is especially so for the majority of black South Africans who reside in informal settlements in the Cape Peninsula and elsewhere in the province.

- **Short-, medium or long-term delivery horizons**: All three spheres argued in their appeal against the Grootboom judgment that they were succeeding in providing housing opportunities ‘on a phased basis’ with the provision of land and basic services as a first phase. In other words, the urgency of delivery has been averted by the agreement that housing opportunities can be provided within a longer timeframe. While this gives the authorities more time, it provides no relief for the urgent basic needs of the indigent.

- **Changes in local government**: Ongoing changes in the structure of local government have affected the delivery of housing. Preoccupation with the reorganisation of human, physical and financial resources, new systems of accountability, and the delegation of new lines of authority that resulted from municipal demarcation have created additional reasons – or excuses – for delays in addressing the Grootboom judgment at a local level.
Recommendations

A range of measures can be adopted to advance women’s access to adequate housing. The following recommendations are limited to immediate measures that are likely to have a significant effect on women’s housing rights:

- **Shift from a gender-neutral to a gender-specific housing programme:** The current housing programme largely proceeds from the premise that men and women’s housing needs are identical and that strategies to address them are accordingly identical. The first recommendation accordingly lies in a thorough gendered analysis of the current housing programme and the adoption of specific measures to address women’s housing needs where necessary. It is further suggested that where the programme does make reference to women, these provisions be implemented so as to ensure the advancement and protection of women’s housing rights.

- **Disaggregated data:** A key strategy to meeting women’s housing needs effectively is the collection of gender disaggregated data that also reflects variables such as urban/rural, race and geographical location.

- **Challenging the `one size fits all' notion of housing:** It is recommended that housing policies be tailored to meet the housing needs of different groups of women in society. For example, special measures are required to meet the housing needs of people infected and affected by HIV/AIDS and people with disabilities.

- **Monitoring women’s access to housing:** Critical to the effective realisation of women’s housing rights is proper monitoring. Gender indicators should be developed in this regard. Given its constitutional mandate, the CGE seems ideally placed to take on this function. It should work in collaboration with the SAHRC in order to maximise scarce resources and avoid duplication.

- **Collaboration with civil society organisations:** Civil society organisations are often at the coalface of housing delivery and accordingly well-placed to undertake assessments of the effectiveness of housing policies as well as their impact on women. Relevant organs of state should therefore collaborate meaningfully with such organisations.

- **Development of strategies to mobilise communities:** The Western Cape provincial government, in its report to the SAHRC for 1999/00 identified a lack of assistance from communities in mobilising resources and facilitating delivery as one of its problems. Provincial government strategies are therefore required to facilitate such mobilisation from communities and should examine the reasons for non-participation.

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International Documents

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1 The formal citation for this case is Government of Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC).